

THE UNIVERSITY OF CHICAGO

THE PARADOX OF UNION: THE CIVIL WAR AND THE TRANSFORMATION OF  
AMERICAN DEMOCRACY

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ADAM LYND ROWE

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*For Tiffany*

TABLE OF CONTENTS

Acknowledgments.....iv

Abstract.....viii

INTRODUCTION

“One State, Miscalled the United States”.....1

PART ONE: THE CRISIS OF THE CONSTITUTIONAL UNION

- 1) “Sovereigns without Subjects:” The Antebellum Ideal of the Union.....40
- 2) “Whither?” The Republican party and the Paradox of Progress.....58
- 3) Earnest Men, Honorable Men, and Confidence Men.....120
- 4) William Henry Seward and the Failure of Antislavery Optimism.....171
- 5) The Collapse of the Establishment.....204

PART TWO: RELUCTANT REVOLUTIONARIES

- 6) Desperate Improvisations and Ideological Evasions.....241
- 7) Lyman Trumbull: Constitutional Jacobin.....269
- 8) William Pitt Fessenden: Yankee Cavalier.....344
- 9) States’ Rights Radicals, Constitutional Conservatives, and Machine Democrats.....452

PART THREE: THE NEW REGIME AND ITS CRITICS

- 10) Most Respectable Whigs: John Pendleton Kennedy and Robert Winthrop.....523
- 11) Charles Eliot Norton, E.L. Godkin, and the New Creed of the Nation.....593

CONCLUSION

- “The Death Struggle of the Republican Party”.....675
- Select Bibliography.....683

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For too long I have looked forward to acknowledging all the debts I have accumulated in writing this dissertation. Now the task seems overwhelming. Where to begin?

The bibliography lists the archives and libraries that made this project possible. My gratitude toward the librarians who provided me with access to these collections is immense, both for making my research possible and for making the work such a pleasant experience.

Gregory Downs read an earlier draft of the manuscript. I knew and admired Greg through his work, but his interest in my project was an act of exceptional generosity toward someone he had never met. Greg's terrific notes saved me from a few embarrassing errors or overstatements and helped me refine my argument and its historiographical implications. As this is a work in progress, I am still incorporating Greg's most insightful comments.

Mark Summers also read some of the dissertation and provided invaluable feedback. As with Greg, my initial interaction with Mark stemmed from admiration on my part and generosity on his. Mark's knowledge of nineteenth century American politics is unsurpassed, though not from any lack of effort on his part to share it. In addition to suggestions and criticisms, he provided me with hundreds of citations and notes from his own archival research. Mark reads and writes faster than I can think, so I am still absorbing his copious notes.

The University of Chicago has been an ideal intellectual home, and I am thrilled to have a post-doctoral appointment that will allow me to remain here a little longer. For seven years, Sonja Rusnak has fielded every question I have brought to her, no matter how trivial, repetitive, or unanswerable – and sometimes all three – with a cheerful smile and an open, unmistakably genuine eagerness to help.

Early in my graduate career, Constantin Fasolt guided me through an extensive reading list for an orals field in early modern European political thought. Much of that reading list is far removed from the American Civil War, but it profoundly influenced the intellectual preoccupations that have guided my research ever since. In addition to broadening my horizons, my conversations with Professor Fasolt also taught me the value of forthrightly admitting what I do not know.

Among the many people I have learned from at the University of Chicago, I am particularly grateful to Ted Cook and Jane Dailey for helping me with my teaching; Jonathan Levy, Amy Lippert and Amy Dru Stanley for many terrific discussions on nineteenth century political and intellectual history; and Tim Crimmins and Colin Rydell for lively discussions on every imaginable subject.

My committee has been ideal. As mentors and models, Professors Sparrow, Conzen and Holt have been generous in their support, and even their sharpest criticisms have conveyed the subtle but unmistakable compliment of taking my work seriously. At the outset, my project was unwieldy in its ambitions, and I am grateful indeed that they had enough confidence in me to let me pursue it. Whether I've achieved those ambitions is for others to judge, but I have benefited immensely as a scholar from the effort. My committee gave me the freedom to follow my own vision, and the support to realize that vision far beyond the limitations with which I began. As a reader, Professor Holt's comments were always spare, meticulous and pointed. I took more courses with him than with anyone else at Chicago, and his favorable opinion of my work since has meant the world to me. His own work is proof that one can be engaged and passionate without being harsh or dismissive toward work with which one disagrees. I do not think I, or anyone, can emulate his example, but I intend to try.

Professor Conzen has the perhaps unenviable distinction of having read, and greatly improved, every significant scholarly work that I have written as a historian. I began working with her as a Master's student, and her invaluable guidance was an important factor in my decision to pursue a Ph.D. She introduced me to the true nature of our profession, and the experience convinced me that it was worth the effort. "You made a good start," she said, several years ago, of a paper I considered not only polished and complete but just about perfect. There are few rewards in working with Professor Conzen, except the ineffable one of ultimately producing something far better than I had been capable of at the outset. This was true of my Master's thesis under her guidance, and it has only become more true with each subsequent effort.

As a historian of the 20<sup>th</sup> century, James Sparrow may seem like an unlikely advisor for a dissertation on the Civil War. It would have seemed so to me until I had the good fortune of taking a seminar with him. His influence will be obvious to anyone familiar with his work, but it only hints at what I've learned in our conversations over the years. Beyond all else, Jim has impressed me with the importance of taking a broad view of American political history, its internal development and its relationship to the rest of the world. The history of American democracy is one big story. And the best specialized research on this great subject begins with an informed appreciation of the whole unfolding narrative. I cannot hope to emulate Jim's knowledge of every facet of American historiography, current and classic, but his example is, nevertheless, an inspiration.

Before graduate school, I worked as a financial analyst and researcher at *Grant's Interest Rate Observer*, where I also helped the editor, James Grant, research his biography of Thomas Brackett Reed. Jim kindly extolled my potential as a historian – without too bluntly contrasting it

with my listless career as a financial analyst. I learned my craft under his guidance as a researcher, and my modest association with his biography is an honor I hope I can one day reciprocate.

Finally, my father taught me how to write and set the intellectual standard I have tried to follow. He would not call himself a scholar, and he has little patience for those who use showy erudition as a substitute for intelligence. But I learned early on that my father only felt real contempt for the sort of frivolous person who does not take an intelligent, passionate interest in *something*, whatever that something may be. Were it not for his example, and a few roaring interventions during my adolescence, I may have become such a person myself. It is now a source of some pride, as I submit this dissertation, to know that he now thinks he may have overdone it a little.

I have dedicated this dissertation to my wife, Tiffany. While writing this dissertation I've had the great good fortune of starting a wonderful family with her. Our shared life together is the basis of all my hopes and the end of all my efforts.

## ABSTRACT

This dissertation analyzes how Republican leaders and intellectuals embraced a new understanding of their polity as they scrambled to save it during the Civil War. An adequate solution to the problem of secession and slavery required a much broader reconceptualization of the political system as a whole. But most Republicans did not see it this way at the time. They sincerely believed that the conservative and revolutionary elements of their agenda were not only compatible but complimentary, a belief that arose almost automatically from their perception of the “slavepower” as an external threat to their cherished order, rather than an intrinsic part of it. Far from inhibiting the Republicans, this illusion united their hopes and fears into a resolute sense of purpose. Only gradually, in responding to one emergency after another, did Republicans begin to accept that the moral and practical imperatives of the war entailed a fundamental departure from the constitutional system they were trying to preserve, a departure that went beyond any particular issue to redefine the very meaning of free government. My goal is to show how the key concepts in the antebellum political vocabulary – liberty, equality, state(s), and citizen – were refashioned in the violent process by which an entirely new conception of the Republic emerged from the failure of the old.

## Introduction:

### *“One State, Miscalled the United States”*

Senator Louis Wigfall of Texas no longer considered himself a citizen of the United States when, on March 7, 1861, he rose to denounce President Abraham Lincoln’s Inaugural Address. His state having seceded more than a month earlier, Wigfall was the proud son of a foreign, potentially hostile nation, and he made no secret of the fact. Yet there he stood, a highly placed member of the government he openly pledged to overthrow. When Republicans attempted to expel this self-declared rebel, they were thwarted by border state senators who would only do so in language that recognized the legality of secession. And so Wigfall remained, providing yet another indication of a nation crumbling to pieces under a paralyzed and helpless government. This was to be his last speech, however, and Wigfall used it to deliver a message even more unwelcome than his presence. The great issue at the core of American political and constitutional history, the issue that had conferred an epic unity on the period between 1787 and 1860, was effectively obsolete, never to be resurrected, he said:

Whether there is one State, miscalled the United States, or whether there are thirty three States confederated together; whether this is a General Government or a Federal Government, whether it derives its power from the people as individuals, and is a social compact, or whether it derives its power from nations, and is a Federal compact, practically amounts to nothing. Seven States have withdrawn; they have established a government; and you have to put down, subvert, root-up, turn over, exterminate, annihilate that Federal government of theirs, before you can enforce your laws within its limits. You may have the power, or you may not; that is a question to be decided, not by you, nor by us. What, then, do you promise yourself by this war?...Preserve the Union

you cannot; for it is dissolved. Conquer those States and hold them as conquered provinces, you may. Is the play worth the candle?<sup>1</sup>

Wigfall intended his question as a taunt, and like any good taunt, it could not be answered, only ignored. But the question proved prophetic. The Republicans who listened grimly to Wigfall's insolent challenge were not prepared to consider the profound dilemma it contained, and they hardly suspected that their eventual answer would decide the nation's fate. *What, then, do you promise yourself by this war?*

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The Republicans who came to power in 1861 oversaw a tremendous revolution and a successful counterrevolution. To save the Union they had to transform it, replacing in substance what they preserved in form, and those who shouldered this responsibility internalized its contradictory imperatives. They announced their most creative innovations in the rhetoric of tradition, refashioned their most cherished principles by desperate improvisation, and drastically altered the main pillars of their government, its political, economic and institutional structure, almost by accident, distractedly building a permanent edifice to meet the demands of a temporary emergency. Most revolutionaries tend to exaggerate the radical novelty of their work, but the leaders of the Civil War era sought to hide it, even from themselves. And so the great themes that lend the era an epic unity – liberty, equality and Union – also obscure drastic

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<sup>1</sup> *Congressional Globe*, 37th Congress, Special Session, March 7, 1861, 1441. The Republicans attempted to pass the following resolution: "Whereas Hon. L.T. Wigfall, now a Senator of the United States from the State of Texas, has declared in debate that he is a foreigner, that he owes no allegiance to this Government, but that he belongs to and owes allegiance to another and foreign State and government: Therefore, Resolved, That the said L.T. Wigfall is expelled from this body." To this, Senator Thomas Clingman, a pro-secessionist from North Carolina, offered the following amendment: "It is understood that the State of Texas has seceded from the Union, and is no longer one of the United States, Therefore, Resolved, That she is not entitled to be represented in this body." A long and pointless debate then followed, and the resolution was dropped. *Congressional Globe*, 37 Congress, Special Session, 1447-1451.

changes, as sacred words acquired new meanings, and a struggle everyone had foreseen transformed the Republic in ways no one had sought.

Outmatched in every conceivable respect, the leaders of the Confederacy understood that their chance of victory lay, not in defeating the North, but in demonstrating that the destruction of the Union was already an accomplished fact. Again and again, secessionists had confidently asserted that the Union, broken by war, could never be restored by force. On this narrow but crucial question, constitutional history, political philosophy and practical wisdom all concurred with the Southern view.<sup>2</sup> Republicans could declare that secession was treason, they could insist on the President's constitutional duty to enforce the laws, but they could not begin to reconcile the military conquest of an entire section of the country with what they all agreed was the original spirit of the Union, the first government ever established by "reflection and choice" rather than "accident and force," as Hamilton wrote in the first *Federalist*.<sup>3</sup> They could ignore, but they could not escape, the paradox implicit in waging war against eight million people, separately organized in a grimly determined rebellion, in order to make them remain equal citizens of a government "by the people." The secessionists gambled everything on the assumption that the North would eventually be paralyzed by this paradox at the heart of a war for the Union. They understood full well that if "the war is to go on until exhaustion...we shall be the

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<sup>2</sup> Southerners correctly pointed out that, although the legality of secession was inherently ambiguous, the Framers of the Constitution *had* expressly considered whether to empower the federal government to coerce a recalcitrant state, and, after James Madison himself spoke in opposition, deliberately withheld any such power. See David Potter, *The Impending Crisis* (New York, 1976), 481- 482. Alexis de Tocqueville argued that the sovereignty of the Union could never survive a contest with the states, though he admitted that a predominant part of the Union might conquer a weaker part, and "then do great things in the name of the federal government, but to tell the truth, that government will no longer exist." Tocqueville, *Democracy in America* Harvey Mansfield and Delba Winthrop trans. (Chicago, 2000), 354. Such observations were not even controversial. William Henry Seward, speaking as the *de facto* leader of the Republican party during the secession crisis, said "I do not know what the Union would be worth, if saved by the use of the sword." (*Congressional Globe*, 36<sup>th</sup> Congress, 2<sup>nd</sup> Session, January 12, 1861, pg. 341). The point isn't that the federal government was powerless, only that it could not possibly maintain its present structure if suppressing the rebellion swelled from a police action to a long, grinding war.

<sup>3</sup> Alexander Hamilton, *Federalist No. 1* Jacob E. Cooke, Ed. (Middleton, Ct. 1961), 3.

first to be exhausted.”<sup>4</sup> But, as Hermann von Holst wrote soon after the conflict, “the secessionists had assumed as matter of course that the north would abandon the restoration of the Union when it had become convinced by experience that the restoration of the former Union was impossible, and that was a disastrously false conclusion.”<sup>5</sup>

And yet the central question this raises – how did the Republicans redefine the Union? – has remained relatively unexplored. The best scholarship on the Civil War in recent decades has focused overwhelmingly on the issues of slavery and race, unearthing historical dimensions of the war, and of the crucial role played in it by groups who were excluded from mainstream politics, that an earlier generation of scholars scarcely noticed.<sup>6</sup> But this immense historiographical achievement has indirectly made it more difficult to understand the Republicans on their own terms. As a result, historians tend to exaggerate Republicans’ antislavery commitments or to deny the sincerity of those commitments altogether.<sup>7</sup> In fact, the antebellum Republicans’ opposition to slavery was an extension of their devotion to the constitutional, institutional and cultural framework of the Union. The same government that protected slavery provided the only political basis for Northern opposition to it. In the Union,

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<sup>4</sup> Herschel Johnson to a friend, October, 1862. Cited in Percy Scott Flippin, *Herschel V. Johnson: State Rights Unionist* (Richmond, 1931), 219-220.

<sup>5</sup> Hermann von Holst, *The Political and Constitutional History of the United States* John Lalor trans. (Chicago, 1892), 458.

<sup>6</sup> It’s only possible to cite a few examples of this voluminous scholarship in a single footnote. Kate Masur, *An Example for All the Land: Emancipation and the Struggle over Equality in Washington D.C.* (Chapel Hill, 2010); Stephanie McCurry, *Confederate Reckoning: Power and Politics in the Civil War South* (Cambridge, 2010); and Steven Hahn, *A Nation Under Our Feet* (Cambridge, 2003).

<sup>7</sup> Gary Gallagher’s *The Union War* is one of the few recent academic monographs on the Civil War that takes the antebellum ideal of the Union seriously. But his study, which focuses on popular perceptions of the Union, avoids considering how the war transformed the Union that Northerners were fighting to save. “Continuity marked citizens’ attitudes between 1860 and the early postwar decades,” Gallagher writes. “...[N]o one should infer a sea change in attitudes toward the nation. Loyal Americans...possessed a strong sense of their nation as a democratic republic unique in the world, bequeathed to them by the founding generation and destined for future greatness if poisonous questions related to slavery could be settled.” Gallagher, *The Union War* (Cambridge, 2011), 6, 161. Contrast Gallagher’s monograph with Chandra Manning, *What this Cruel War Was Over: Soldiers, Slavery and the Civil War* (New York, 2007), which places antislavery sentiment above all others in the Northern war effort. The most balanced treatment of the war remains James McPherson *The Battle Cry of Freedom* (Oxford, 1988).

Northerners could not attack slavery directly; out of the Union, their attacks would acquire the harmless, self-satisfied tone of a foreign nation deploring the moral failings of its neighbor.<sup>8</sup>

This dissertation analyzes how Republican leaders and intellectuals embraced a new understanding of their polity as they scrambled to save it during the Civil War. An adequate solution to the problem of secession and slavery required a much broader reconceptualization of the political system as a whole. But most Republicans did not see it this way at the time. They sincerely believed that the conservative and revolutionary elements of their agenda were not only compatible but complimentary, a belief that arose almost automatically from their perception of the “slavepower” as an external threat to their cherished order, rather than an intrinsic part of it. Far from inhibiting the Republicans, this illusion united their hopes and fears into a resolute sense of purpose.

Only gradually, in responding to one emergency after another, did Republicans begin to accept that the moral and practical imperatives of the war entailed a fundamental departure from the constitutional system they were trying to preserve, a departure that went beyond any particular issue to redefine the very meaning of free government. And that realization dispelled the illusion that had allowed them to defer an impossible dilemma between incompatible ideals. Republicans who were sincere in their moral principles were rarely willing to contemplate sacrificing one as the necessary cost of the other. The ideal of individual liberty was inextricably connected, in their minds, to that of local self-government. They could not imagine a powerful nation-state capable of extending and protecting individual liberty for all Americans, even as the

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<sup>8</sup> The best history of the political attack on slavery that culminated in military emancipation is James Oakes, *Freedom National: The Destruction of Slavery in the United States, 1861-1865* (New York, 2013). But Oakes isolates this process from the broader political changes that emancipation entailed, which makes antislavery strategies seem deliberate, even clairvoyant. The reality was much more improvisational. Oakes effectively demolishes the impression that Republicans were reluctant to destroy slavery – an impression that rests on anachronistic assumptions about the Union. But the Republicans were reluctant, even unwilling, to entrust the Federal government with powers capable of enforcing national civil rights.

war over which they presided brought such a state, tentatively, into being. And so they muddled along in helpless ambivalence or diverged upon new lines of self-deception. As the original Republican party dissolved with its animating illusion, all sides incurred the bitter recrimination of having abandoned or betrayed a principle they had once cherished as sacred.

To understand the Civil War, both its accomplishments and its limitations, one must ultimately come to terms with the Republican leaders who improvised their way through the ordeal – unequivocal in their support of the war, sincerely antislavery, and yet profoundly uncertain about the new political order they were building. They belonged to the old order, its ideals and implicit assumptions shaped the contours of their worldview, and they could not possibly anticipate what emerged from its chaotic demise. And so they built blindly, with no way to know, until they were through, what they had saved and what they had made anew.

By focusing on elite Republicans' conception of their political order, this dissertation provides new insight into both the animating motives that defined the party's leaders and the salient differences that divided them as a party. Recovering the intractable moral dilemma implicit in the Republicans' worldview also allows us to appreciate the complex dimensions of a political transformation that have been forgotten and lost, even as the Civil War continues to reverberate loudly in the present. Americans have inherited the ideals established by the Second American Revolution, unaware of the different ideals the Republicans were compelled to abandon.

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Historians who emphasize the crucial importance of ideas and principles tend to acknowledge only one of them at a time. Yet a key function of any political ideology is to supply the organizing framework that allows different ideas and principles to coexist. A moral principle,

no matter how profoundly and sincerely felt, does not confer the power of enforcing obedience to it, nor does it alter the boundaries of legitimate coercion. Beginning in the mid-twentieth century, as the struggle for racial equality returned to the center of American politics, scholars of the Civil War era have unconsciously projected backward a political order that did not yet exist. A century after Appomattox, the Federal government had asserted its authority on everything important *except* race. That is why the states' rights canard had come to seem so patently disingenuous. The institutional tools to enforce the rights and privileges of national citizenship were already present. All that was missing was the will to act.

The problem facing the Republicans in the Civil War era was exactly the opposite. Even those who wholly and sincerely advocated racial equality could not imagine a political system capable of translating that commitment into a permanent reality. The key problem for Republican leaders and intellectuals was how to incorporate the results of an abrupt, catastrophically violent assertion of military force into an enduring political regime that remained true to the ideal of free government.<sup>9</sup>

“A crisis,” as the political scientist Stephen Skowronek has defined it, “is a sporadic, disruptive event that suddenly challenges a state’s capacity to maintain control and alters the boundaries defining the legitimate use of coercion.”<sup>10</sup> In the case of the Civil War, the immediate cause of the crisis is beyond dispute, but the resolution to that crisis was ultimately a matter of redefining the boundaries of legitimate coercion. Prior to the Civil War, the Federal government had virtually no authority over the real work of governance – over education, policing and

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<sup>9</sup> For a terrific analysis of the military’s central role in reforming the South, see Gregory Downs, *After Appomattox: Military Occupation and the Ends of War* (Cambridge, 2015). This is not to diminish the significance of what W.E.B. Du Bois called “the problem of the color line.” To explain the political crisis of the Civil War era without the concept of race would be like trying to explain a financial crisis without the concept of money. Yet its overwhelming significance diminishes its explanatory power. It explains everything, and, therefore, cannot explain why everything suddenly changed.

<sup>10</sup> Stephen Skowronek, *Building a New American State* (Cambridge, 1982), 10.

punishing crimes, defining suffrage requirements, and protecting individual rights. A general government that preserved local autonomy in so many vital areas could not possibly hope to maintain the rights of former slaves in the South. Even many of the most radical proposals during the war were animated by the chimerical hope of transforming the South permanently and all at once, without transforming the government as a whole. Get past the heady rhetoric, and it becomes clear that many flowery statements of principle served as an alibi for those who did not want to consider the crude mechanics of power. As W.E.B. Du Bois later observed, it was this mindset that brought the disappointment of one failed panacea after another.<sup>11</sup>

But to criticize the Republicans for the limitations of their agenda unfairly dismisses the ideological and institutional constraints in which they operated. “In confederations,” Alexis de Tocqueville wrote with the American Union in mind, “the preponderate power always resides, despite fictions, in the state governments and not in the federal government, and civil wars are only disguised foreign wars.”<sup>12</sup> Ironically, by making the contested fiction of national sovereignty a reality and, at the same time, dramatically expanding the boundaries of citizenship itself, the Civil War also made it possible to criticize the mentality of those who accomplished this remarkable feat. Compared to the enduring Federal leviathan that emerged during the Great Depression and World War Two, the state-building efforts of the Civil War era seem as ephemeral as its architects were ambivalent. But in violently establishing the political sovereignty of the nation-state, the Republicans transformed the way Americans perceived literally every problem under their government. This was a conceptual revolution, and the post-

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<sup>11</sup> W.E.B. Du Bois, *The Souls of Black Folk* (New York, 1999), 15. “The bright ideals of the past – physical freedom, political power, the training of brains and the training of hands, -- all these in turn have waxed and waned, until even the last grows dim and overcast. Are they all wrong – all false? No, not that, but each alone was over-simple and incomplete.”

<sup>12</sup> Alexis de Tocqueville, *Democracy in America* Harvey Mansfield and Delba Winthrop, trans. (Chicago, 2000), 631.

Reconstruction reversals of an even more sweeping revolution did not overturn the new paradigm of American politics.

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In the foundational text of modern republicanism, Machiavelli suggested that even the most drastic reform of an antiquated state must retain “at least the shadow of its ancient modes so that it may not appear to the peoples to have changed its order even if in fact the new orders are altogether alien to the past ones.”<sup>13</sup> Machiavelli did not believe political leaders would need to believe their own deceptions. But then, Machiavelli never met an American. The Republicans could never have remained in power if they were not able to make the most astonishing ideological adjustments while also retaining a sincere reverence for the political structure they inherited from the founders. Thus, Charles Sumner could insist, absurdly, that “the New England system of common schools is a part of the Republican form of government as understood by the framers of the Constitution.”<sup>14</sup>

Although thoughtful contemporaries tended to regard the war as a drastic break with their past, to historians interpreting events in retrospect it seems to have merely confirmed “the main current of nineteenth century American historical development,” as Morton Keller wrote, expressing the prevailing interpretation of most political historians. “The war affected its pace but not its character.”<sup>15</sup> In the middle decades of the nineteenth century, America moved from a decentralized agrarian society to an organized industrial society; the central government expanded its authority to assure national uniformity in commerce and a consistent definition of

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<sup>13</sup> Machiavelli, *Discourses on Livy* Harvey Mansfield and Nathan Tarcov trans. (Chicago, 1996), 60.

<sup>14</sup> Cited in David Herbert Donald, *Charles Sumner and The Rights of Man* (New York, 1970), 426. As Henry Adams remarked, this was “an idea that would have seemed to the last generation as strange as though it had been announced that the electric telegraph was an essential article of faith in the early Christian Church.” Adams “The Session” *North American Review* (July, 1870).

<sup>15</sup> Morton Keller, *Affairs of State, Public Life in Late Nineteenth Century America* (Cambridge, MA, 1977), 2.

citizenship; the localized, participatory democracy that fascinated Alexis de Tocqueville vanished in a welter of ethno-cultural divisions, class conflict and political machines fueled and corrupted by organized money; railroads and telegraph lines stitched the country together, the populations of major cities swelled into the millions, and the settlement of the West, always energetic, surged into a tidal wave. Swept up in this accelerating current, the American ship-of-state crashed violently onto the shoals of slavery. The Civil War was probably necessary to remove that intractable evil, but Northerners who fixated on the war to explain the vast changes that swept their society mistook the consequences of the conflict for the causes that preceded it.

In one sense this argument is unanswerable. But there are particular moments in the lived experience of a nation, “when the door opens and lets the future in.” However long that future may have pounded impatiently at the threshold, its entrance is rightly seen as a singular event, and a dramatic one at that. Or, to move from literary metaphor to academic theory, “Even the accumulation of incremental changes” William Sewell writes, “often results in a build-up of pressures and a dramatic crisis of existing practices rather than a gradual transition from one state of affairs to another...Historical events tend to transform social relations in ways that could not be fully predicted from the gradual changes that may have made them possible.”<sup>16</sup>

In the decades prior to 1861, governance structures at the state and local level steadily reproduced themselves through constant small adjustments and revisions. To give two prominent examples: The slave regime tightened its grip in the Deep South, and municipal governments expanded their public responsibilities in large cities. And as these examples illustrate, the pressures placed on local governance structures in one place were wholly foreign elsewhere, as

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<sup>16</sup> William Sewell, “Historical Events as Transformations of Structures: Inventing Revolution at the Bastille” *Theory and Society* (Dec., 1996), 843. The door quote is from Graham Greene, *The Power and the Glory* (New York, 1990), 12. Sewell’s conceptual description of historical events as disruptive transformations of social structures is too concise to summarize and too lengthy to quote in full. But it provides a terrific theoretical foundation for understanding the Civil War as a transformation in the structure of the national polity.

the slaves, indebted farmers or urban proletariat who dominated affairs in one state were totally absent or insignificant in another. The decentralized structure of the Union allowed these centrifugal forces to grow with the polity itself, heedless of external restraint. As a result, a “cultural federalism,” more potent than its institutional counterpart, reinforced Americans’ ideological commitment to local self-government, even as nationalism and industrial capitalism asserted a countervailing pressure toward consolidation.<sup>17</sup>

The continental abundance that fostered the staggering growth of the United States also allowed citizens and leaders to avoid a painful departure from inherited patterns of thought. As cities doubled and tripled in size, as immigrants began arriving by the millions, as the general government assumed control over vast territories stretching to the Pacific Ocean, as industrialization created a new class structure in the North and a Cotton Kingdom in the South, Americans moved briskly into the modern world without ever shedding the innocence of their more Arcadian past. The staggering innovations transforming American society only intensified an almost pathological deference toward the Founders. The rigid constitutionalism that held the nation together disguised the explosive centrifugal forces tearing it apart. And so the Union, as a concept and system of governance, persisted virtually unchanged, increasingly calcified and brittle in relation to the dynamic forces surrounding it.

“The evils we experience” Alexander Hamilton wrote in *Federalist 15*, “do not proceed from minute or partial imperfections, but from fundamental errors in the structure of the building which cannot be amended otherwise than by an alteration in the first principles and main pillars of the fabric.”<sup>18</sup> The same diagnosis applied in the 1850s, but you will search in vain for the Republican willing to acknowledge it. “If I have, in any way, succeeded in mastering the primary

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<sup>17</sup> The term “cultural federalism” comes from Roy Nichols, *The Disruption of American Democracy* (New York, 1948), 20-24.

<sup>18</sup> Hamilton, *Federalist* No. 15, 93.

elements of our forms of government, the first and fundamental idea is, the reservation to the people of the respective States of every power of regulating their own affairs not specifically surrendered in the Constitution,” Charles Francis Adams declared during the secession crisis. Even “the intimation of any such interference” on the question of slavery, he insisted, would shake “the foundation of the whole Confederated Union.” A lifelong veteran of the antislavery cause, Adams could nevertheless report, in all sincerity, “So far as I remember, nothing of this kind was ever thought of heretofore.”<sup>19</sup> The “natural antagonism” between the institutions of the North and South had only one solution, Benjamin Wade told his Southern colleagues in the Senate. “It is to stand upon the principles you once professed, rigid State rights, yielding to the General Government just as little power as it is possible to cement it together so far as to provide for the common defense.”<sup>20</sup> Wade’s opinion flowed logically from the belief, universal among Republicans, that Southerners were the aggressors in the sectional conflict. The slavepower’s control over the Federal Government was, for the Republicans, an object lesson in the dangers of centralization.

Missing from all segments of antebellum politics was any serious effort to rethink the institutional framework of the Union, creating a centralized state that would temper the rights of local self-government, restraining democracy in order to save it. Even the anti-Union sentiment that made the abolitionists so widely hated throughout the North was characteristic of the broader political culture to which they belonged. The ideal of self-government and voluntary association suggested, as a corollary, the right of voluntary dissociation, i.e. secession. On this point radicals in both the North and South were wholly agreed. Though one could not hope to coerce a separate community into behaving morally, a free community should not hesitate to dissolve the political

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<sup>19</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 2<sup>nd</sup> Session, Appendix, 123-127.

<sup>20</sup> *Congressional Globe*, 35<sup>th</sup> Congress, 1<sup>st</sup> Session, 1113.

bonds that connected it with slave communities. Attacking the Union allowed abolitionists to denounce slavery without adjusting a theory of political liberty that placed slavery beyond their reach.

All Americans in the antebellum era accepted a communal definition of self-government as the basis of political liberty. Alexander Hamilton, in the first *Federalist*, was careful to say that the new nation would decide “whether societies of men,” rather than simply men, “are really capable or not of establishing good government from reflection and choice...” Participation in politics, as the Founders recognized, is inherently illiberal. The state may protect the rights of individuals but political power, except in the smallest communities, can only be exercised through membership in a group. Absolute individual autonomy is the negation of political liberty just as unrestrained political liberty is the negation of individual autonomy. Freedom to build a community of common purpose can only exist in tension with the freedom of individuals to live as they choose. After the Civil War, the nation-state gradually asserted itself as the balance wheel between these two freedoms, but the framers of the original Constitution only intended it to protect and harmonize the political freedom of groups. Institutionally, this contradiction manifested itself in the striking disparity between the powers of the general government, which were strictly fettered by the Constitution, and the dynamic innovations of individual states. The diminished role of the central state in American political culture produced not only an ethos of radical individualism but also an equally strident and often illiberal ethos of communitarianism.<sup>21</sup>

Indeed, “individualism,” the term Alexis de Tocqueville coined to describe one of the most striking qualities of American society, is easily misunderstood in its application to the antebellum United States. America was never a nation of isolated, self-sufficient individuals.

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<sup>21</sup> For a comprehensive analysis of this developmental pattern, see Gary Gerstle, *Liberty and Coercion: The Paradox of American Government From the Founding to the Present* (Princeton, 2015).

Tocqueville himself, along with countless other observers, marveled at Americans' ability to cooperate and organize themselves spontaneously for almost any conceivable public purpose. But they did so on their own terms. "In the United States," Auguste Laugel, a French observer wrote early in Civil War, "there is a horror of all trammels, system, and uniformity." Americans were fervent joiners, participators, members, organizers, and cooperators, but they fiercely resisted the impersonal organizations that dealt them a passive role.<sup>22</sup>

Americans understood their democracy as the antithesis of European statism that, they believed, placed the prerogatives of rulers ahead of the rights of people. They were therefore unwilling to see how their own concept of democracy placed an insuperable barrier to national emancipation. Only those who were hostile to the principle of democratic equality appreciated its relationship to slavery.<sup>23</sup> It escaped no one's notice, for example, that reactionaries in Europe constantly invoked American slavery to defend their own autocratic systems, provoking many democrats to respond by defending the indefensible. American abolitionists and most antislavery leaders avoided that trap, but the antidemocratic critique of slavery still caused antislavery democrats to ignore the legitimate connection between their democracy and slavery.<sup>24</sup> Only Americans who did not share their countrymen's passion for equality were, ironically enough, able to see the only viable solution to the problem of slavery. "What we want is a strong government, instead of a 'government of opinion,'" the New York diarist and intellectual George Templeton Strong wrote in 1860. "If there be disunion, a strong government will be demanded and will come into being somehow." And, like most of his countrymen, Strong assumed that a

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<sup>22</sup> Auguste Laugel, *The United States During the Civil War* edited by Allan Nevins (Bloomington, 1961), 179.

<sup>23</sup> In the context of the early American Revolution, T.H. Breen has made a similar point in a fascinating essay on James Otis. Otis's emphasis on the rights of British subjects allowed him to assert a far more expansive concept of liberty than those who were moving away from the idea of subjecthood and toward the idea of citizenship. Breen, "Subjecthood and Citizenship: The Context of James Otis's Radical Critique of John Locke" *New England Quarterly* (September, 1998).

<sup>24</sup> W. Caleb McDaniel, *The Problem of Democracy in the Age of Slavery: Abolitionists and Transatlantic Reform* (Baton Rouge, 2013).

powerful central government would mean the end of “Democracy and equality and various other phantasms...”<sup>25</sup>

Though a sincere disciple of his nation’s democratic faith, Herman Melville foresaw the same somber result.

*Power, unanointed may come –  
Dominion (unsought by the free)  
And the Iron Dome  
Stronger for the stress and strain,  
Fling her huge shadow athwart the main  
But the Founders’ dream shall flee.*<sup>26</sup>

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The Republicans’ devotion to the antebellum Union is uncontroversial among historians, but most tend to treat this commitment either as simple nationalism, a devotion devoid of ideas and principles, or according to our own teleology of what the Union subsequently became. In the first framing, racialized nationalism is pitted against the genuine ideal of freedom, with Lincoln and other Republicans condemned for their adherence to the former or applauded for lurching desperately toward the latter, a development that sympathetic historians tend to characterize in terms of personal growth.<sup>27</sup> In the second framing, the Republicans were always determined to

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<sup>25</sup> Allan Nevins and Milton Halsey, eds. *The Diary of George Templeton Strong* 4 vols. (New York, 1952), 3:66.

<sup>26</sup> Herman Melville, *The Battle Pieces of Herman Melville* Hennig Cohen, ed. (New York, 1963), 40. Melville wrote the poem in 1860 or early 1861, most likely during the five-month secession crisis.

<sup>27</sup> Much of the scholarship on this question focuses on Lincoln. Lerone Bennett Jr. has written the most influential scholarly criticism of Lincoln’s attitude toward slavery and black Americans. Bennett, *Forced Into Glory: Abraham Lincoln’s White Dream* (Chicago, 2000). Historians have a hard time reconciling the view of Lincoln as the Great Emancipator with the overwhelming evidence, presented by Bennett and others, that he came to that position reluctantly and never fully articulated a vision of interracial equality. But the view of the Republicans and Lincoln as passive, even unwilling, instruments of emancipation ignores the extent to which he and they rushed ahead of the vast majority of their countrymen, both in their antebellum opposition to slavery and in their support of emancipation. A narrative of personal growth, though profoundly ahistorical, allows historians to reconcile these seemingly contradictory facts. I have approached this question from an entirely different angle. Eric Foner is perhaps the most influential historian to juxtapose a devotion to the Union against a devotion to freedom. The Republicans were divided, he writes in a characteristic formulation, “between the Unionists by principle and the

create “the more perfect Union” that emerged from the war, but they were constrained by prudent considerations of what was politically possible.<sup>28</sup>

The first interpretative framework, even at its most sophisticated, tends to flatten a complex historical process into a melodrama thinly disguised as a dialectic; the second credits the Republicans with a clarity of purpose that only became conceivable in retrospect. Antebellum Republicans did not simply accept the Constitutional limits on their power to abolish slavery directly; they positively cherished those limitations as fundamental to their idea of political liberty. On this question, there is no evidence of any significant difference between Republicans’

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radicals, who saw the Union as a means to freedom.” This distinction parrots the criticism abolitionists leveled against Republicans but it distorts the mindset of the Republicans, whether radical or conservative – how they understood the Union, freedom and the relationship between the two. All Republicans agreed that slavery was immoral in its own right and a mortal threat to the Union as they understood it. Eric Foner, *Free Soil, Free Labor, Free Men* (New York, 1970), 140. In his study of Republican ideology during the war, Michael Green writes that moderates were more “devoted to the Union as an end than radicals who saw it as a means to freedom.” Green, *Freedom, Union and Power: Lincoln and His Party During the Civil War* (New York, 2004), 74. Dorothy Ross has sensitively analyzed the nationalism that animated and restrained the Republicans’ war effort. But her analysis brackets the Union as a concept and focuses instead on the tension between the commitment to universalist ideals and a historically particular, racialized nationalism. Ross, ““Are We A Nation?’ The Conjunction of Nationhood and Race in the United States 1850-1876” *Modern Intellectual History* 2, no. 3 (October, 2005), 327-360; and Ross, “Lincoln and the Ethics of Emancipation: Universalism, Nationalism, Exceptionalism” *The Journal of American History* 96, no. 2 (September, 2009), 379-399. For an analysis of the Union as a political concept throughout the nineteenth century, see Rogan Kersh, *Dreams of a More Perfect Union* (Ithaca, 2001).

<sup>28</sup> The first chapter of Michael Vorenberg’s insightful study of the Thirteenth Amendment is entitled “Slavery’s Constitution.” And the second chapter is “Freedom’s Constitution.” This dichotomy is implicit in most historical interpretations but it would have infuriated antebellum Republicans, who emphatically and sincerely denied that the Constitution was a proslavery instrument. Vorenberg, *Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment* (Cambridge, 2001). Scholars emphasizing the Civil War’s importance in the development of a modern liberal nation-state have little to say about the elusive political system that the war displaced. For example, Stephen Sawyer and William J. Novak, “Emancipation and the Creation of Modern Liberal States in American and France” *The Journal of the Civil War Era* (December, 2013), 467-500. For an elaboration on this point, see below, note 54. The fullest treatment of this general subject remains, Harold M. Hyman, *A More Perfect Union: The Impact of the Civil War and Reconstruction on the Constitution* (New York, 1973). Though meticulously researched, Hyman’s study presents the teleological view of the war implicit in its title. A study on the same theme but more sensitive to the ideals of the antebellum Union is Phillip S. Paludan, *A Covenant With Death: The Constitution, Law and Equality in the Civil War Era* (Urbana, 1975). But Paludan’s study focuses entirely on legal theorists. Heather Cox Richardson has described the economic policies the Republicans implemented during the war, characterizing them as modernizers pioneering the path toward an activist state. But her account elides the fact that Republicans were deeply ambivalent about these policies, often accepting them only under the pressure of necessity. Richardson, *The Greatest Nation of the Earth: Republican Economic Policies During the Civil War* (Cambridge, 1997). “What are you to do,” Ida Tarbell wrote in summarizing Vermont Representative Justin Morrill’s attitude toward the tariff rates recommended by his own committee, “when Pennsylvania iron men and Rhode Island manufacturer...whose duties should be gradually lowered, come down on you for higher rates, and your party colleagues tell you that if you refuse the request the election may be lost and the cause of human freedom retarded?” Tarbell, *The Tariff in Our Times* (New York, 1914), 5.

private and public attitudes. And their response to the rebellion disguised but did not change this persistent belief. Those who advocated emancipation immediately and adamantly, like those who accepted it only gradually and reluctantly as a military necessity, were both committed to preserving a system of democratic self-government that was incompatible with the emergence of a central state capable of maintaining equal rights for black Americans. Even the most forceful insistence on the ideal of universal freedom elided or ignored the problem of how to achieve that ideal within a political framework that embodied the pre-existing ideal of democratic self-government. Once attuned to the significance of this problem, the traditional dichotomy between conservative and radical dissolves into a far more complex moral and ideological conflict.<sup>29</sup>

Virtually all of the original leaders of the Republican party, if they lived long enough, adhered to ideals that undermined or negated the moral obligations they had accepted in order to win the war. Their conception of freedom included political assumptions and beliefs that tacitly qualified their commitment to emancipation – regardless of whether their rhetoric acknowledged or evaded this underlying contradiction. Racial categories occasioned the starkest version of this dilemma, which recurred in many forms during the Civil War era. The historical origins of this racial ideology, how it emerged and what has sustained it in the past and present, deserves all the

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<sup>29</sup> Allan Bogue, in what remains one of the best studies of Republican leadership during the Civil War, argued that the divisions between Republican factions often amounted more to rhetoric rather than substance. This interpretation becomes less persuasive when one looks at these same divisions before and immediately after the war, when differences subsumed by the common war effort had profound consequences. But it points to an important truth, namely that the rhetorical controversies among Republicans are misleading. All sides tended to disguise the contradictions of their own positions while also grossly mischaracterizing their opponents. That is always true in politics, but in this era it means recognizing that terms like “radical” and “conservative” served as simple epithets more often than as substantive descriptions. Bogue, *The Earnest Men: Republicans of the Civil War Senate* (Ithaca, 1981).

attention historians have belatedly begun to give it.<sup>30</sup> But this pernicious ideology created a social reality that political leaders could no more avoid than gravity.

The Republicans were committed to an ideal of democratic self-government that subordinated the state to the moral sense of the organic communities that composed the nation as a whole. This ideal was central to their understanding of both political liberty and democratic equality. But those who sincerely insisted on this ideal could not reconcile it to a reality in which a preponderate white majority insisted upon a moral right to exclude black Americans from the community to which they belonged. And so a commitment to the ideal of democratic self-government, as the Republicans understood it, unavoidably empowered the prejudice that excluded blacks from participating in it, just as a viable commitment to racial equality unavoidably required at least a partial rejection of the ideal of democratic self-government. Few, if any, Republicans were willing to reject their ideal of democratic self-government; all too many either ignored the problem or accepted the prejudice of the majority as natural and just. This dissertation is primarily concerned with those who, like the mother in the story of King Solomon, refused to dismember their ideal in order to keep a part of it. The logic of the antebellum Union guided how these Republicans perceived and struggled to overcome its inescapable contradictions. And so the very idealism with which they opposed slavery also shackled them to an ideal of freedom that proved self-negating.

“No position for the Negro that would please the [white] South would agree with the enlightened opinion of the North,” a Philadelphia diarist and intellectual, George Sidney Fisher, wrote two months after Appomattox. “But how can the North enforce its views? Only by such an exertion of the power of the general government as would be inconsistent with its plan and

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<sup>30</sup> See for example, Barbara Fields, “Ideology and Race in American History,” *New Left Review* 1, no. 181 (May/June 1990) and Thomas Holt, “Marking: Race, Race-Making and the Writing of History” *American Historical Review* 100, no. 1 (February, 1995).

theory...I can see no way out of these difficulties consistent with the preservation of the Union and free government.”<sup>31</sup> What Fisher characterized as “the enlightened opinion of the North” was hardly utopian. It amounted to nothing more than that black Americans should not be re-enslaved or relentlessly terrorized. But he was entirely correct in observing that even this minimal object was incompatible with what idealistic Americans continued to mean by free government. Frederick Douglass, by contrast, refused to believe that extending the ideal of free government to include black Americans required a fundamental alteration of that ideal. “[N]o general declaration of human rights can have any practical value,” he wrote in 1866, “unless the whole structure of the government is changed from a government by States into something like a despotic central government, with power to control even the municipal regulations of States, and to make them conform to its own despotic will.”<sup>32</sup> For Douglass, the solution was impartial suffrage. But, as Fisher would have told him, impartial suffrage could not be attained without establishing a central government that Douglass himself characterized as despotic. Even then it would not have changed the fact that impartial suffrage – in an electorate composed of an overwhelmingly white majority – would not have been impartial at all.

The Civil War ended the hope that the ideal of political freedom rooted in the antebellum Union could somehow be made consistent with itself. American leaders and intellectuals who emerged from its aftermath found no coherent ideals to guide them. Instead they stumbled clumsily toward a new understanding of their polity that also gradually transformed how they perceived and addressed its moral and structural defects. Cultural and intellectual historians have richly described this transition within the rarefied realms of intellectual discourse and literary

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<sup>31</sup> Sidney George Fisher, *Diary*, June 8, 1865. Pg. 499.

<sup>32</sup> Frederick Douglass, “Reconstruction,” *The Atlantic Monthly*, December 1866.

culture, but its connection to the institutional politics of the era has remained one-dimensional.<sup>33</sup> The distinction between intellectuals and political leaders is anachronistic in this era. And, to the limited extent that it applies, it only heightens the dramatic significance of those who were compelled to act within a context that brought their most cherished ideals into conflict with one another.

Outside the political process, one could continue to oppose the unspeakable cruelties inherent in war and slavery; one could denounce arbitrary government without endorsing constitutional restraints that allowed masked vigilantes to terrorize their fellow citizens with impunity; one could support a political coalition capable of subduing the arrogant oligarchy of the South without cementing alliances that succored the shoddy aristocracy emerging in the North; and finally, one could continue to endorse the sublime principle of government “by the people” and reject the unreasoning hatred that made the people unworthy of that same principle. But those who wielded power in this era could not, ultimately, ignore the unspeakable reality of

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<sup>33</sup> George Fredrickson’s seminal intellectual history of Civil War remains one of the most influential. Fredrickson, *The Inner Civil War: Northern Intellectuals and the Crisis of the Union* (New York, 1965). Fredrickson’s study ignored political leaders and the concept of the Union. Most scholars have followed his example, as though politicians cannot or will not take ideas seriously. That assumption seems to become more justified with each passing year, but it emphatically did not apply to the Republican leaders of the Civil War. Frederickson’s account of the war’s influence on American intellectual and cultural life therefore makes for a striking contrast with how most scholars present the politics of the era. The brutal carnage of the war, Frederickson argues, discredited radical idealism in favor of conservatism, romanticism in favor of realism, bureaucratic efficiency over democracy. This rather bleak view of the later nineteenth century is hardly unique to Fredrickson. Indeed, the only novel and controversial aspect of his analysis consists in connecting these developments to the experience of the Civil War. Several other scholars have brilliantly traced a similar intellectual process within particular disciplines in this era, including political economy, sociology, literature and popular culture. But these analyses remain strangely disconnected from the actual politics of the era – as though political leaders were unaware of the broader cultural tendencies to which they contributed. And thus it is possible to label as a “conservative” someone who merely clung to the radical idealism of the antebellum period in opposition to the bureaucratic conservatism that displaced it. Cultural and intellectual historians tend to relish the nuance, ironies and implicit contradictions revealed by their subjects while political historians tend to insist upon the stark dichotomy of an up-or-down vote. Were the Republicans for emancipation or against it? For industrial capitalism or against it? For democracy or against it? For civil liberties or against them? The best cultural history of the era, which builds on the framework established by Fredrickson, is Louis Menand, *The Metaphysical Club: A Study of Ideas in America* (New York, 2002). A terrific recent assessment of the historiography on the intellectual history of reconstruction is Leslie Butler, “Reconstructions in Intellectual and Cultural Life,” in *Reconstructions: New Perspectives on the Postbellum United States*, Thomas Brown, ed. (Oxford, 2006).

the choices they confronted – choices that were infinitely more difficult and confusing to leaders who actually took their ideas and principles seriously. This dissertation traces the intellectual history of the Civil War era within the dynamic controversies of high politics, focusing on how a particular understanding of the Union animated Republicans’ thinking and actions throughout, even as their efforts ultimately transformed all Americans’ perception of their polity – what it was, what it had been, and what it might someday become.

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The chapters that follow make no attempt at a comprehensive analysis of national politics in the Civil War era. Instead, they present an analysis of the Republican elites as a distinct group.<sup>34</sup> Scholars usually study national political discourse in search of authentic expressions of public opinion. Hopefully, this study contributes to those efforts by way of a different approach. The inner-core of the Republican party – the apparatus of politicians, office-holders, journalists, intellectuals and organizers– represented a class unto itself, distinct from the broader coalition that the party cobbled together in order to win power. No party can succeed without appealing to the values that voters already possess, but political insiders made the key choices that determined the issues over which the nation divided and debated. And the ideological and professional motives that informed these choices were distinct from those that animated the broader coalition that emerged as a result.<sup>35</sup>

Political motives are never straightforward; even the purest champions of a political cause must align themselves with less righteous forces if they are to produce anything more than

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<sup>34</sup> “Distinct” is not the same as different, but I do not assume, and have not established in this study, the precise correlation between the worldview of Republican leaders and that of the people they represented.

<sup>35</sup> To be sure, the tremendous power elites exerted over the political process did not make them masters of their country’s destiny, quite the contrary. It is no coincidence that the two most effective statesmen of the nineteenth century, the first democratic era in history, Lincoln and Otto von Bismarck, were both supremely conscious of their inability to control events. A keen awareness of the limitations of power was, perhaps somewhat paradoxically, what allowed them to wield it so effectively.

fine phrases. And a compromising alliance, for even the noblest ends, inevitably creates just grounds for opposition. In explaining his alliance with Joseph Stalin, Franklin Roosevelt liked to quote the following proverb: “My children, it is permitted you in time of grave danger to walk with the devil until you have crossed the bridge.”<sup>36</sup> But there is a tragic corollary to this proverb that applies to those standing on the other side, for it is also permitted them in a time of grave danger to burn down that bridge, thwarting the devil rather than welcoming the blameless man to safety. Here, in a nutshell, is the inescapable problem of politics, why the common impulses of decent men so rarely cross the narrow barriers of competing interests. Just as the devil always has an honest man as his alibi, every honest man in duress has a devil lurking beside him.

How, then, should a scholar assess the motives underlying political conflict? It is hardly enough to supply a mere catalogue of motives harnessed to a common coalition. The historian must ultimately probe deeper to render a useful judgment of past events. One solution is to ignore what politicians say and pay attention to what they do. As an old Kentucky expression put it, you should watch a politician’s feet, not his mouth.<sup>37</sup> But this cynical outlook gives politicians both too much credit and too little – too much, because politicians rarely control their own feet, which must dance to the tune dictated by events; and too little because those events are shaped, in no small part, by the ideas in politician’s heads, though almost never in the way they intend.

One irony of the antebellum Republican coalition is that its overwhelming emphasis on a single issue lent the organization an unparalleled unity of purpose while allowing its members to avoid a genuine consensus on a broader governing philosophy. “The vital, animating principle of the Republican party,” Representative Jabez Lamar Curry of Alabama said, in one of the most astute and honest Southern speeches on that subject, “is opposition to the extension of slavery

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<sup>36</sup> John Lewis Gaddis, *Strategies of Containment* (Oxford, 2005), 3.

<sup>37</sup> Cited in Marvin Meyers, *The Jacksonian Persuasion: Politics and Belief* (Palo Alto, 1957), v.

into the Territories. That is the ligament which binds the heterogeneous compound together. Without it, it would fall to pieces of its own weight, or would be disintegrated from want of coherence and harmony.”<sup>38</sup> George Julian went so far as to say that the antebellum Republican party was not a party at all. “Its action was not inspired by a creed, but an *object*. Aside from this object the members of the combination were hopelessly divided.”<sup>39</sup>

Indeed, to scholars examining the era closely, as under a microscope, political lines in Northern states appear scrambled by a number of hotly contested issues. But when one steps back and looks at the broad canvas of the mid-nineteenth century, the bright glare of slavery overwhelms everything else. In the important speeches of the era, both those that are well-remembered and those long forgotten, in the nation’s literature and journals, in heated Congressional debates – slavery is not simply the most prominent issue under discussion; it often seems like the *only* issue. Some scholars have concluded from this remarkable contrast that the slavery issue was therefore artificial, a conflict among intellectuals and elites, not an unavoidable clash between hostile peoples. When applied strictly to the South, this observation is widely accepted, at least implicitly. Leading scholars, such as William Freehling, Stephanie McCurry and Eugene Genovese, present the South as differing widely from place to place, with many internal sources of conflict; the sectionalization of the region’s politics, which empowered proslavery extremists, was the accomplishment of a small, undemocratic planter elite, whose political sophistication and ideological fervor gradually prevailed over the diffuse, disorganized Unionism of most Southern whites.<sup>40</sup>

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<sup>38</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 1<sup>st</sup> session, 95.

<sup>39</sup> Julian, *Death Struggle of the Republican Party*, 266.

<sup>40</sup> The argument is fully developed in Freehling’s two volume study: *The Road to Disunion* (Oxford, 1990; 2007); Stephanie McCurry *Confederate Reckoning* (Cambridge, MA, 2011). Genovese’s work tends to engage with institutional politics only indirectly, and his use of ideological hegemony suggests a degree of political power that went beyond the control of institutions. But the difference is only on degree to which the master class dominated their society’s politics. Eugene Genovese, *The Political Economy of Slavery: Studies in the Economy and Society of*

The profoundly undemocratic spirit of the proslavery movement makes it easy to appreciate the outsized role of elites in driving the South into the abyss of Civil War. But scholars are much less inclined to emphasize a similar dynamic in explaining the rise of the Republicans, who were nothing if not democratic in their outlook.<sup>41</sup> In part the difference is normative rather than descriptive. Political activists “manipulate” public sentiment when their influence is considered pernicious, but “educate” the public when it is beneficial. In either case, leaders do not change public values so much as selectively appeal to particular values in framing the public’s perception of an issue or conflict. The sectional balance of power mattered tremendously to elites, North and South, but it had little immediate relevance to the lives of ordinary voters in either section.

The relationship between the Know Nothings and the Republicans was essentially that of a spontaneous popular upheaval that sophisticated political actors appropriated, rechanneled and rebranded. The Know Nothings, William Gienapp observed, “were the most potent force in the 1854 elections.”<sup>42</sup> Fueled by an inchoate cluster of grievances and concerns, including anti-Catholicism, the Kansas-Nebraska act, liquor laws, and baffling economic changes, the Know-Nothing revolt upended the political system and destroyed the Whig party. And yet two years later the Republican party had clearly emerged as the chief beneficiary of the political confusion. The Know-Nothings had served, George Julian recalled, as “a sort of underground railroad” for

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*the Slave South* (London, 1965), and Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York, 1976). The most powerful dissenting argument, first advanced by Ulrich Bonnell Phillips, places white supremacy at the center of Southern history. All whites were united by a determination to maintain white racial supremacy at all costs, and the Republican threat to white supremacy is what provoked secession. The problem with this argument is that Republicans posed no threat to white supremacy only to slavery, and the willful distortion of this distinction clearly served the interests of planter class. Phillips, *Life and Labor in the Old South* (Boston, 1929). Phillips developed the argument most explicitly in his essay, “The Central Theme of Southern History,” *The American Historical Review* (Oct., 1928).

<sup>41</sup> I should perhaps stress the word *similar* since the domination of the planter class over Southern society and politics has no parallel in the North, where there was no unified elite class. But there were still elites. And these played a similar role in mobilizing voter sentiment in opposition to the “slavepower” and making it seem a direct threat to the North.

<sup>42</sup> Gienapp, *Origins*, 444.

Democrats and Whigs to “make their exodus from their former political masters.”<sup>43</sup> But for all the disruptive power of the Know-Nothing movement, its leaders failed to stitch together a national coalition.

Leaders of the new Republican party skillfully appropriated the nativist vote to their own cause. But the remarkable fact is that almost every prominent Republican was either indifferent or hostile to the Know Nothings as a political movement.<sup>44</sup> Eric Foner’s classic study, *Free Soil, Free Labor, Free Men*, remains the best analysis of the multifaceted political appeal by which Republican politicians channeled the disparate concerns of Northern voters into an attack on slavery. His book’s greatest strength is in showing how Republican “ideology could appeal in different ways to various groups within the party.”<sup>45</sup> But the book is vague in distinguishing between the animating beliefs of political leaders and the way they incorporated those beliefs in their appeal to voters. That distinction is unmistakable in his chapters on nativism and race, where Foner clearly presents professional politicians negotiating with powerful cultural impulses that they do not fully share. But the same awareness is missing from the primary thesis of the argument: “At the center of the Republican ideology was the notion of ‘free labor.’”<sup>46</sup> That notion was indeed central to American identity, as Foner recognizes, but it was hardly a distinctive or even important element in the ideology of Republican leaders, whose backgrounds were overwhelmingly concentrated among educated professions – lawyers, journalists and intellectuals. It was free *government* that defined these men’s concerns.

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<sup>43</sup> George Julian, “Death-Struggle of the Republican Party,” *North American Review* (January, 1858), 265; originally cited in Gienapp, *Origins*, 418.

<sup>44</sup> Abraham Lincoln’s eloquent denunciation of them is now famous but he made it in a private letter, not on the stump. And one can be sure that most of the former Know Nothings who helped elect him president were unaware that he equated their anger with shameful bigotry. Perhaps the most prominent future Republican affiliated with the American party was Henry Wilson, and his role almost amounted to that of a double-agent, leading the effort that tore the party apart on the issue of slavery in the territories.

<sup>45</sup> Foner, *Free Soil*, 10.

<sup>46</sup> Foner, *Free Soil*, 9.

Significantly, Michael Holt, whose interpretation of the Republicans emphasizes electoral politics far more than ideology, is more sensitive to the sense of crisis that animated Republican leaders. Free labor was central to Republicans' understanding of their society, but that concept did not distinguish them from Northern Democrats. No Northern politician was willing to dispute the importance of free labor, any more than a politician today would be willing to question the social contributions of small business owners or mothers.<sup>47</sup>

Abraham Lincoln commented on this tendency in his only elaborate antebellum celebration of free labor. "In the nature of things," he said at a Wisconsin agricultural fair in 1859, "[farmers] are more numerous than any other class; and I believe there really are more attempts at flattering them than any other; the reason I cannot perceive, unless it be that they can cast more votes than any other."<sup>48</sup> Lincoln's greatest, most deeply felt antebellum speeches never dwelled on the concept of labor. He never mentioned labor once in his House Divided Address or in his speech at Peoria, in which, by contrast, the word "slave" appeared 233 times.<sup>49</sup> Political liberty, exemplified in the concept of self-government, was the animating ideal of his career, just as politics itself was the consuming passion of his life.

The same could be said of most other Republican leaders, but not necessarily of those who elected them. "Piled up manure," a New England diarist and farmer wrote in recording the

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<sup>47</sup> None of this is to deny the validity of Foner's analysis. But it is an analysis of how Republican professionals crafted a message that showed how their own intense ideological beliefs conformed with the values and interests of a much broader electorate. It is not an ideological analysis of the small but crucial class who framed that message. Holt's work notes the pervasive importance of republican (small "r") ideology, less to analyze it than to incorporate it into a larger argument about the structural breakdown of the American political system. Michael Holt, *The Political Crisis of the 1850s* (New York, 1978).

<sup>48</sup> Basler ed. *Collected Works of Abraham Lincoln*, 3:472-473.

<sup>49</sup> Technically, in the House Divided Speech, Lincoln did say that Douglas "has labored to prove it a sacred right for white men to keep negroes..." – but that hardly counts. And at Peoria he quoted the Constitutional reference, in the fugitive slave clause, to "persons held to service or labor."

day's events in 1856, "in p.m. voted for John C. Fremont for president."<sup>50</sup> Most voters, it is safe to assume, did not invest their civic responsibilities with the same historic grandeur felt by their leaders. During the secession crisis, as Lincoln and his party boldly rejected all serious efforts at compromise, Rebecca Harding Davis was finishing her brilliant social portrait, "Life in the Iron Mills," which was published in the April issue of *The Atlantic Monthly*, just before the war began. "I have never seen an adequate description anywhere of the amazement, the uncomprehending horror of the bulk of the American people which preceded the firing of that gun at Sumter," Davis later recalled. "Politicians or far-sighted leaders on both sides knew what was coming. And it is they who have written histories of the war. But to the easy-going millions, busied with their farms or shops, the onrushing disaster was inexplicable as an earthquake." Few understood the abstract questions that raged in Congress – amend the Constitution? Restore the Missouri Compromise? But, Davis recalled, all keenly appreciated "the vital one – whether the Union should be preserved. The Union, to the average American of that day, was as essential a foundation of life as was his Bible or his God."<sup>51</sup>

The modest blessings of what Davis fondly called "this vulgar American life" were not enough to define the Union for the statesmen and intellectuals who also invested the concept with an almost mystical significance. Ralph Waldo Emerson captured the difference well. "America," he complained, "seems to have immense resources, land, men, milk, butter, cheese, timber and iron, but it is a village littleness; – village squabble and rapacity characterize its policy."<sup>52</sup> The village squabble writ large – that was the Union for millions of white Americans who toiled in its vast obscurity, beyond the struggle for power and glory in the great Republic.

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<sup>50</sup> Cited in Jean Baker, *Affairs of Party: The Political Culture of Northern in the Mid-Nineteenth Century* (New York, 1998), 212.

<sup>51</sup> Rebecca Harding Davis, *Bits of Gossip* (New York, 1905), 109-110.

<sup>52</sup> Ralph Waldo Emerson, *A Modern Anthology* (New York, 1958), 258.

Of all the class divisions one might identify in a society, none is ever more salient than that which separates those who aspire to govern from those content to be governed well.

The leaders of the antebellum Republican party were distinguished primarily by their intense regard for the political ideals they attributed to the Union. The point is crucial because the various social groups composing the Union did not start the Civil War – politicians did. Or more accurately, the slavery interest posed a dire threat to the political ideals Republicans attributed to the Union but not to any economic or social class in the North. The status of slavery in the Western territories was the only important exception, but that issue was effectively settled in 1858. When Lincoln famously insisted on standing firm against any compromise opening the door to future extensions of slavery, he was thinking of South America and the Caribbean – a point essential to what he thought the Union represented but with no economic rationale whatsoever. The slave regime’s opposition to free homesteads and high tariffs were frustrating to some, but they were hardly the stuff of civil war. No Northern economic interest could possibly justify such a disruptive event, as virtually everyone who spoke for such interests understood. Yet the most conspicuous beneficiaries of the Civil War were the economic interests the Republicans enlisted to win it, and among the most conspicuous casualties was the Union they had fought to save.<sup>53</sup>

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<sup>53</sup> “At all times,” Lord Acton wrote in 1877, “sincere friends of freedom have been rare, and its triumphs have been due to minorities, that have prevailed by associating themselves with auxiliaries whose objects often differed from their own; and this association, which is always dangerous, has been sometimes disastrous, by giving to opponents just grounds of opposition, and by kindling dispute over the spoils in the hour of success.” Though not commenting directly on the American experience, the date of Acton’s essay is significant, and he referenced the transformation of American institutions in the next paragraph. Acton, *The History of Freedom in Antiquity and the History of Freedom in Christianity* (London, 1877). “The most striking products of [the Republicans’] crusade,” Kenneth Stampp wrote in 1950, “were the shoddy aristocracy of the North and the ragged children of the South.” Stampp, *And the War Came: The North and the Secession Crisis, 1860-1861* (Baton Rouge, 1950), 298.

My central argument, and the sources on which it rests, extends, thread-like, through several distinct historiographical issues, all of them illuminated and complicated by a massive scholarly literature: The underlying ideas and ethos of American nationalism, constitutionalism, and Unionism; the development of the institutions governing American society before the Civil War and the extent to which the war transformed those institutions; the formation of the Republican party; the escalating political conflict that culminated in disunion and war; the clumsy, improvised consolidation of social and material resources that enabled the Northern victory, including, most significantly, the emancipation of four million souls eager for their freedom; and, finally, the fraught controversies over Reconstruction and Reunion – these issues, meticulously described by other historians, form the background of the chapters that follow. The essential narrative thread that weaves its way through these immense historiographies, subtly and sometimes sharply challenging existing scholarly interpretations of each, is how Republican leaders and intellectuals understood their polity and how that understanding changed, or failed to change, during the Civil War and Reconstruction. My goal is to recover the perspectives of the Republicans and intellectuals who played such a decisive role in developments they could not fully comprehend. How did they understand their alternatives and responsibilities in responding to the successive crises thrust upon them? What were the original ideas and assumptions that brought them into the ordeal and how did these change under the pressure of events?

All historical knowledge is built upon recorded facts; the rub, for the historian, is in their significance. Most historical arguments are concerned with one of two separate problems: First, the causal significance of interrelated events that emerges implicitly in a historical narrative or explicitly in a theoretical analysis. As David Hume, the eighteenth-century philosopher and, not incidentally, historian, observed, the causal connection between events is inferred, not observed.

We see one billiard ball roll into another. And then we see the second billiard ball begin to roll immediately after its collision with the first. But we do not actually observe the cause that links the motion of the first billiard ball with that of the second. That exists only in the mind, a theoretical model that explains events “out there” in the world before our senses.

The causal model explaining events also depends on the larger process the historian is attempting to explain. The Civil War is part of the transnational history of slavery and emancipation in the Atlantic World; it is part of American political and economic development; it is part of the development of modern warfare. These interpretive claims do not depend on the subjective experiences or intentions of those involved.

The second problem of historical interpretation is concerned with a very different definition of causation – the motives and reasons impelling human beings to do what they have done. And here the intuitive intimacy of humanistic imagination, of inhabiting the mind of another, creates an entirely separate problem of historical generalization, for no two minds are exactly alike and no two perspectives are exactly the same. Instead of observing, like a scientist, the movement of two billiard balls and constructing a causal model to explain it, the historian must rely upon the testimony of those involved. Causation in this sense is now part of the observable record, not a theoretical construct. But, alas, the record is partial, contradictory, self-serving and even frankly dishonest. Billiard ball A claims he charged billiard ball B, smacked him square in the face, and sent him fleeing away in disgrace. Billiard ball B denounces this as a vicious lie, insisting that he stood up manfully to billiard ball A, stopped him dead in his tracks, and then magnanimously departed.

It is tempting to dismiss subjective experience for the supposed clarity and detachment of hindsight in interpreting the past. But that precludes the ultimate wisdom history confers – the

capacity to see through the eyes of those who went before us, suspending our prejudices in favor of theirs, and thus expanding our memories beyond our own fleeting moment in time. However partial, however self-serving, however oblivious to the impersonal forces impelling them, the conscious motives and reasons of human beings, as they collide and collaborate within the human artifice they have made and remade together – along with the inevitable irony of the consequences – are the most essential dimension of our history. To borrow a line from Lincoln, if that does not matter, nothing of the past matters.

Every society is riven by tacit compromises, tectonic fault lines quivering quietly beneath the surface, that form a political landscape as fixed and immovable as a mountain range, until suddenly it isn't. These compromises are impossible to detect until they are impossible to ignore – unassailable until they are untenable. Only intellectual history can show how these underlying beliefs operated within individual, thinking minds as their most cherished certainties were flouted by events.

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The primary subjects of this study are the original leaders of the Republican party, who were sincerely committed to the party's twin purpose of opposing slavery while upholding the Constitutional framework that (had) protected slavery. One particular member of this group has not, to say the least, suffered from a lack of scholarly or popular interest. The gaunt, sad-faced, endlessly fascinating man whom the Republicans first elected as their standard bearer has received more attention from historians than any other American who ever lived. Readers expecting to learn something new will, therefore, want to know in advance what is to be discovered here that has not been recounted in the countless words written about Abraham Lincoln. There are two related answers to this question.

The first, and most basic, answer is that John Wilkes Booth prevented Lincoln from confronting the essential dilemma inherent in the original purpose of the Republican party, a dilemma that virtually all Republicans avoided while Southern armies remained unvanquished.

More broadly, Lincoln's dramatic martyrdom and the transformation of the Presidency in the twentieth century have greatly magnified his role in defining the position of the Republican party, especially in relation to Congress. Most students of American history can name Lincoln's important cabinet members, but only specialists are likely to know who chaired the most powerful Senate Committees. These men are remembered, to the extent that they are remembered at all, as moons reflecting the light of their great leader. And yet, as Lincoln's successor abundantly demonstrated, the will of Congress was more than equal to the will of even the most willful President.

Lincoln himself understood this. His enormous power as Commander-in-Chief depended on his ability to keep a fractious coalition together. And he dissolved himself like an impersonal force into that role. His purposeful passivity was the essential element of his greatness, enabling him to master the supreme challenge of the power he wielded so effectively. Congress, by contrast, had the exact opposite function. It embodied, channeled and asserted the tumultuous political forces to which Lincoln responded. The Constitutional design of the two branches conformed closely to the reality. Lincoln's job was to execute the political will of his party— *to act*. Congress's job was to establish that political will, formulating laws through deliberation and debate among the representatives of the people and the States.

As this description implies, Lincoln does not provide a clear window into the "mind" of Republican political leadership. Surely, he thought long and hard about the dilemmas and possible consequences of every significant decision, brooded over regrets, and trembled over

occasional self-doubts. But all eyes were upon him as the Commander-in-Chief, and he revealed nothing of his mind except what he wanted to be seen. His deliberative process was always obscured by his discretion and what he revealed was often deliberately misleading. Long after deciding upon emancipation, for example, Lincoln exaggerated his reluctance to take that fateful step.

The governing process on the other end of Pennsylvania Avenue was much more open, guileless, and outspoken. In the impassioned debates that roiled Congress throughout this era, we can see, more clearly than anywhere else, the Republican mind in motion. This study has focused primarily on Senators, rather than representatives. Given the intellectual and biographical emphases of this study, the Senate clearly offered the most promising quarry. A seat in the Senate typically went to the preeminent leaders of state party organizations, and the Republican party in this era was little more than a loose confederation of State parties. Jealous of their independence, most Senators at least attempted to speak and think for themselves. And, unlike most members of the House, they had ample opportunity to do so on any subject.

I have not, however, confined myself to the Senate or even to Republicans in this study. It is impossible to understand the Republicans without placing them in the broader political culture to which they belonged. Southern leaders loom large in my analysis of the antebellum era, when their relationship to Republicans was important. But after secession, these Southern leaders dissolved into an abstraction in the minds of most Republicans. The same is true, in a very different way, of African-Americans. Their presence, along with their actions, are ubiquitous in this study, but they appear here as they appeared in the blinkered perspectives of the Republicans, as nameless numbers to be used and as faceless victims to be rescued.

My concern with political thought has also led me to emphasize some figures who are exceptionally revealing examples of important cultural patterns. Men like Daniel Sickles and George Templeton Strong, in very different ways, embodied with a unique intensity the salient cultural forces and assumptions of their society. What made them distinctively representative in one sense made them atypical in another.

The first chapter of this dissertation explores the antebellum ideal of the Union as the central concept in the Republicans' political ideology. When Abraham Lincoln informed Congress, in the winter of 1862, "we shall nobly save, or meanly lose, the last best, hope of earth," his fellow citizens knew precisely what he meant, though the content of that idea was then undergoing a complete transformation. A little less than a year later, when Lincoln said at Gettysburg, "This nation, under God, shall have a new birth of freedom," he spoke for a pregnant widow.<sup>54</sup> Lincoln and his fellow Republicans occupied the chaotic interval between death and rebirth, between the "new nation" brought forth by "our fathers," and the unknowable nation taking its place.

The rest of part one, chapters two through five, attempts to answer a question that emerges implicitly from the analysis presented in the first chapter. If the Republicans were sincerely devoted to the political order the war destroyed, why did they rush headlong into a conflict that a majority of their countrymen struggled desperately to avoid? A short answer to this complex question is likely to seem either vague or simplistic. But to preview the argument that follows: The Republicans were reacting to the broader failure of their political order, a

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<sup>54</sup> "The death of contemporary forms of social order ought to gladden rather than trouble the soul. But what is frightening is that the departing world leaves behind it not an heir, but a pregnant widow. Between the death of the one and the birth of the other much water will flow by, and a long night of chaos and desolation will pass." Alexander Herzen, *From the Other Shore* Richard Wollheim, trans. (London, 1956), 124. Herzon published the original French edition in 1851. I first encountered this particular metaphor in Martin Amis, *The Pregnant Widow* (New York, 2010).

failure that went beyond the conflict over slavery. The political power of slave states, and thus of slaveholders, declined precipitously during the 1850s, even as the threat they posed seemed to grow ever more menacing. This is not to imply that the Republicans' perception of the "slavepower" as an escalating threat was wrong or exaggerated. The same drastic growth that diminished the political power of slaveholders undermined the political order Republicans cherished, and made their free society more vulnerable than ever to its oligarchic antithesis. Perhaps the most important ideological distinction, both within the Republican party and in the North more generally, was between those who remained confident in the strength and vitality of their democratic society and its institutions, and those who darkly feared their demise. All honest wars are fought out of fear of what might be lost, not hope of what might be gained.<sup>55</sup>

Labels like conservative and radical are, I argue, entirely misleading as descriptions of mentality or motive among Republicans. All political action is aimed at both preservation and change. In the swift current of a revolution, the two actions are virtually indistinguishable. A conservative impulse to preserve a radical political theory held the Republicans together even as the struggle compelled them to abandon that theory in practice.

Part two of this dissertation provides an intimate intellectual study of key figures as they struggled to reconcile their understanding of the Union to the war and its consequences. History is necessarily concerned with groups – with nations, classes, cultures, and genders; in short, with the limitless variety of communities, social structures and concepts that organize and define human life, but not with life as it is actually lived. A historian may accurately reconstruct the belief system of a particular group, but it is only within individual minds that a worldview evolves under the pressures of lived experience. "By showing how cultural tensions and contradictions may be internalized, struggled with and resolved within actual individuals," David

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<sup>55</sup> American slaves and even free blacks were already in a state of war.

Brion Davis has pointed out, “biography offers the most promising key to the synthesis of culture and history.”<sup>56</sup>

The individuals I have chosen for this purpose did not meet any prior criteria of “representativeness.” Instead, the choices emerged organically from extensive reading of primary sources, both published and archival. This approach inevitably requires articulate, intelligent subjects who left behind sources that allow me to uncover a coherent logic implicit in their perspective – i.e. their perception of events and the motives implicit in their response. Of course this eliminates many individuals, either due to absence of sources or absence of intelligent thought. And in seeking to understand the war from different perspectives I have avoided repetition, even while confining myself to the narrow, rarified range of Republican elites. No two minds are exactly alike, of course, and thus any two intellectual biographies will necessarily differ. But I have avoided including more than one individual who followed the same basic political logic. I have also avoided repeating the work of other scholars. Frederick Douglass and Charles Sumner, to give just two examples, appear in this study as reference points rather than as objects of extended analysis, for I have little original to add to the masterful scholarship they have already received.<sup>57</sup>

The two figures who receive the most extensive analysis in this study are Lyman Trumbull and William Pitt Fessenden, the subjects of chapters seven and eight, respectively.

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<sup>56</sup> David Brion Davis, “Some Recent Directions in Cultural History” *American Historical Review* 73 (Feb. 1968), 705. Daniel Walker Howe, *The Political Culture of the American Whigs* (Chicago, 1980),

<sup>57</sup> David Herbert Donald’s two volume biography of Charles Sumner is the definitive work on that subject. The book is, indeed, a singular exception that illustrates the extent to which scholars have neglected the Senate in this crucial era. Donald’s biography is the most comprehensive history of the Senate in the Civil War era, from the 1850s to the early 1870s. William Pitt Fessenden was the most powerful Senator in this era; his influence over legislation dwarfed that of Sumner. Yet the most extensive biography covers his entire Senate career in just 150 pages; Donald, by contrast, devotes about 500 pages to the same period in Sumner’s life. As chairman of the Judiciary Committee throughout the 1860’s, Lyman Trumbull wrote more significant legislation than any Senator in American history, but his biographies, all published more than 50 years ago, recount his entire life in fewer words than Robert Caro devotes to single session of Lyndon Johnson’s Senate career. In addition to Douglass’s published writings, I have relied on William McFeely, *Frederick Douglass* (New York, 1991).

Both were among the first Republicans elected to the Senate after the party formed in 1854, and they remained there until the Grant Administration. They were, by almost any measure, the two most powerful Republican Senators during the war and the early phases of Reconstruction.

Outwardly very similar, Trumbull and Fessenden agreed on almost every important question throughout this period. Even they did not know whether they were conservatives or radicals; the label did not interest them except when hurled as an epithet. Once one understands the underlying logic of their actions at each stage in the conflict, both men appear strikingly consistent. Yet the logic the two leaders followed was completely different.

Chapter nine focuses on two radical Democrats and two conservative Whigs who joined the Republican party at the outset. I have focused on interesting contrasts between individuals who worked closely together as Republicans while stubbornly clinging to their older political creeds. Gideon Welles and Edward Bates were the two oldest members of Lincoln's cabinet and also its most prolific diarists. During the political conflicts of their formative years, they disagreed on absolutely everything of importance. As Republicans, they agreed on everything of importance, including their reasons for leaving the Republican party immediately after the war. But they continued to think and write according to the logic and language of their older party creeds, regarding one another as heretics whose alliance could only be temporary. James Doolittle and Timothy Howe, the Republican Senators from Wisconsin during the war, offer a different version of the same philosophical contrast. Without changing any of their fundamental political beliefs, the "radical" became a "conservative" and the "conservative" became a "radical."

The third and final section of this dissertation shifts the focus from Republican intellectuals to show how exponents of earlier and subsequent conceptions of the Union

reckoned with the war and its consequences. Chapter ten considers the intimate friendship between John Pendleton Kennedy and Robert Winthrop. Kennedy, a Maryland Whig who belonged to a prominent Virginia family, was the author of *Swallow Barn*, the first significant novel romanticizing Southern plantation life. And Winthrop wrote the first scholarly biography of his famous ancestor. As scholars, they celebrated the distinctive histories of their respective sections, but, as two of the most prominent Whigs poised to succeed Webster and Clay, they embodied the cultural and intellectual nationalism of American elites that began to unravel at midcentury. The war predictably strained their lifelong, intimate friendship, but in ways at once surprising and highly revealing. Kennedy, the former apologist for slavery, became a Republican and found himself cheering Frederick Douglass on his return to Maryland in 1865. And Winthrop, once the epitome of fastidious Brahmin Whiggery, became the most prominent public supporter of the Democratic party in 1864.

The final chapter focuses on the collaboration and friendship between E.L. Godkin and Charles Eliot Norton to consider the intellectual and cultural nationalism of American elites that gradually emerged from the rupture of war. In establishing one of the most influential journals of the late nineteenth century, significantly entitled *The Nation*, Norton and Godkin helped articulate and direct the pivotal transition in American political thought during the postbellum era. Unlike the other figures in this study, Norton and Godkin were not devoted to the Union as an ideal until the war seemed to confirm its grand moral significance. In their different ways, Norton and Godkin, struggled to reconcile the communal ideal of enlightened self-government with the ideal of liberal individualism, and, at the same time, the promise of egalitarian democracy with the realities of state power that the war so starkly revealed.

Like their predecessors, they failed; failure is a theme that unites all the figures in this dissertation. But the conflicting visions animating their efforts are the key to understanding the new Republic that emerged under their leadership, and that we have inherited.

## Part One

### The Crisis of the Constitutional Union

#### 1

#### *“Sovereigns without Subjects”: The Antebellum Ideal of the Union*

What Herman Melville called “the Founders’ dream” was, like any powerful dream, at once visceral and vague, containing both lofty aspirations and glaring inconsistencies. For almost a century, Americans in all sections had celebrated with near religious devotion the political, legal and cultural associations that bound them together under the vague name of Union, while avoiding a decisive contest over what that sacred word actually meant. Starting with the Constitution, with its studied omissions and labored compromises, the national political order had gradually evolved into “the most complicated government on the face of the globe,” as John Quincy Adams judged it, with compromises accumulating into an intricate system of inconsistencies.<sup>1</sup> To be an ardent nationalist in the antebellum period was, inescapably, to be devoted to that inconsistent system, i.e. to a Constitutional framework that resolutely avoided the question of ultimate authority. And therein lay the key philosophical advantage of the secessionists. For forty years, Kenneth Stampp observed, “the case for state sovereignty and the constitutional right of secession had flourished...before a comparable case for perpetual Union had been devised.”<sup>2</sup> Only the challenge of Southern separatism in the early 1830s prompted Unionists to develop a sophisticated legal and intellectual foundation for the nation’s

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<sup>1</sup> Cited in Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities 1877 – 1920* (Cambridge, 1982), 6.

<sup>2</sup> Kenneth Stampp, “The Concept of a Perpetual Union” in *The Imperiled Union* (Oxford, 1980), 35.

indivisibility, but their theories remained hobbled by the ambiguous nature of the Union they were defending.

Those arguing that ultimate sovereignty resided with the individual states had no counterparts arguing that it resided with the national government. Instead, nationalists claimed sovereignty resided with the American people as a whole, which amounted to saying that it resided nowhere at all. Indeed, the claim that the American people created the Union contrasted rather awkwardly with the absence of any national definition of citizenship. The Constitution omitted a definition but granted the power to establish one to Congress, which also avoided doing so – deferring that all-important prerogative to the states. Roger Taney’s *Dred Scott* decision represented the most important antebellum attempt to supply a national definition of citizenship, and for all the controversy of that decision, Taney’s definition was far more popular than any conceivable alternative.<sup>3</sup>

It was not a coincidence that Daniel Webster’s fame rested on soaring, sentimental eloquence while John Calhoun’s rested on ruthless logic: Webster clothed the nation’s antagonistic principles in beautiful language; Calhoun relentlessly laid them bare. “Stripped of all its covering the naked question is, whether ours is a federal or a consolidated government,” the South Carolinian insisted.<sup>4</sup> Calhoun grasped the alternatives clearly because he was willing to make his choice. And it was precisely this choice that Unionists hoped their system could avoid, creating, in a higher harmony of mutual interests and cooperation, an alternative to the coercive

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<sup>3</sup> To give just one obvious example, even after the *Dred Scott* decision put the question front and center, Republicans did not dare notice that their allies in Kansas banned black citizens from the North in the same state Constitution that banned black slaves from the South. As Lincoln’s Attorney General complained privately during the second year of the war, “I fear that very few of our wisest teachers have, in their discussions upon *Citizenship* and *Slavery* endeavored after precision of thought and diction. They are too apt to deal in lofty phrases and passionate declamation, dwelling rather upon consequences hoped or feared, than upon present facts and principles, from which the consequences must flow.” Edward Bates to Robert Winthrop, January 12, 1863. Winthrop Papers. See also William Novak, “The Transformation of Citizenship in Nineteenth Century America” in *The Democratic Experiment* edited by Meg Jacobs, William Novak, and Julian Zelizer (Princeton, 2003), 85—119.

<sup>4</sup> John Caldwell Calhoun, *Works of John C. Calhoun*, edited by Richard Cralle. New York, 1851) 6:75.

power Calhoun claimed no government could do without.<sup>5</sup> “The people,” Daniel Webster said in his reply to Calhoun, “live under two Governments. They owe obedience to both. These Governments [State and Federal] are distinct but not adverse...Neither can dispense with the duty which individuals owe to the other; neither call itself master of the other: the people are masters of both.”<sup>6</sup>

The creative premise that the people were “masters” of the distinct governments to which they owed obedience allowed American nationalists to avoid choosing between them. But in making their choice the secessionists forced the Unionists to make it also. “One thing seems certain,” Francis Lieber, a prominent political theorist and professor at Columbia University wrote by way of prophesy in early 1861, “if ever the American people should be forced to make a choice between a unitary government and an unmitigated confederacy, they would be obliged to select the former type.”<sup>7</sup>

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Arguments over sovereignty, whether it resided with the national government or with the individual states, amounted to a mere distraction, Lieber observed in March 1861, three months after South Carolina became the first state to secede from the Union. “And it would have been much better had that word [sovereignty] never entered our public law.”<sup>8</sup> In retrospect, Lieber’s lament seems like a peculiar diagnosis of what ailed the Union in the winter of 1861. But his dismissal of the concept – which was central to the political struggles that produced the modern

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<sup>5</sup> Webster adeptly and ably showed how Calhoun’s theories would lead inevitably to disunion; he did not explain how disunion could be prevented if the sentimental attachments binding the sections together dissolved.

<sup>6</sup> *Speech of Daniel Webster in Reply to Mr. Calhoun’s Speech on the Bill “Further to Provide for the Collection of Duties on Imports,”* (Washington, 1833), 26. Webster’s argument was inconsistent, claiming ultimate authority for Congress in practice but denying it in theory. But that is the point. He preferred an inconsistent system that worked, and he brilliantly showed how Calhoun’s impeccable logic would lead to chaos and war. But in the battle of ideas, the internal inconsistencies of Unionists thought had grave consequences.

<sup>7</sup> Francis Lieber, “What is Our Constitution – League, Pact or Government?” *Miscellaneous Writings of Francis Lieber* 2 vols (New York, 1881), 119.

<sup>8</sup> Lieber, *Miscellaneous Writings*, 107.

nation-state – captured what Unionists regarded as the signal accomplishment of their system. “The sovereignty of government is an idea belonging to the other side of the Atlantic,” Daniel Webster had declared in his famous reply to Calhoun. “No such idea is known in North America. Our Governments are limited.”<sup>9</sup>

In the high middle ages, Western Europe, like the mid-nineteenth century United States, belonged to a unified legal order that fragmented ultimate authority into a welter of overlapping jurisdictions. The power to make law was conceptually separated from, and subordinate to, the power to interpret law. For Medieval intellectuals, “law was found, not made, a matter of knowledge rather than of will.” But they were profoundly aware of the problem that later theorists of sovereignty, like Thomas Hobbes and Jean Bodin, addressed more explicitly; they simply resolved the problem in a different way. Catholic theologians, for example, grappled with how the Church could overthrow a heretic Pope without overthrowing the hierarchy of the Church itself, a question that created the same philosophical paradox that rattled the mind of John Calhoun: “How could one affirm simultaneously the overriding right of a sovereign to rule and the overriding claim of the community to defend itself against abuses of power?”<sup>10</sup>

Modern constitutional theories emerged from the dualities of medieval thought, as classical philosophy blended with Christian theology to create the conceptual separation of power from authority, and with it the theoretical problem of subordinating the former to the latter. “All political authority is derived from popular suffrage, and all laws must be made by the people or their representatives,” Thomas Aquinas wrote in the thirteenth century. “There is no security for us as long as we depend on the will of another man.” Marsilius of Padua, who was Aquinas’s opposite on the vital political controversies of that era, agreed that “as men are equal,

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<sup>9</sup> *Speech of Daniel Webster in Reply to Mr. Calhoun’s Speech on the Bill “Further to Provide for the Collection of Duties on Imports,”* (Washington, 1833), 19-20.

<sup>10</sup> Brian Tierney, *Religion, the Law and the Growth of Constitutional Thought* (Cambridge, 1982), 16.

it is wrong that one should be bound by laws made by another.”<sup>11</sup> European Civilization was expanding rapidly, allowing intellectuals to bury the tensions in their political assumptions in a communal ethos of organic law, a belief that the discordant elements of political power could be dissolved in the harmony of union, and even a theory of federalism in which power emanated upward.

As historians of early modern Europe have shown, the idea of the state, which emerged gradually out of institutional patterns established in the high middle ages and became fully-articulated in the sixteenth century, is distinct from all previous conceptions of political power.<sup>12</sup> Significantly, the much older idea of a republic – from *res publica*, which is literally translated as “people’s thing” – carries normative assumptions that tended to disappear as the idea of the state emerged.<sup>13</sup> The state, that is, a form of power independent from both rulers and ruled, possessing

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<sup>11</sup> Cited in Lord Acton, “The History of Freedom in Christianity” in *Selected Writings of Lord Acton* edited by J. Rufus Fears three vols (Indianapolis, 1985), 34-35.

<sup>12</sup> Quentin Skinner, *The Foundations of Modern Political Thought* 2 vols. (Cambridge, 1979); Skinner’s approach to political thought -- which involves situating key texts within the framework of a discourse involving countless obscure writers – commands tremendous respect but is less rewarding for non-specialists who do not care to know the name of every tree in the intellectual forest. Nevertheless, he does make the reader feel confident in his judgment that the concept of the state first acquired its modern form in the sixteenth century. Constantine Fasolt provides a lucid sketch of the centuries-long transition from “oligarchic competition by estates to monarchical monopoly” – that is, the process that transformed the European order defined by conflict among elite classes – nobility, clergy, and merchants – into one defined by territorially sovereign states. Fasolt, “Hegel’s Ghost: Europe, the Reformation and the Middle Ages” *Viator* 39 (2008), 368—374; The greatest work on this subject is Norbert Elias, *The Civilizing Process* (Oxford, 1994). Part two, originally published as a separate volume, *State Formation and Civilization* provides a stimulating analysis of the social process by which the competition for power among different, roughly equal units leads gradually to the monopolization of power by a single authority. And he brilliantly describes the dramatic social and psychological changes this process brings with it.

<sup>13</sup> Skinner, *Foundations of Modern Political Thought*, xxiii. A key point for Skinner is that scholars who translate *res publica* as “state” are guilty of a misleading anachronism. I certainly wouldn’t want to insist on an exact parallel in the historiography of the antebellum United States. But I do think there is an important point here. To describe the general government as a limited or undeveloped state is to interpret what it was in terms of what it subsequently became. Stephen Skowronek argues that America “was exceptional not for the absence of a state but for the peculiar way state power was organized.” Skowronek, *Building a New American State* (Cambridge, 1982), 8. Skowronek knows far more than I about the variety of theoretical definitions of the state, and the extent to which they suit the reality of American governance in the nineteenth century. Like most political scientists interested in the nineteenth century United States, Skowronek is concerned with the peculiar difficulties that characterized its gradual development as a nation-state on the Western model. That’s an important inquiry. But for the historian of American politics it’s significant that so much of the best work on national governance in the mid-nineteenth century is concerned with tracing the origins of a state that did not yet exist: Theda Skocpol, Daniel Carpenter, along with Skowronek and Richard Bensele are some of the leading scholars in this field, which they’ve defined as “American

sovereign legislative authority without any legitimate rivals in its territory – that idea emerged out of a power struggle within European society that demolished the older communitarian worldview of power blended by organic law. The social order of the high middle ages had been formed by tacit compromises among rival elites – the nobility, clergy and merchants – over how to divide the spoils of power. As this tacit “social contract” gave way to increasingly bloody struggles between rival oligarchies, the competition eventually yielded victors who established monopolies of power over territorial units. The idea of the state emerged as these victors consolidated their power, abolishing all customary barriers to their authority. And the European system of inwardly pacified, outwardly embattled nation-states was born.

Americans in the nineteenth century believed their system incorporated the fruits of European history while leaving behind its toxic ruins. The idea of the state certainly existed in American political thought. But it represented precisely what Americans hoped their system could do without. Everywhere in Europe, Americans believed, the rights of the people had been usurped by the prerogative of the state. Before the Civil War, Americans, and their European admirers, believed their greatest contributions to the art and science of politics were those aspects of their system that later generations considered backwards and underdeveloped, even feudal. Viewed in hindsight through the categories of modernization, Americans were precocious in extending suffrage to a broad electorate but far behind Europe in developing the institutions

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political development.” Their primary question is the historical process by which the state emerged; they are less interested in the historically particular form and ideology of power that the State ultimately displaced. Here one might contrast the literature on the relationship between political theory and practical governance in the early Republic, where the intellectual agenda has been set by historians: Gordon Wood, Stanley Elkins and Richard McKintrick, Richard John, Max Edling, Richard Kohn, to name a few. Historians interested in nineteenth century governance have tended to focus on the local and state level, where all the real action was. Robin Einhorn and Michael Willrich are two outstanding examples. James Sparrow, William Novak and Stephen Sawyer have recently edited a collection of essays that moves beyond narratives of the state’s development according to particular theoretical paradigms by looking closely at what the general government *actually did* at particular moments in time. *Boundaries of the State in US History* (Chicago, 2015).

capable of real governance.<sup>14</sup> Yet many of the best political theorists of the nineteenth century, Lord Acton, Alexis de Tocqueville, Karl Marx and Francis Lieber, along with the American expounders of the Constitution after the rise of universal white, male suffrage, from Joseph Story and John Quincy Adams to Daniel Webster, agreed in believing that America had moved political science beyond the idea of the state, though they did not necessarily phrase it that way, toward a new and more advanced organization of power.<sup>15</sup>

The ideology of the American Revolution, most famously expressed in the Declaration of Independence, stressed the conflict between rulers and ruled, as the ambitions of the former perpetually threatened the liberties of the later. Though theoretically created by the people, the state, represented by the Monarchy, was separate from the people, who, under the English Constitution, were represented in Parliament. In conceptually separating the interests of rulers from those of the people, English Whigs fully articulated the modern distinction between private and public, which supplies the basis of all liberal concepts of freedom. American revolutionaries inherited Whig ideology and amplified its suspicions, which led ultimately to the conviction that King George III was bent on subverting their rights and reducing them to political slavery. After the Revolution, Americans struggled to apply the categories of Whig thought to a society that did not really resemble eighteenth century England. The ideal of a mixed Constitution, which

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<sup>14</sup> The activities of the individual states complicates this picture. But Americans considered their federal system their greatest innovation.

<sup>15</sup> Marx is different from the other figures mentioned in this context. Marx disagreed with Hegel, who described America as a stateless society, by insisting that it was the bourgeois state at its most advanced stage of development. But America eventually developed the insulated bureaucratic structure Hegel identified with the state, which would seem to confirm his judgment over Marx's. The important point is that Marx, along with every chest-thumping American, considered the comparative absence of modern state institutions as historical advancements over European forms. And perhaps it's worth adding that if, in fact, there is no great law of history, only particular people making particular choices, then it follows that history is not a fair arbiter of who was right and who was wrong. As historians like to say, there were many different possible versions of modernity, though choices once made cannot be unmade. Anti-statism is now politically relevant only on the right in America, though it remains a staple of far-left thought as well. In the early nineteenth century anti-statism was central in almost all idealistic political thought, not merely as classical liberalism but also in communitarian visions. On Marx and Hegel, see Stephen Skowronek, *Building A New American State* (Cambridge, 1982).

balanced the state (i.e. the monarchy) against the representatives of the different social orders (i.e. Lords and Commons), made little sense in a relatively egalitarian society that lacked both a monarchy and distinct social orders. One solution, the simplest, was to vest all political power in the people's direct representatives. But Americans quickly discovered that the people's representatives could be every bit as oppressive as an absolutist state.

And so gradually a different idea of a balanced Constitution emerged, in which all branches of government were the people's representatives. Instead of a conflict between rulers and ruled there was conflict among the people themselves, and the purpose of a balanced constitution was to prevent one combination of citizens from oppressing the others through their control of the government. There were no rulers, only citizens striving to bend the government to their own selfish purposes. "The Americans had reversed in a revolutionary way the traditional conception of politics," Gordon Wood concluded his classic study of the period. "[T]he Stability of government...now depended upon the prevention of the various social interests from incorporating themselves too firmly in the government."<sup>16</sup>

Conceptually, the new theory of politics eliminated the idea of the state as a distinct element in a balanced government. If all branches of government represent the people then there is no autonomous structure of authority capable of asserting a contrary influence over the people themselves, no reasons of state to counteract the will of the people. Although the Founders articulated this vision of American politics, they did not anticipate its full implications. They supposed that a natural aristocracy would assume the role of an autonomous bureaucracy, and under their leadership the Federal government succeeded, to a certain extent, in isolating national political elites from the direct control of the people. In this sense, the state remained a reality in the Early Republic even as it faded as an idea.

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<sup>16</sup> Gordon Wood, *The Creation of the American Republic* (Chapel Hill, 1969), 606.

The rise of universal white male democracy, combined with the spread of national consciousness into almost every strata and segment of society, lent the American system of government a significance that the Founders had scarcely imagined. Madison's argument in *Federalist 10* and *51* came to seem highly questionable, if not absurd, under these circumstances. "Different interests necessarily exist in different classes of citizens," Madison observed in *Federalist 51*. "If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: The one by creating a will in the community independent of the majority, that is, of the society itself; the other by comprehending in the society so many separate descriptions of citizens, as will render an unjust combination of a majority of the whole, very improbable, if not impracticable."<sup>17</sup> Madison's reference to "a will in the community independent...of the society itself" closely approximates the definition of the state that then prevailed in Europe. But his alternative to a power capable of arbitrating over the competing interests in society – the diversity of a large territory – became far less plausible after the rise of democratic nationalism.

Tocqueville was the first to analyze systemically the workings of American democracy, and it hardly needs to be said that his book could not have been written a generation, or even a decade, earlier. The parochial outlook of the common people, which Madison had taken for granted and sought, to a limited extent, to overcome, did not prevent them from uniting under the banner of spread eagle nationalism. Locally, the people might govern themselves democratically. Nationally, however, their power to unite under the potent symbol of a figure like Jackson represented a grave threat to democratic self-government, for it gave the people a power they

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<sup>17</sup> *Federalist 51*.

could not possibly control.<sup>18</sup> And so astute minds, beginning with Tocqueville, saw the decentralized structure of the American polity as the only safe way to combine equality and liberty within a great territorial empire. And Tocqueville's philosophical observations were almost universally shared by the nation's political leaders. The dynamics of national party politics in the Jacksonian era created a remarkable consensus against the evils of consolidation, a consensus that, paradoxically, explains why Americans argued about that danger constantly.

Under the Articles of Confederation and during the Federalist era, elites had championed a powerful general government as a bulwark against the democratic excesses of the state legislatures. Those who sought to preserve the Revolution's democratic gains within stronger institutions joined with those who sought to reverse those gains by building a more powerful centralized state. And the Constitution reflected the ambiguity of their combined purposes. But both sides assumed that stronger national institutions would restrain the democratic excesses (or liberties) of local governments. The argument over the proper limits of Federal power was thus in large part an argument about the limits of democracy.

Jacksonian Democracy muddled the old ideological fault lines in ways that convinced virtually everyone of the dangers of centralization. The Whig party continued to champion the vision of a strong national economy inherited from the Federalists. But they combined that positive agenda with a newly acquired terror of executive despotism, restraining the branch that a

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<sup>18</sup> This also explains the Janus face of the Democratic party. Sean Wilentz identifies it as the driving force behind American egalitarian democracy. Daniel Walker Howe argues that its only defining feature was a commitment to white supremacy. Both claims are essentially true. National political parties were confederations of state organizations. And so within individual states the Democracy could advance an agenda that had little or nothing to do with race. But nationally there very little that any party could agree upon, and the Democratic party succeeded by relying on spread-eagle nationalism as the glue that held its state party organizations together. Historians of the second party system have amply demonstrated the local orientation of national parties. But for historians trying to understand national political ideology or the substance of national political conflict, this raises a serious difficulty. The primacy of state political governance could make the great issues at the national level almost an afterthought, at least to some. This fact does not diminish the historical importance of national issues, but it presents a formidable challenge to our understanding of the leaders who handled them. Needless to say, the problem did not disappear with the second party system. Michael Holt, *The Rise and Fall of the American Whig Party* (Oxford, 1999).

bureaucratic state would inevitably strengthen, as the Hamiltonians had recognized. The framers of the Constitution had not intended the President to be a direct representative of the people as a whole. But that was what Jackson became. It is almost impossible to exaggerate the fervor of Jackson's popular support— or the fear it caused his opponents. The general government was no longer beyond the reach of popular democracy, and the prerogatives of the states were therefore a crucial pillar against majoritarian rule. At the same time, however, elites remained far better organized to control the activities of the Federal government, particularly through the courts, while democratic populists continued to distrust a state so far removed from the immediate concerns and interests of ordinary people.

The parochial outlook of many Northern Democrats helps explain why Federal policy was dominated by the Southern, proslavery wing of the party. But it also supplies the crucial context for understanding nationalistic appeals for a more activist government. The Whigs did not need to assert their own limitations on the powers of the Federal government because there was no one challenging them from that direction. “All participants in American politics accepted the Constitution of 1787 as authoritative in defining political possibilities,” Daniel Walker Howe has observed.<sup>19</sup> This consensus stands in stark contrast to the attitude of the framers themselves, who all deplored the shortcomings of their work for one reason or another. Among antebellum Americans, however, the same ambiguities that had caused general dissatisfaction at ratification allowed everyone to worship the Constitution for their own idiosyncratic reasons. To the Jacksonians the Constitution protected the people from “the rich and powerful,” who “too often bend the acts of government to their own selfish purposes.” But of course it also protected “the rich and powerful” from majority rule; the property of the few from the newly won power of the many.

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<sup>19</sup> Daniel Walker Howe, *The Political Culture of the American Whigs* (Chicago, 1980), 23.

Intellectuals of the Democratic faith worshiped the Constitution as an iron fetter protecting the people from their government. Their intellectual adversaries, by contrast, worshiped the Constitution as the sacred law that bound the people themselves; the covenant that united them as equals also conferred the authority of tradition over the whims of the present. But these rhetorical differences, however passionately felt at the time, belied a powerful underlying consensus.

John Calhoun's prophetic warnings forever associated the fear of consolidation with the slaveholders' fear of emancipation. But Calhoun's high-wrought, logical mind was hardly typical of his class. After all, slaveholders had enjoyed more influence over the general government than any other group, a fact that made antislavery radicals some of the most ardent admirers of Calhoun's Constitutional theories. In its more modest form, fear of centralization was fully shared by those who cherished democratic self-government. When Americans denied the sovereignty of the states, they never insisted on the sovereignty of the general government. Instead they spoke vaguely and passionately about the sanctity of the Union, a system that dissolved sovereignty in the organic and fundamental law of the community.

"The only reason, I believe, why a freeman is bound by human laws is that he binds himself," Justice James Wilson wrote in *Chisholm v. Georgia*.<sup>20</sup> This is precisely what Americans meant by self-government. It did not mean democracy or majority rule, for there was no reason to believe that the will of a majority would be preferable to that of any other group. The ideal of self-government was the hope that men could govern themselves in voluntary obedience to law and only law – that they could collaborate politically without being compelled to obey a power superior to themselves. As John Jay wrote in the same decision, the American

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<sup>20</sup> *Chisholm v. Georgia*, 2 Dallas, 454.

people, “are sovereigns without subjects.”<sup>21</sup> As sovereigns, they owed no allegiance to government – state or federal – but to the law that constituted the government, and fidelity to that obligation bound them together as individuals and as distinct communities.<sup>22</sup>

The Constitution, Daniel Webster declared in his reply to Calhoun, “makes its own preservation depend on individual duty and individual obligation...It lays its hand on individual conscience, and individual duty.”<sup>23</sup> There is no central State, in this conception, entrusted with the ultimate power of maintaining the authority of the Constitution. It is a covenant between the people of the United States, individually and collectively, which they themselves have a moral obligation to maintain.<sup>24</sup>

However imperfectly realized, this ideal was not merely a matter of rhetoric and theory; it was rooted in the recognition of a genuine achievement. “The sovereignty of the people” was the creed of revolutionaries throughout the Western world, but Americans alone claimed to have found a practical alternative to entrusting that sovereignty to the sword of the state. The key feature was the Constitutional convention, which separated the people’s authority from the authority of the government – not just in the right of revolution, a natural right beyond the authority of any government, but as a lawful right enshrined in the American system of government. If the powers conferred on the general government proved inadequate, the

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<sup>21</sup> *Ibid.*, 2 Dallas, 474.

<sup>22</sup> This premise is also why President Lincoln, in his first message to Congress, stressed that the people of the rebellious states had been misled by an “ingenious sophism” to believe in the legality of secession. For if the people of eleven states had wantonly disregarded the moral and legal obligation that bound them together, then the experiment of self-government was a failure. But if they had been misled, then there was hope of restoring them to a true sense of civic duty. Lincoln, *Collected Works*, 4:432-433.

<sup>23</sup> *Speech of Daniel Webster in Reply to Mr. Calhoun’s Speech on the Bill “Further to Provide for the Collection of Duties on Imports,”* (Washington, 1833), 21.

<sup>24</sup> “It is asked whether a State, by resuming the sovereign form in which it entered the Union, may not, of right, withdraw from it at will,” James Madison wrote in response to Calhoun’s nullification doctrine. “As this is a simple question whether a State, more than an individual, has a right to violate its engagements, it would seem that it might be safely left to answer itself.” Madison to William Rives, March 12, 1833. Cited in George Ticknor Curtis, “A discourse on the nature of the American union, as the principal controversy involved in the late Civil War.” (New York, 1975). Lincoln advanced an identical argument in his first inaugural address.

responsibility for adjusting the constitution was left to the people themselves, not their government.

This system would hardly qualify as an improvement if “the people” were an undifferentiated mass. In that case, the sovereignty of the people embodied in a national convention would be no different than the sovereignty of the people as embodied by Parliament or any other predominate institution. The existence of the individual States as autonomous political communities, voluntarily united by solemn compact, was the essential feature that rooted the ideal American Republic in reality. Without the States, independent in all that pertained to themselves, the “sovereignty of the people” would be a mere farce perpetrated by whatever despotic power governed in their name. Without the Union, the farce would be multiplied in each state.<sup>25</sup>

Individual citizens were never free from the police power of the state. No one ever maintained the ridiculous pretense that the laws governing a free citizen were duties that could not be enforced, only voluntarily obeyed. But that is precisely what Americans believed about the fundamental law that bound them together as a nation. No American nationalist, prior to the Civil War, denied this essential fact about the composition and creation of the American Republic, which was the defining quality of the national existence they celebrated. It was a system that established political unity without imposing it, denying ultimate authority to the government “in its parts or in its whole.”<sup>26</sup> This was what allowed Americans to believe they created their government as a covenant between equals, collectively and individually, engaged in

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<sup>25</sup> “Every State is an independent, sovereign political community, excepting in so far as certain powers, which it might otherwise have exercised, have been conferred on a general government, established under a written Constitution and exercising its authority over the people of all the States. This general government is a limited government. Its powers are specific and unenumerated. All power not conferred on it still remain with the States or with the people.” Cited in Curtis, “A Discourse,” 30.

<sup>26</sup> Henry Adams, “The Session,” *The North American Review*, July 1870.

the enterprise of self-government, rather than a sovereign state that established a definite hierarchy of power.

Despite its obvious contradictions, hopefully regarded as imperfections, this was the lofty ideal that most Americans unblushingly worshipped in the decades before the Civil War. The term “Union” itself connoted the salient qualities of the concept’s appeal. Unlike “nation” or “country” the association was not natural or automatic but deliberate and voluntary. Unlike “government,” the term “Union” avoided fraught questions about the location of power. It was the purest representation of a people bound together by their own free consent.

Like “the Union” the concept of self-government was rooted in the American experience between the Revolution and the Civil War. Americans did not use the term before the Revolution, and it faded soon after the rebellion, its continued utterances mere echoes from memory.<sup>27</sup> The term conveyed much more than democracy or majority rule, for everyone knew that a majority could rule. “Self-government” referred to a much more elusive balance of assertion and restraint, of political cooperation secured and defined not by any superior power but by voluntary obedience to reason, justice and law. Because political authority emanated upward, it ultimately depended on the morality of the individual.<sup>28</sup> Hence the dilemma in which Americans found themselves. If the American government was corrupt, it was a corruption of the American self. The failure of a community to acknowledge the rights of a minority could not be resolved by abrogating the rights of the majority.

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<sup>27</sup> Francis Lieber, *Civil Liberty and Self Government* (Philadelphia, 1859), 251.

<sup>28</sup> In this analysis, however, the individual is understood in communitarian terms. His capacity to govern himself is the basis of his capacity to govern others. “Our ideal commonwealth,” Charles Eliot Norton wrote of the old Union theory, “rests upon the foundation of individual morality, and its form is determined not by external authority or theoretical considerations, but by the moral sense of its members, and their capacity of self-control as determined by their moral civilization.”

“Without local self-government, in other words, self-government consistently carried out and applied to the realities of life, and not remaining a mere general theory, there is no real self-government,” Francis Lieber wrote in one of the most influential statements of antebellum American political philosophy. “Self-government is founded on the willingness of the people to take care of their own affairs, and the absence of that disposition which looks to the general government for everything; as well as on the willingness in each to let others take care of their own affairs. It cannot exist where the general principle of interference prevails.”<sup>29</sup> One would be hard pressed to identify an American principle that enjoyed a greater consensus than this one. “This habit, of depending chiefly on themselves, produces in the Americans a spirit of independence, scarcely to be found in any other nation,” Francis Grund wrote, and it was these personal characteristics of the people that explained their form of government.<sup>30</sup> “Self-government as an administrator is subject to criticism for many failures,” Carl Schurz admitted. “But it is impossible to overestimate self-government as an educator.” The average intelligence in America was greater than anywhere else because “here the individual is constantly brought into interested contact with a greater variety of things, and is admitted to active participation in the exercise of functions which in other countries are left to the care of a superior authority.”<sup>31</sup>

The political theorists, journalists and stump orators who invoked “self-government” were echoing the key concept in Emerson’s writings, ‘self-reliance.’ Both ideas involve an apparent paradox, “a matchstick propped up by leaning against...itself,” as Louis Menand has observed of Emerson’s philosophy.<sup>32</sup> But Americans did not understand self-government and self-reliance to mean individual autonomy or independence; they believed, however vaguely or

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<sup>29</sup> Francis Lieber, *Civil Liberty and Self-Government* (Philadelphia, 1859), 253. The copy I happen to be quoting from belonged to Herman von Holst.

<sup>30</sup> Francis Grund, *The Americans in the Moral, Social and Political Relations* (New York, 1968), 173.

<sup>31</sup> Carl Schurz, *The Reminiscences of Carl Schurz* three vols (New York, 1907), 2:79.

<sup>32</sup> Menand’s ellipses. Louis Menand, *The Metaphysical Club: A Story of Ideas in America* (New York, 2001), 18.

implicitly, that the virtue of collaborating with one's neighbors as equals was a virtue that resided within individuals themselves. "Sentiments and ideas renew themselves, the heart is enlarged, and the human mind is developed by the reciprocal action of men upon one another," Tocqueville wrote.<sup>33</sup> But that enlightening effect only occurs among individuals associating together voluntarily, under circumstances that cultivate man's natural sociability in cooperating to solve common problems. Bureaucratic institutions meet the same need at the cost of blunting the collaborative instincts of the people they serve, isolating individuals and social classes in the impersonal rule of the state. Tocqueville blamed French centralization for the chronic instability of his country, rendering the people incapable of collaborating together in their own government.<sup>34</sup>

"The American government calls itself a government of the supreme people," Walter Bagehot wrote soon after the Civil War in his classic study of the English Constitution, "but at a quick crisis, the time when a sovereign power is most needed, you cannot *find* the supreme people."<sup>35</sup> Before the Civil War, such a criticism would have struck most Americans as demonstrably wrong. After all, the American people had framed, debated and ratified their Constitution during a tremendous crisis in which their very existence as a united people was at stake, and the result was a glorious example of enlightened self-government, not a recipe for paralysis and chaos. Americans' almost instantaneous reverence for their Constitution stemmed from their recognition of this achievement. They had re-established the boundaries of state power without imposing it by force.<sup>36</sup> The achievement was central to what Americans idealized in the

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<sup>33</sup> Tocqueville, *Democracy in America*, 491.

<sup>34</sup> Tocqueville, *The Old Regime and the French Revolution*, 120-137.

<sup>35</sup> Walter Bagehot, *The English Constitution* (London, 1867), 23.

<sup>36</sup> John A. Jameson, *The Constitutional Convention: Its History, Powers and Modes of Proceeding* (Chicago, 1873). Jameson's study, at once learned and paradoxical, is a fascinating artifact of the intellectual climate in which he undertook it. The first edition was published in 1866. He correctly observed that the convention was the distinctive innovation Americans contributed to political philosophy, but his description of the nation's origins and

Union, self-government, even liberty itself – and their furious, inflexible devotion to these fixed concepts, their desperation to preserve a precarious, imperfect inheritance, reflected their awareness that the achievement was very fragile indeed.

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development make that contribution unintelligible. “A nation,” Jameson wrote, “is a distinct, independent people, consisting of men of one blood, with such accretions from alien races as, resulting from common affinities, are destined to be permanent; occupying a determinate territory...a people bound together by common attractions and repulsions, into a living organism, possessed of a common pulse, a common intelligence and aspirations, and destined apparently to have a common history and a common fate.” It was thus an instinctive, irresistible impulse that created the American nation, and that impulse, not the government or the people, was the sovereign will – organic, unwritten and inscrutable. The Constitution was one artifact of that sovereign will, and the Civil War another. Jameson somehow did not realize that this theory completely deprives the Constitutional convention of any ongoing institutional relevance to the American political system. It wasn’t an innovation but an idiosyncrasy. Jameson, *Constitutional Conventions*, 32.

## 2

### *“Whither?” The Republican Party and the Paradox of Progress*

#### *I: Revolutionary Ideals, Reactionary Impulses*

The antebellum Republican party presented itself as the party of Northern progress against Southern barbarism, but the party had the least appeal in the core centers of the North’s emerging industrial economy. The backbone of the Republican party was in rural areas. They were farmers, small town tradesmen and lawyers – the very people who most keenly felt the looming decline of their public influence and their way of life. The “lords of the loom” in New England, New York’s financial elite, and merchant capitalists in most major cities were all notably cool, even hostile, toward the Republicans and the antislavery crusade. So were the immigrants who supplied the bulk of the nation’s wage labor. The point is crucial because it explains the balance of power within the Republican party on the eve of the Civil War. And it is frequently overlooked because the outbreak of the war immediately compelled an alliance between the Republicans and all economic nationalists, effectively transforming the balance of interests that defined their coalition.<sup>1</sup>

Scholars have long recognized that the sectional conflict, and particularly the growing belief in a slave power conspiracy, reenergized the republican tradition in Anglo-American political thought. Within the lively, often bombastic arena of democratic politics, the distinctive traditions of liberalism and republicanism were inextricably combined, knotted together by

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<sup>1</sup> For the attitude of financial elites toward the antebellum Republican party, see Sven Beckert, *The Monied Metropolis: New York City and the Consolidation of the American Bourgeoisie, 1850 – 1896* (New York, 2001), 78-97.

partisan discourse that also blended empty slogans with sacred convictions, rhetorical exaggerations with discreet omissions. But from the American Revolution to the Civil War, as Michael Holt has argued, “the essence of American politics had been the battle to secure republicanism – government by and for the people, a government of laws whose purpose was to protect the liberty and equality of the people from aristocratic privilege and concentrations of tyrannous power.”<sup>2</sup>

At the same time, however, most scholars who emphasize the importance of republicanism in the Civil War era have argued that Americans had long since abandoned any lingering distrust of commerce as a corruptor of republican virtue. Fears of a conspiracy to reduce the people to slavery remained as potent as ever, but Americans were more likely to confuse liberty with prosperity than to believe one threatened the other. “The identification of democracy and capitalism with republicanism transformed American political culture by the eve of the Civil War,” Lloyd Ambrosius wrote in summarizing a general scholarly consensus.<sup>3</sup> “[T]he ideology of republicanism...was not the same in the 1850s as in 1776 or 1789,” William Guinapp argued in his study of the origins of the party of Lincoln. “It had been shorn of its moral dimensions and its anti-commercial ethos...”<sup>4</sup>

As a relative comparison with the Revolutionary era, these observations are valid. The Founders’ early vision of building a delicately balanced republic devoted to civic virtue had given way almost immediately to a democratic social order that celebrated the right of every man to advance as far as his talents and energies could take him. Soon after the Revolution, a political party that insisted on Spartan austerity could expect as much success as one that favored restoring the monarchy. Historians’ dismissal of an anti-commercial ethos in antebellum

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<sup>2</sup> Holt, *Political Crisis of the 1850s*, 134.

<sup>3</sup> Lloyd E. Abrosius *A Crisis of Republicanism* (Lincoln, 1990), 4.

<sup>4</sup> Gienapp, *Origins of the Republican Party*, 365.

republican thought, however, seems to rest on two separate mistakes. First, anxiety about commercial corruption is inherently a concern of the privileged, not of working people eager to improve their condition, who supplied the bulk of the nation's voters. And although the rarified concerns of educated elites occupied a much less conspicuous place in the rhetoric of antebellum politics, that does not mean those concerns ceased to matter.<sup>5</sup> And second, moral critiques of commerce are inherently relative. Not even the most strident Puritan begrudged a citizen the honest fruits of his labor. And only a few occasional saints are sincerely capable of taking a malign of view of the level of affluence to which they are accustomed.

It was only “such as walked inordinately” who sinned, John Winthrop explained to his fellow Puritans in Massachusetts, “and it is without question that he is worse than an Infidell who through his owne Sloathe and voluptuousnes shall neglect to provide for his own family.” In both republican and Puritan thought, modest prosperity borne of hard work was perfectly honorable – it's the inordinately rich who threaten the virtue (piety) and stability of the community. The ceiling that separates appropriate from inordinate affluence has moved fitfully but unmistakably upward throughout American history. To interpret this trajectory as a move from stern anti-commercialism to embattled good taste is only natural for educated 21<sup>st</sup> century Americans. We cannot imagine life without our once unimaginable luxuries, nor can we forego the honest habit of deploring the unseemly extravagance of others. The important variable is not an abstract concept of avarice but jarring changes in the amount of private wealth that citizens

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<sup>5</sup> Or, perhaps it might be better to say that the concerns of elites mattered as much or as little in the antebellum period as during the eighteenth century Revolution. The nameless men and women who made the American Revolution were not fighting to establish the natural aristocracy envisioned by their leaders. See for example, T.H. Breen, *American Insurgents, American Patriots* (New York, 2010). By sheer power of numbers, white Americans of the “middling sort,” neither rich nor poor, have usually been the driving force in American politics. Their legitimate grievances tend to be exaggerated by an acute but unconscious sense of entitlement disguising the far graver injustices endured by others. It matters a great deal whether they have leaders who speak for them intelligently – whether, that is, they elect a Thomas Jefferson, an Abraham Lincoln or a Warren Harding as their standard bearer.

may accumulate, a change that inevitably translates into a shift in the balance between private and public power.

“Blind to the growing concentration of wealth in the North and the ways in which industrialization was closing off avenues of mobility,” Gienapp writes, “Republicans upheld the social ideal of the independent farmer, shopkeeper, and skilled worker.”<sup>6</sup> But Gienapp’s own analysis offers several implicit reasons for questioning the first assertion in that sentence. He convincingly argues that humanitarian concern for slaves was at most a secondary consideration among most Republicans. Nor, he argues, was the protection of free soil in Kansas, and the West more generally, their primary motivation. The central preoccupation of Northern leaders was the Slave Power as an imminent threat to the liberties of the North. Although this “master symbol” of Republican thought united a number of diverse themes, its principle emphasis was on a small oligarchy who dominated the South and were determined to dominate the North as well. There can be no doubt that many Republicans sincerely feared the nationalization of slavery. But they were also unavoidably aware that the slave oligarchy’s relative power within the Union was declining precipitously.

Because the Republican party so successfully harnessed an optimistic celebration of free labor in their attack on the Slave Power, the political rhetoric of the sectional conflict fixated on the moral and material contrasts between the economic systems of the North and South. So it is not surprising that scholars of the antebellum slavery controversy have generally associated moral attacks on industrial capitalism with proslavery polemicists and intellectuals like George Fitzhugh and James Henry Hammond.<sup>7</sup> But many Northern intellectuals implicitly accepted the

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<sup>6</sup> Gienapp, *Origins of the Republican Party*, 356.

<sup>7</sup> Eugene Genovese work emphasizing the slaveholder’s ideology has been especially influential. To be sure, most scholars have rejected Genovese’s interpretation of the slaveholders’ ideology as anti-capitalist. But the disputed point is really quite narrow. Genovese, unlike apologists for the Confederacy, recognized that the slave regime was

proslavery critique of Northern society while sneering at the pretense that these crimes somehow excused the far deeper rapacity of the South. If proslavery arguments were merely the reactionary howls of an anachronistic social order, they posed no threat. But what if the social ideals of Northern society were also doomed?

In Lincoln's most elaborate discussion of the relationship between capital and labor in the free states, he observed that "a large majority are neither hirers nor hired. Men, with their families...work for themselves, on their farms, in their houses and in their shops, taking the whole product to themselves, and asking no farmers of capital on the one hand, nor of hirelings or slaves on the other."<sup>8</sup> But Lincoln was not an optimist, even on this subject. His discussion of the steam plow in the same speech was perhaps the most unenthusiastic discussion of technological progress ever delivered by a nineteenth century politician. And he ended his address, delivered at the Wisconsin Agricultural Fair in 1859, on a note of worry for the future of the society he had celebrated.<sup>9</sup>

An Eastern Monarch, Lincoln related, once asked his wisest men to come up with a sentence that would be equally true at all times and for all situations. "They presented him the words... '*And this, too, shall pass away.*' How much it expresses!" Lincoln concluded. "And yet let us hope that it is not quite true. Let us hope, rather, that by the best cultivation of the physical world, beneath and around us; and the intellectual and moral world within us, we shall secure an

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rooted in, and sustained by, a global capitalist system in which cotton was a central commodity. And no scholar would deny that proslavery polemicists presented a romanticized version of their own society and a biting critique of Northern wage-labor democracy. The only disputed question is whether these polemicists articulated a sincere ideology that can be accurately described as representative of the planter class. The crucial point, for my argument, is that proslavery polemicists were not interested in attacking capitalism *per se*; they were attacking the middle class society cherished by Republicans. They were aping the aristocratic disdain, prominently expressed in England at the time, for the mean, money-grubbing middle class. But these aristocratic pretensions were obviously fraudulent, but the disdain was just as obviously genuine. It was the disdain of the great capitalist for the small. Republican fear of the "slavepower" stemmed from an awareness that a similar class was emerging in their own society. Indeed, the slaveholders' ideology strikingly anticipates the traits Thorstein Veblen encountered among Chicago elites in the early twentieth century and described in his *The Theory of the Leisure Class*.

<sup>8</sup> Lincoln, *Works*, 3:478.

<sup>9</sup> *Ibid.*, 3:475-477.

individual, social, and political prosperity and happiness, whose course shall be onward and upward, and which, while the earth endures, shall not pass away.”<sup>10</sup> Lincoln, a railroad lawyer, was not blind to the power of concentrated wealth growing around him. He knew well that the “great, durable curse of the race” – the effort of some to shift their share of the burden of labor onto others – was not confined to the South. But he knew of no power to prevent it save by cultivating the moral and intellectual power of the individual.<sup>11</sup>

The middling farmers and independent professionals who filled the Republican ranks were not blind to the growing concentration of wealth in their own society. How could they be? What they desperately lacked was an ideologically acceptable solution to a problem that was too new, that had grown too quickly, for anyone to have developed a coherent political response. “Men cannot do what they have no means of saying they have done,” J.G.A. Pocock has observed.<sup>12</sup> The ominous tendencies subverting the free labor society Republicans idealized were inherent in its development, and the Republicans could not conceptually separate their political principles from the economic forces that undermined them. As William Cronon has argued, the desires of rural Americans fueled the economic innovations that then transformed their society in deeply unsettling ways.<sup>13</sup> Ideas and the material circumstances in which they are embedded rarely evolve at the same pace – and in the mid-nineteenth century the race wasn’t even close. It was not a coincidence that as industrialization transformed Northern society, its traditional leaders combined a celebration of an already anachronistic social order with a shrill warning about an oligarchic threat to its existence. Objectively, the relative political power of slaveholders diminished rapidly during the 1850s, even as the subjective threat they represented

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<sup>10</sup> Ibid., 3:482.

<sup>11</sup> Lincoln, *Collected Works*, 3:462. Undated fragment. Probably September 19, 1859.

<sup>12</sup> J.G.A. Pocock, “Virtue and Commerce in the Eighteenth Century” *Journal of Interdisciplinary History* (Summer, 1972), 122.

<sup>13</sup> William Cronon, *Nature’s Metropolis* (New York, 1991).

grew among those distraught by the amorphous, unnamed tendencies transforming their society. More than a symbol, the Slave Power provided a convenient target as the one class of capitalist oligarchs whose wealth rested on a readily identifiable crime.

Republicans who fixated on this threat relied upon the rhetorical and ideological concepts of their earlier party affiliations to describe and understand it. Northern Democrats who took their political creed seriously were appalled as their party brazenly abandoned its states' rights doctrine whenever it collided with the interests of slavery, which was not only immoral but also the most obvious example of a powerful economic class bending "the acts of government to their own selfish purposes," as President Andrew Jackson had declared in his famous bank veto. "When it was apparent that principles were to be sacrificed for the means," Gideon Welles wrote in explaining his revolt from the party in 1854, "that the organization which had been instituted to maintain state- rights and oppose centralization was to be made an instrument to promote centralization and oppose states' rights, I could no longer be a part or parcel of it."<sup>14</sup> For ideologically earnest Democrats, opposition to the slave power was a logical extension of their opposition to the money power.<sup>15</sup> And their rhetoric remained strikingly broad, attacking not only slavery but "oligarchy" and championing "personal rights" over "the rights of property – the rights of individuals rather than those of monopolizing institutions."<sup>16</sup>

Earnest Whigs who joined the Republican party, by contrast, continued to emphasize the moral corruption of the people, a corruption that inevitably undermined the people's capacity for self-government. Free government, in their minds, rested on the people's capacity to elevate an honest reverence for the authority of law and morality over their own selfish inclinations.

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<sup>14</sup> Gideon Welles, "An Old Democrat Leaves his Party and Gives his Reasons" Gideon Welles Papers, Library of Congress (Microfilm)

<sup>15</sup> This point is convincingly demonstrated by Jonathan Earle, *Jacksonian Antislavery and the Politics of Free Soil, 1824-1854* (Chapel Hill, 2004).

<sup>16</sup> Speech of Francis Blair, *Congressional Globe*, 35<sup>th</sup> Congress, 1<sup>st</sup> Session, (March 23, 1858), 1282-1283.

“Destroy this spirit,” Abraham Lincoln warned in his debates with Stephen Douglas, “and you have planted the seeds of despotism around your own doors.”<sup>17</sup> In this framing, the power of a tyrannical oligarchy was merely the symptom of a more deadly disease manifested in the people who succumbed to it. It was not an all-powerful minority but a lawless majority who paved the way to despotism. Whigs who followed their ideological convictions into the Republican party insisted that the commercial corruption of the North was preparing the way for the political tyranny of slaveholders.

The ideological sincerity that united antebellum Republicans from all political backgrounds also distinguished them from professional elites who valued the thriving machine of the Democratic party or an economic nationalism that included the Cotton Kingdom. Democrats who viewed partisan rhetoric as an instrument for obtaining patronage and power were loath to adopt a position that would alienate the most powerful bloc of their coalition; Northern merchants and manufacturers interested in promoting their economic agendas were equally loath to embrace a party that alienated and antagonized planters who controlled the nation’s most valuable commodity. The resulting party realignment temporarily scrambled traditional alliances between ideological and interest group coalitions.<sup>18</sup>

American national pride in the nineteenth century rested on two separate claims to preeminence. One was the belief that America represented the world’s only successful experiment in self-government. Foreign observers before the Civil War generally agreed that

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<sup>17</sup> Lincoln, *Collected Works*, 3:95. September 11, 1858.

<sup>18</sup> “Temporary,” because the war catalyzed the Republican party’s transition from an ideological coalition into a party machine. And when one compares the careers of the machine Democrats who flocked to the Republican party during the war with those who joined at its idealistic inception, the contrast is almost comical: Benjamin Butler, Daniel Sickles, Edwin Stanton, John A. Logan, Charles Drake, Matthew Carpenter – all these men had remained doggedly loyal to the Democratic party throughout the conflict over slavery in the 1850s, only to become fiery radicals thereafter. Meanwhile, virtually all of the original leaders of the Republican party, if they lived long enough, eventually defected from it in disgust.

American vanity was nearly insufferable on this point. But the emphasis was on political liberty, on the sense that Americans were the only people in history who governed themselves. Few images in Tocqueville's great portrait are more charming than that of the brilliant French philosopher listening grimly as one American after another button-holed him for a lecture on the sublime perfection of the institutions he had come to study.

But another American claim to preeminence began to suggest itself in the furious economic boom that erupted in the late 1840's, as the United States became a continental empire and manifested its future as the richest, most powerful nation on earth, one that already provided citizens with unprecedented opportunities to better their condition.<sup>19</sup>

Implicit in the bitter controversies between Federalists and Jeffersonians, Whigs and Democrats, was an assumption that the nation's commercial and economic destiny would be decided by its politics. Few would have suggested that the statesmen discussing these momentous questions were merely exchanging hot air – cheering or lamenting a capitalist transformation beyond their control. But that is precisely what an increasing number of Americans believed in the 1850s. And the rising apathy towards politics was related to the apocalyptic sense that sinister forces were subverting democratic self-government. The sudden disconnect between these two mindsets helps explain the peculiarly manic attitude of Americans on the eve of Civil War.<sup>20</sup> Business elites no longer felt themselves under attack by the

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<sup>19</sup> Great Britain's position during the Civil War was an indirect acknowledgment of this troubling prospect.

<sup>20</sup> "An excessive emphasis on politics has led most observers to regard the period [of the 1850s] too exclusively as one of turmoil and uncertainty," Allan Nevins observed in his study of that era. The political peril was real, but who could notice when "in any broad view, the period stands conspicuous for a peaceful growth and prosperity greater than any that Americans had previously seen." Nevins, *Ordeal of the Union: The Emergence of Lincoln: Douglas, Buchanan and Party Chaos, 1857 – 1859* 4 vols. (New York, 1950), 3:3. Contrast this (astute) characterization of the national mood with, to give just a couple of examples, George Forgie, *Patricide in the House Divided* (New York, 1979); David Brion Davis, *The Slave Power Conspiracy and the Paranoid Style* (Baton Rouge, 1970). One can find the same contrasting characterization of the Northern mood in Foner's *Free Soil* (sublimely confident) and Holt's *Political Crisis* (hysterical sense of crisis). Both characterizations are accurate, if partial, and they supplied the most salient intellectual division within the Republican party itself.

Democracy, as they had earlier, and the defection of many radical egalitarian Democrats into the Republican ranks during 1850s only made the party of Jackson more inviting to Northerners who had once recoiled from it in horror.<sup>21</sup> For a coalition many accused of being resurrected Whiggery, the Republicans were notably unsuccessful in attracting the economic elites who had been the most influential supporters of the erstwhile party. Cultural Whiggery found a home in the new Republican party far more readily than economic Whiggery.

Significantly, the political event that produced the Republican party was not a measure designed to expand American slavery; the proponents of that agenda were fixated on the Caribbean, not Kansas. Those who championed the Kansas-Nebraska Act were eager to build a transcontinental railroad, an effort that engendered an acute sensitivity to vested financial interests and a casual flouting of Northern ideological sensibilities.

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Historians too often endorse the Republicans' interpretation of their Northern opponents, as spineless lackeys for the slavepower, instead of considering them on their own terms.<sup>22</sup> Their distinguishing trait was not sympathy with proslavery aggression but indifference toward it. And although they justifiably feared that political agitation over slavery might lead to civil war, their aversion to that impending calamity was not significant in itself, shared as it was by all rational people, but in the absence of any equal or greater perceived threat. To divide the North between

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<sup>21</sup> "Prosperity," Michael Holt observed of the collapse of the Whig party, "undermined the justification for Whigs' positive pro-governmental programs; drove far more Democrats in a pro-banking, pro-business, prodevelopment direction; and, with the boom in railroad construction, divided both parties along regional and interest group lines, thereby further blurring interparty differences." Michael Holt, *The Rise and Fall of the American Whig Party* (Oxford, 1999), 955. See also, Henry Cohen, *Business and Politics in America from the Age of Jackson to the Civil War: The Career Biography of W.W. Corcoran* (Westport, Conn, 1971).

<sup>22</sup> "Instead of analyzing what Northern Democrats said and how they said it," Jean Baker wrote in 1983, "historians have swallowed the Republican complaint that the Democrats supported slavery and the Confederacy." Baker, *Affairs of Party*, 146. Though one can think of many exceptions – Kathleen Conzen's work on German Catholics for instance – the general complaint seems even truer today than in 1983. Conzen, "German-Catholic Communalism and the American Civil War: Exploring the Dilemmas of Transatlantic Political Integration." *In Bridging the Atlantic: Europe and the United States in Modern Times*, edited by Elisabeth Glaser-Schmidt and Hermann Wellenreuther. (Cambridge, Cambridge University Press, 2002), 119–44.

amoral materialists and political idealists is to caricature a far more complex ideological fissure. The salient ideological division in Northern society was between those who darkly feared the nationalization of slavery and those who considered that threat fantastic. Culturally, the latter mindset was best represented in the pages of *Harper's Weekly*.

Established in 1857, *Harper's* quickly became the preeminent model of a new kind of weekly journal, one designed to appeal to "respectable" families regardless of their political or religious affiliations. Its prevailing tone was cheerfully cosmopolitan, unflappably moderate. Upon a careful study of the issues published in the late 1850s, one is quickly struck by how out-of-place it seems from the apocalyptic political style that characterized the final stages of the sectional conflict. In ideological and emotional tone, the *Harper's* of the immediate antebellum years seems to belong to the next generation, after the horrific violence of the Civil War had cleansed the nation of its feverish passions, and chastened American elites set aside the deadly clash of political ideals for the merely sordid scramble to get paid.

"Politically, there have been but few events of note during the year," *Harper's* observed in January of 1858, summarizing a period that began with the Dred Scott Decision and ended with the battle over the Lecompton Constitution raging in Congress.<sup>23</sup> To be sure, as a weekly aimed at a national audience, *Harper's* had a practical motive for dismissing a subject that split the country in two. But no newsweekly can expect to help its circulation by offering readers a patently false version of their own preoccupations. In truth, *Harper's* appealed to an audience that was already beginning to deprecate the nation's boisterous politics in the detached, mildly ironic style that became much more pervasive in the Gilded Age. It expressed the ethos of classical liberalism, in which the role of government, like that of a neglected housewife, is relegated to the narrow, gently disdained realm of indispensable, fussy work that is taken-for-

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<sup>23</sup> *Harper's Weekly*, January 2, 1858.

granted as simply natural. To this mindset, the government those parochials in Congress celebrated as the nation's greatest gift to mankind was mostly a farce, whose greatest achievements and most egregious blunders did little to hinder or advance the mightiest commercial civilization on the planet. New York City's, "Municipal government [is] indisputably worse than any," *Harper's* cheerfully observed, "Yet we thrive notwithstanding, and two thirds of the business of the country are done here."<sup>24</sup>

The battles in Congress that inspired breathless commentary elsewhere often prompted good humored derision from *Harper's*. "It was evident," the paper noted after a farcical account of several violent episodes in Congress, "that whatever study members may have made of Hansard, and the 'Parliamentary Compendium' they were well up on their Pickwick." For the members of Congress involved in these bloody disputes, the wry dismal was perhaps less astonishing than the tacit assumption that the greatest deliberative body in the history of the world ought to take the English Parliament as a model. Even when the paper treated politics with earnest admiration, the results were dismissive. Readers of glowing word and sketch portraits of Jefferson Davis, Henry Ward Beecher and countless other polarizing figures would learn that for all their trivial differences these men were all sincere and honorable – very fine gentlemen indeed.

It was the businessman, not the politician or preacher, who was the true object of *Harper's* admiration. "Rare almost as great poets – rarer, perhaps, than veritable saints and martyrs – are consummate men of business," the paper gushed.

A man, to be excellent in this way, must not only be variously gifted, but his gifts should be nicely proportioned to one another. He must have, in a high degree, that virtue which men have always found the least pleasant of virtues – prudence. His prudence, however,

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<sup>24</sup> *Harper's Weekly*, January, 19, 1861.

will not be merely of a cautious or quiescent order, but that which, being ever actively engaged, is more fitly called discretion than prudence.<sup>25</sup>

*Harper's* characterization of stock speculators makes for a striking contrast with that of the New York *Tribune*, which frequently railed against the “respectable gambling” conducted on Wall Street. “To buy an article and hold it for the satisfaction of prospective wants is not necessarily detrimental,” the *Tribune* observed in 1858. “But when a large portion of the community desert the quiet vale of Industry for the dizzy peaks of Speculation...when they build or buy for themselves costly mansions, and indulge in fast horses, costly equipages, and sumptuous living, on the strength of the fortunes they will have when their corner lots shall have been realized – then is that community on the high road to ruin.”<sup>26</sup> Greeley’s phrase “respectable gamblers” had a precise echo in Lincoln’s “respectable scoundrels,” – in both cases the emphasis is not on wrongdoing *per se* but on society’s failure to condemn it. Such perceptions fueled the anxiety that American society had lost its moorings; that the nation was no longer so sure of what it had once proclaimed as self-evident truths. Jefferson Davis hit upon a raw nerve when he observed in 1858 that “any population whose density is so great as to trade rapidly on the supply of bread,” would find slavery disadvantageous, though he could not see why such deplorable conditions should be called moral progress.<sup>27</sup>

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“During the earlier periods of antislavery excitement,” *Putnam's Monthly* observed in 1855, “it was mainly confined to men of ardent temperaments and extreme opinion, to abolitionists, strictly so-called; but as things are now, it is shared by men of tempered and conservative disposition. The cautious and the wise – heads silvered over with age, and hearts

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<sup>25</sup> *Ibid.*, January 30, 1858.

<sup>26</sup> New York Weekly *Tribune*, January 30, 1858.

<sup>27</sup> *Congressional Globe*, 35<sup>th</sup> Congress, 1<sup>st</sup> Session (February 8, 1858), 619.

which experience has taught to beat in measured pulses – are joined with more enthusiastic spirits... Whence this change?”<sup>28</sup>

Few writers touched so directly at the central question regarding the emergence of the Republican party. The radicalism of slaveholders, their open disdain for the egalitarian principles of their fathers, was the proximate cause. But the writer quickly reminded his readers that this “small but desperate knot of propagandists” would have no influence but for the wider corruption of American society as a whole.

A gross materialism, the success of trade, the progress of gain, an external expediency, is preferred to the lofty ideal aspirations and spiritual truth. The grand and beautiful theory which lies at the center of our institutions, their noble humanitarianism, their just and magnanimous recognition of the dignity and worth of every human being, their utter and indignant disdain of the spirit of caste, of exclusion, of selfish aggrandizement – no longer touch our hearts and kindle them into a fine and generous enthusiasm. Great deeds are not done among us... We speculate how to get rich; we build railroads and ships, to increase our stores; we spy out the luxurious harvests hereafter; we return the panting fugitive to his life-long doom; but the heroic virtues, the chivalric sentiments, the sweet, and tender, and self-forgetful impulses, which constitute the true and only glories of manhood, we lay aside, forgetting them even in our prayers.<sup>29</sup>

Perhaps the most celebrated work of history published in later 1850s was John Lothrop Motley’s *The Rise of the Dutch Republic*. Initially published at his own expense, Motley’s acclaimed study quickly sold through several editions, established his reputation as a historian and led to his being appointed minister to the Austrian Empire by President Lincoln. The Netherlands was an unlikely subject for a best-seller, but its very insignificance in American eyes supplied a key reason for the book’s success. “The Dutch revolution was as noble as our own,” Richard Henry Dana declared in a speech denouncing the caning of Charles Sumner in 1856, the same year Motley’s history was published. But in time the Dutch “came to make

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<sup>28</sup> Putnam’s *Monthly*, October 1855.

<sup>29</sup> Putnam’s *Monthly*, October, 1855.

material prosperity their ruling motive. They ceased to live for ideas, and where are they now? Rich, prosperous, educated, respectable, useless and despised! The glory is gone! What hath been is that which shall be, and there is no new thing under the sun. Is this to be the fate of Massachusetts, of New England?"<sup>30</sup>

In a widely republished campaign oration in that same year, "The Duty of the American Scholar to Politics," George William Curtis also used the history of the Dutch Republic to illustrate the general law that "the era of noble thought in national history is not usually coincident with the greatest national prosperity." The pursuit of wealth naturally leads citizens to put their own private interests ahead of the public interest, Curtis explained. "The private pocket inevitably becomes the arbiter of public policy." Trade demands peace, "and peace is often to be purchased only by principle."<sup>31</sup>

For college educated Americans, the history of the Roman Republic supplied a powerful narrative connection between the crime of slavery and the economic changes sweeping Northern society. Slavery in the Roman republic, William Francis Allen wrote in 1860, passed through two separate stages. First was a patriarchal stage, in which the slave was encompassed within the absolute rule of the *paterfamilias* over his household. Though the slave had no legal protections, the institution was generally mild in practice because it existed within an economic system that reinforced a unity of interest between the master and his dependents. But as wealth accumulated in Rome, the slave gradually became "an instrument of capital and speculation." The public virtue that had long characterized the Roman aristocracy decayed, amid peace and prosperity, into "short-sightedness, selfishness, and indolence." Instead of political leadership, "Capital waged war upon Labor," Allen continued, quoting Theodor Mommsen, the most celebrated

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<sup>30</sup> Cited in *The Edinburgh Review*, "The Political Crisis in the United States" (October, 1856).

<sup>31</sup> George William Curtis, "The Duty of the American Scholar to Politics and the Times" (New York, 1856), also printed in the *New York Weekly Tribune*, August 16, 1856.

historian of Rome since Edward Gibbon. And the transformation of the social order into one of opulent oligarchs and impoverished masses prepared the way for the despotism of Caesar.<sup>32</sup>

Allen allowed the obvious American parallels to suggest themselves instead of spelling them out. But Mommsen was more direct. “Wherever the government of capitalists in a slave state has fully developed itself, it has desolated God’s fair world in the same way. As rivers glisten in different colors but a common sewer everywhere looks like itself,” so all societies resemble one another “where in exactly similar fashion the all-powerful rule of capital ruined the middle class, raised trade and estate-farming to the highest prosperity, and ultimately led to a – hypocritically whitewashed – moral and political corruption of the nation...and not until the dragonseed of North America ripens, will the world have again similar fruits to reap.”<sup>33</sup>

In 1858, Francis P. Blair’s delivered a speech in Congress against the Lecompton Constitution that hinged on an elaborate political comparison with Roman history, which, he argued, showed “how the great Republic of antiquity fell to decay, when it ceased to cherish the people as landholders, and became an oligarchy, by the very means now being employed in our own.” The relevant historical facts really were impressively similar. To give a far briefer summary than Blair: Traditional Roman law had prescribed that land won by conquest should be distributed to yeoman farmers, who were considered the backbone of the free republic. In practice, however, the Senate allowed wealthy members of their own class to turn these lands into huge plantations, crowding out Roman citizen-farmers with foreign slaves. In 133 B.C., Tiberius Gracchus attempted to reform these abuses and return the land to Roman citizens, provoking the furious opposition of the Senate. The result was a constitutional crisis that turned violent and ended in Gracchus’s murder in the Roman Forum. Historians have traditionally dated

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<sup>32</sup> William Allen White, “Slavery in Rome,” *North American Review* (June, 1860), 90-107.

<sup>33</sup> Theodor Mommsen, *The History of Rome* (Glencoe Ill. 1908), 5:396.

the “Roman Revolution” from that moment. Throughout Blair’s speech, his language was strikingly broad, attacking not slavery *per se* but “oligarchy,” and pitting “personal rights” against “the rights of property – the rights of individuals rather than those of monopolizing institutions.”<sup>34</sup>

The critique of antebellum intellectuals was far more specific and significant than the moralist’s timeless contempt for mammon-worship. They claimed that the commercial corruption of the North had prepared the way for the political tyranny of the Slave Power. And although intellectuals were perhaps most likely to express these fears, they were fully shared by many of the most influential leaders of the Republican party. “In cities politics are necessarily influenced by trade,” William Pitt Fessenden, a Senator from Maine and the most influential Republican Senator behind William Henry Seward, wrote to his son. “The mercantile class, as a class, is always mercenary and unreliable in public affairs. You will sometimes find one who, though a man of trade, rises above all the selfishness begotten of his calling, and in great emergencies or crises is capable of great efforts and sacrifices. Still, as a general rule, my remark is true.”<sup>35</sup> Implicit in the “general rule” Fessenden described is the classical republican concept of civic virtue, the essence of which is disinterestedness – the capacity to act upon public affairs without regard to selfish interests or passions. Those tirelessly engaged in accumulating a fortune lack virtue almost by definition.

Zachariah Chandler, a hard-drinking Michigan Senator who was about as genteel as a bobcat, considered himself especially qualified to condemn the business classes for this vice, having earned himself a fortune without losing a bloodlust which he mistook for virtue. “From the days of Carthage,” he wrote of the famed commercial city wiped off the map by Rome’s

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<sup>34</sup> *Congressional Globe*, 35<sup>th</sup> Congress, 1<sup>st</sup> Session, (March 23, 1858), 1282-1283.

<sup>35</sup> *Ibid.*, 106.

virtuous yeoman farmers, “to those of James Buchanan, all great Mercantile countries have been peaceable, ever ready to hire defenders not furnish them, ever ready to buy immunity but not ready to fight for it.”<sup>36</sup> During the secession crisis, when a group of New York capitalists brought a compromise petition to their state’s junior Senator, Preston King, and urged him to support them in the Senate, he laughed in their faces and said, “I would resign my seat first and I think I would rather die.”<sup>37</sup> Significantly, Lincoln’s most bellicose recorded statement, by far, in the secession winter, came as a response to entreaties from William E. Dodge, a New York capitalist. Days before Lincoln’s inauguration, Dodge pleaded with him to save the country from a course that would leave it bankrupt with grass growing in the streets of its commercial cities. “The Constitution will not be preserved and defended until it is enforced and defended in every one of the United States,” Lincoln replied. “It must be so respected, obeyed, enforced, and defended, let the grass grow where it may.”<sup>38</sup> Earlier in the secession winter, when Lincoln was urged to reassure the country after his election prompted a business panic, he wrote that “nothing is to be gained by fawning around the ‘*respectable scoundrels*’ who got it up.” Let them clean up their own mess, he wrote, and “perhaps they will be less greedy to do the like again.”<sup>39</sup>

The Republicans’ contempt for the country’s business leaders is especially striking from former Whigs.<sup>40</sup> As a young nationalist and a protégé (and godson) of Daniel Webster, Fessenden had described the country’s merchants as an American nobility, “not hereditary – not depending upon the testimonials of worm-eaten statues, and rusty armor – but self-created – and showing in support of their claims to the distinction, a splendid income, – a lordly palace – and a

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<sup>36</sup> Zachariah Chandler to Lyman Trumbull, November 17, 1860. Trumbull Papers. Library of Congress.

<sup>37</sup> Julia Trumbull (Lyman’s wife) to George Trumbull (their son), January 26, 1861. Cited in Horace White, *The Life of Lyman Trumbull* (Boston, 1913), 121-122. Julia Trumbull does not make it clear that this is the same resolution Seward presented (since he hadn’t done so yet) but the date of the letter makes it quite likely. Senator Trumbull also treated the men coldly.

<sup>38</sup> Cited in Stampp, *And the War Came*, 195-196.

<sup>39</sup> *Ibid.*, Lincoln to Truman Smith, Nov. 10, 1861.

<sup>40</sup> King was the only one quoted above who was not a former Whig .

magnificent expenditure – all attained by their industry and expenditure.”<sup>41</sup> Fessenden's change in attitude might have been partly practical. He was no longer a young lawyer in a port city eager for wealthy clients. But that hardly explains why he had since developed a contempt for the mercantile class. A more likely explanation lies in the changing relationship between “men of trade” and the political system. The strings of capital were becoming conspicuous on the shoulders of statesmen, and those who stood for the principles of the early Republic were embarrassed to find themselves standing among the puppets of the new regime. Cultural Whigs who worried about maintaining a proper balance between property and power awoke to the alarming reality that the two were becoming identical.

### *II: 1858 –The Year of Portentous Speeches*

The purpose of historical comparisons, Marc Bloch once observed, is to reveal significant differences hidden beneath surface similarities. To Bloch's adage, James Kloppenberg has added the corollary that such comparisons can be equally instructive in showing how “phenomena assumed to be dissimilar...exhibit similar features when viewed from a new perspective.”<sup>42</sup> The three most famous speeches of the antebellum sectional conflict provide an opportunity to do both. For all their obvious differences, William Henry Seward's “Irrepressible Conflict” speech and James Henry Hammond's “Cotton is King” address (also known by his claim that all societies rest on a “mud-sill”) are more significant for the premises they share in common. And Lincoln's “House Divided” speech, though famous for making an identical point as Seward's, did so by way of an antithetical argument. A close study of these three speeches reveals the key

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<sup>41</sup> Cited in Cook, *Civil War Senator*, 29.

<sup>42</sup> James Kloppenberg, *Uncertain Victory: Social Democracy and Progressivism in European and American Thought* (Oxford, 1986), 8.

premise that determined each leaders' perception of the sectional conflict in its final stage – whether the political crisis represented the impending triumph of their cherished ideals or a desperate struggle to preserve their very existence.

In March of 1858, Seward had already declared victory in the sectional conflict over slavery. The rupture of the Northern and Southern wings of the Democratic party over “popular sovereignty” was, in his mind, the death knell in the slavepower’s struggle to preserve its predominance. But Seward still needed to mobilize the voters who would consolidate that victory. And so Seward shifted his focus from party politics to the underlying social and economic forces transforming the United States. Seward’s “Irrepressible Conflict” speech provided the most memorable expression of his ideas, but he developed them most fully in his Senate speech eight months earlier. “Every nation has some ruling idea, which, however, changes with the several stages of its development,” Seward said. At their origins, the ruling idea of the American colonies “was labor to subdue and reclaim nature.” At that stage slavery had been seized “as an auxiliary, under a seeming necessity. That idea has ceased forever.” The new reigning idea was “voluntary, enlightened labor, stimulated by interest, affection, and ambition.” The nation “needs that every man shall own the land he tills; that every head shall be fit for the helmet; and every hand fit for the sword, and every mind ready and qualified for counsel.” Having overthrown slavery in Washington, in Kansas and in California, free labor “will invade you soon in Arizona, Virginia, Missouri and Texas. It will meet you soon in Central America and even in Cuba.”<sup>43</sup> Though he was directly addressing Southern Senators, none seized on the word “invade” to misconstrue Seward’s meaning, perhaps because he was there to clarify it if needed.

Seward was followed, the very next day, by James Henry Hammond, whose response to Seward combined a bellicose celebration of Southern civilization –“Cotton is king” – with an

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<sup>43</sup> Seward, *Works*, 4:600-601.

admission that his section had indeed lost its commanding sway over the Republic. Taken together, the ideas exchanged over those two days comprised the most extraordinary intellectual dialogue held in the Senate since Webster replied to Hayne. What makes the two speeches so striking is not, of course, the contrast in their attitude toward slavery. The Senate of 1858 witnessed an endless back-and-forth between proslavery Southerners and antislavery Republicans. Seward's and Hammond's dueling speeches were remarkable for being at once extreme statements of pro and antislavery thought and an abandonment of slavery politics. In this respect, Hammond's idiosyncratic position among Southern fire-eaters exactly mirrors Seward's among the Republicans. The South Carolinian's claim that every society must rest on a mud-sill, like the New Yorker's claim, later in 1858, that an "irrepressible conflict" existed between North and South, became the rallying cries of their sectional opponents – the "proof" that their societies were beset by relentless fanatics. And yet the same confidence that made Hammond and Seward so threatening to their opponents also distinguished them from their own allies.

In his "Cotton is King" speech, Hammond conceded the truth of Seward's claim that the sectional battle for power was over, and that the North had won. He quite agreed that the attempt to expand slavery had been an impractical folly. Far from a cause for panic, however, the North's political power was really a distraction from the triumph of the South's moral example. "The Senator from New York said yesterday that the whole world had abolished slavery," Hammond said. "Ay, the *name* but not the thing; all the powers of the earth cannot abolish it. God only can do it when he repeals the fiat, 'the poor ye always have with you' for the man who lives by daily labor, and scarcely lives at that, and who has to put out his labor in the market and take the best he can get for it; in short, your whole hireling class of manual laborers and 'operatives' as you

call them, are essentially slaves...Why, you meet more beggars in one day, in any single street of the city of New York, than you would meet in a lifetime in the whole South.”<sup>44</sup>

Hammond, like Seward, was profoundly influenced by the works of Francis Bacon. Each, to put it mildly, read his Bacon rather differently. But in Bacon’s philosophy of scientific progress, Seward and Hammond both saw a reason to expect the gradual vindication of their own moral systems. As a result, both men horrified their sectional antagonists with prophesies of the absolute, universal triumph of their social order, even as they infuriated radicals in their own section with the patience and passivity counselled by their confidence. If progress is sure in time, why risk the uncertainties and disruptions of trying to hasten its arrival? “[A]t bottom I prefer at least to try the union after the Free States have the ascendancy,” Hammond wrote privately, “for if they will have sense enough to drop all the abolitionism as I rather think they will, and refrain from sectionalism we can yet rule the country I think. It is clear here that but a few care a copper about negroes.”<sup>45</sup>

While Seward celebrated the progress of antislavery sentiment in the North, Hammond, in a later speech delivered the same week as Seward’s “Irrepressible Conflict” address, pointed to the opposite tendency in the South.<sup>46</sup> He observed that Southern visionaries such as Thomas Jefferson were the source of the fanatical doctrines that Northern abolitionists had only lately appropriated. But the South had wisely abandoned those heresies, and the North would surely come around soon enough as well. Historians have argued that the Jeffersonian vision of a yeoman Republic always depended implicitly on slavery, and that a strident proslavery ideology emerged as the contradiction at the heart of Southern politics became increasingly impossible to ignore. The progress of the nineteenth century, “the contagion of liberty” that fueled abolitionist

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<sup>44</sup> *Congressional Globe*, 35<sup>th</sup> Congress, 1<sup>st</sup> Session, Appendix.

<sup>45</sup> Hammond to Simms, March 24, 1858. Hammond Papers, Library of Congress.

<sup>46</sup> *Charleston Mercury*, November 2, 1858.

movements in both Europe and the Americas, prodded Southerners into the position of isolated reactionaries. In truth, however, proslavery arguments like Hammond's rested on the objective disappearance of conditions that made the free labor ideal possible – infinite space.

In 1800, when the limits of the American continent seemed no more real than the finite life of the sun, it really was possible to imagine an ever-expanding arcadia. But by 1858, it was already clear that American society would never become one in which “every man shall own the land he tills,” as Seward put it. Early proslavery writers, such as Robert Walsh, cheerfully contrasted the lot of the Southern slave with the European factory worker, but they still considered slavery an unfortunate blight on the resplendent possibilities of America.<sup>47</sup> Only when Northern cities began to replicate Old World class lines, and Old World inequalities, could Southerners begin to see their system as a necessary precondition of Republican freedom. Hammond was not delusional in suggesting that Jefferson's vision of American society had objectively failed, and Southerners were merely the first to recognize the fact. And he hit a raw nerve when he observed that the very forces Seward hailed as progress were responsible for hastening the demise of the free labor society he cherished.

“Transient and temporary causes have thus far been your preservation,” Hammond told his colleagues in the Senate. “The great West has been open to your surplus population, and your hordes of semi-barbarian immigrants, who are crowding in year by year. They make a great movement, and you call it progress. Whither?”<sup>48</sup>

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<sup>47</sup> Robert Walsh, *An Appeal from the Judgments of Great Britain Respecting the United States* (Philadelphia, 1819). For a discussion of Walsh, see Larry Tise, *Proslavery: A History of Defense of Slavery in America, 1701—1840* (Athens, 1987), 49–50.

<sup>48</sup> *Congressional Globe*, 35<sup>th</sup> Congress, 1<sup>st</sup> Session, Appendix.

All political thought and action ultimately boils down to that one question: *Whither?* The life of a society, as of individuals, is a process of persistence through constant change. And politics is the conscious effort to arrest or accelerate the tendencies of the times – to preserve or augment the good and to remove or diminish the bad. “If we could first know *where* we are, and *whither* we are tending,” Lincoln began his House Divided speech, tacitly acknowledging the question Hammond had posed a few months earlier, “we could then better judge *what* to do, and *how* to do it.”<sup>49</sup> In a few key respects, Lincoln’s great speech is identical to the one with which it is most frequently compared, Seward’s “Irrepressible Conflict” speech. But on the key question –*whither?* – the two men could not have been farther apart. More than an idiosyncratic difference between the two leaders, the contrast exemplified a neglected intellectual division within the Republican party, between those who confidently predicted the demise of slavery and those who darkly feared its imminent triumph over the nation’s founding principles.

Delivered within a few months of each other in the summer and fall, respectively, of 1858, both speeches made the same basic point in response to the same basic circumstances. Seward and Lincoln simultaneously denied the possibility of compromise *and* disunion. Even among Republicans this combination of beliefs was exceedingly rare in 1858. They claimed that an unavoidable conflict would bring slavery North or freedom South, but both sections would remain part of one nation, indivisible. Should slavery win the contest, both Seward and Lincoln seemed willing to contemplate emigrating from the land of their birth.<sup>50</sup> So their patriotism was conditional even though their Unionism was absolute. Though neither packed his bags, both

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<sup>49</sup> Lincoln, *Collected Works*, 2:461. Lincoln undoubtedly read Hammond’s speech, by far the most famous proslavery speech delivered that year, yet so far as I know, I am the first person to note this connection. That Lincoln chose to open his House Divided speech with the question Hammond had posed suggests how profoundly it troubled him.

<sup>50</sup> Lincoln suggested this possibility in a famous letter to Joshua Speed in 1855 denouncing Know-Nothingism. See Lincoln, *Collected Works*, 2:338. Seward suggests the same possibility in his Irrepressible Conflict Speech. See Seward, *Works*, 4: 289-302.

could imagine leaving the country individually but not seceding from it politically. This unusual combination of beliefs, an unequivocal devotion to both the Union and universal emancipation, placed the two politicians in an identical position on the fundamental division among Northern Republicans, distinguishing them, in exactly the same way, from radicals and conservative Unionists alike. In the wake of the Dred Scott decision, radicals not actively contemplating secession themselves were at the very least not given to proclaiming the Union perpetual. And no conservative would deny the possibility of compromise and coexistence between free states and slave states.

Lincoln's speech stressed antagonistic principles of government. "I believe this government cannot endure, permanently half slave and half free," he declared at the outset. The proverbial house was not going to fall, but slavery, due to a sinister conspiracy, had been steadily gaining at the expense of freedom. And so the Republicans, he explained, had united "under resistance to a common danger, with every circumstance against us." Though he ended on a note of obligatory optimism - "the victory is *sure* to come" - it was unmistakably a victory in a defensive struggle.<sup>51</sup> This was what made Lincoln sound comparatively moderate, even though a man who believes he is fighting for his life is apt to be far more aggressive than a man who believes he has his enemy beneath his heel.

That is precisely where Seward found his enemy, and he crowed accordingly. For him, the irrepressible conflict was between antagonistic systems of labor. Whereas Lincoln described a sinister political conspiracy, Seward expressly denied the importance of "fanatical or designing men" in bringing about the sectional controversy. In a loosely organized Confederacy the two labor systems could coexist, but ever-increasing commerce and population were "rapidly bringing the states into a higher and more perfect social unity or consolidation." As a result,

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<sup>51</sup> Lincoln, *Collected Works*, 2:461-469.

freedom and slavery were brought into an inexorable conflict, “and it is this great fact that renders all such pretended compromises vain and ephemeral.” Though Seward naturally suggested that a Democratic party might somehow nationalize slavery, his whole speech left no doubt of an inevitable outcome in favor of freedom, not just nationally but universally. The relative advantages and disadvantages of the two systems were absolute. So powerful was the free labor revolution that it had overwhelmed even the stubborn despotisms of Russia and Turkey, which were then “engaged in abolishing slavery.”<sup>52</sup>

Lincoln, by contrast, never mentioned free labor in his House Divided speech and rarely invoked it elsewhere. His focus was on the struggle to affirm or deny the moral principles embodied in the national institutions of the American Republic, and so he viewed the events of the 1850s with steadily mounting alarm. But looking at the same decade through Seward’s eyes, one can readily appreciate his sanguine belief that “the battle for Freedom has already been fought and won.”<sup>53</sup> The shameful proslavery radicalism that so alarmed Lincoln was merely the paroxysms of a dying organism. True enough, proslavery interests had won an uninterrupted string of political victories in the 1850s. They had repealed the Missouri Compromise ban on slavery in the Kansas-Nebraska territory. The Supreme Court had declared inviolate the slaveholder’s right to carry his property into any federal territory. One Northern president after another had fallen utterly under the sway of proslavery partisans. And what had all of these victories gotten them? Not one permanent advantage, not one new square inch of slave territory, and for their troubles they had aroused an antislavery majority in the North. Not since King Pyrrhus contended with Rome had temporary victories contributed so consistently to ultimate

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<sup>52</sup> Seward, *Works*, 4:389-302.

<sup>53</sup> *Congressional Globe*, 35<sup>th</sup> Congress 1<sup>st</sup> Session, 521.

defeat. Every possible trick and bribe had been attempted to impose slavery on Kansas, and yet the state was poised to come in free.

In his speech against the Compromise of 1850, Seward had said that slavery enjoyed a temporary advantage over free labor in a new territory that was fatal to its long-term future.<sup>54</sup> A slaveholder could drag his unwilling laborers into a wilderness, but a man seeking to employ free men would have to wait for them to arrive on their own.<sup>55</sup> That's why positive laws against slavery in the territories were so essential. But over the next decade, the dynamic advances of Northern free labor society seemed to overwhelm even the temporary advantages of slavery. In 1850, not one railroad connected Chicago to the outside world. Five years later it was the terminus of 2,200 miles of rail, the transportation hub of the Northwest, and the largest grain-exporting market in the world.<sup>56</sup> The eternal barriers preventing the emancipation of mankind seemed to be dissolving one by one, and the slow march of freedom quickened to a gallop. A veritable flood of white Americans and European settlers were pouring into the West, and none of them wanted to carry bondage with them. The election of 1860 confirmed that Southern predominance over the Union was over forever, and the Republicans, as Seward urged the incoming President, should show "the magnanimity of the victor" toward the ungracious, petulant tantrums of their defeated adversaries.<sup>57</sup>

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<sup>54</sup> Speech in the Senate, March 11, 1850. Seward, *Works*, 51-93.

<sup>55</sup> History supports Seward on this point. In the burst of Western settlement that followed the war of 1812, the population of Illinois, where slavery was prohibited, grew from less than 10,000 to a little over 50,000 by 1820. Alabama's territorial population exploded from 9,000 to 128,000 in the same period. See Daniel Walker Howe, *What Hath God Wrought* (Oxford, 2007), 125-126. Kansas seemed to prove that this tendency had been reversed.

<sup>56</sup> Cited in Nevins, *Ordeal of the Union*, (New York, 1947), 2:195 and 2:223. On the staggering economic advancement of the Northwest see William Cronon, *Nature's Metropolis: Chicago and the Great West* (New York, 1991), esp. 55-93. Daniel Walker Howe has written insightfully on the sense of wonder with which (some) early nineteenth century Americans greeted technological progress. Innovation promised increased productivity and greater material comfort but these points were trivial compared to the more basic fact we now take for granted: The triumph of man over nature. See Howe, *Political Culture*, 96-122.

<sup>57</sup> Cited in Bancroft, *Seward*, 25.

This way of thinking seemed positively loathsome to abolitionists, who were not willing to entrust history with the gradual decline of an intolerable national crime. To them, Seward's belief that the battle for freedom had been won even as four million souls remained in bondage was either evil or absurd, like giving up the hunt for an active murderer on the grounds that a natural death would find him someday. But the Republicans were not abolitionists. A perception, not a principle, divided Lincoln and Seward. "What danger are we exposed to?" Seward asked in 1858, after observing that the balance of power in the Union had shifted irrevocably in favor of the North. "It is that the free States will nevertheless go for slavery."<sup>58</sup> Seward considered this impossible. Lincoln believed it imminent. And there is the whole of the difference between them.<sup>59</sup>

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For Seward, the struggle between slavery and freedom was "part of the eternal conflict between truth and error - between mind and physical force - the conflict of man against the obstacles which oppose his way to an ultimate and glorious destiny."<sup>60</sup> In Seward's mind, it was a struggle in which mankind had made, and would continue to make, definite progress. In morals as in science, each generation stands on the shoulders of its forebears – corrected errors accumulate as the foundation of new truths, a barrier overcome is overcome forever. Lincoln, by contrast, described the same conflict as "the eternal struggle between these two principles – right and wrong – throughout the world. They are the two principles that have stood face to face from

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<sup>58</sup> *Congressional Globe*, 35th Cong. 1st sess. 521.

<sup>59</sup> Seward's Panglossian view did not prevent him from seeing what Lincoln saw, but he believed the correction of these vices were written in the very same inexorable laws that Lincoln feared pointed to tyranny. Thus Seward: "You will let this government slide still further the smooth declivity of vice if you choose; nature will bring it back again in due time with convulsions which will wake the sighs and groans of the civilized world." Seward, *Works*, 4:383. The quote is from a speech he delivered in Iowa on September 21, 1860.

<sup>60</sup> Seward, *Works*, 1:88.

the beginning of time; and will ever continue to struggle.” For Lincoln, then, there was no hope of decisive progress in this conflict. It was the struggle of the human heart in conflict with itself, a Sisyphean struggle in which yesterday’s efforts count as little as yesterday’s breaths.

Of all Lincoln's comments on slavery and American progress, none captures his attitude better than the extended metaphor he delivered in several speeches during his pre-Presidential New England tour in early 1860:

If I find a venomous snake lying on the open prairie, I seize the first stick and kill him at once. But if that snake is in bed with my children, I must be more cautious - I shall, in striking the snake, also strike the children, or arouse the reptile to bite the children. Slavery is the venomous snake in bed with the children.<sup>61</sup>

Lincoln’s metaphor was designed to explain why Republicans, despite their avowed hatred of slavery, only intended to resist its expansion. But he was not suggesting, like apologetic slaveholders since Jefferson, that emancipation risked insurrection. Slavery here is an abstract principle, not the living tyranny endured by black Americans. Although Lincoln spoke of the immorality of slavery far more than most moderates, indeed as much as any abolitionist, he rarely ever dwelled on the suffering of slaves or the cruelty of masters. What alarmed him was not the inherited existence of slavery but the denial of its immorality implicit in the efforts to extend it. The venomous snake is the belief that one man has a right to enslave another. And the children threatened by the serpent represent not the physical safety of whites but the animating spirit of the American Republic.

“Almost every man has a sense of certain things being wrong,” Lincoln said in the same speech, “and at the same time, a sense of its pecuniary value. These things conflict in the mind and make a riddle of man.” The total value of slave property in the United States, he noted, was \$2 billion. Attack that property and men with an interest in it will retreat from the faith of their

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<sup>61</sup> Lincoln, *Collected Works*, 4:4-5. March 5, 1860.

fathers and claim that the Declaration of Independence is a lie or that it does not apply to blacks. Were they in a position to do no harm, one might strike them down. But American Democracy was young and credulous, as vulnerable as a sleeping child, and the poisonous proslavery viper might yet destroy it.<sup>62</sup>

Through flattery and fear-mongering men like Stephen Douglas had convinced half the American people to foreswear the principle that made them free. He claimed that majority rule meant the majority could do as it pleased, championing the form of democracy while insidiously corrupting the principle of human equality that is its spirit. “Destroy this spirit,” Lincoln warned in his debates with Douglas, “and you have planted the seeds of despotism around your own doors. Familiarize yourself with the chains of bondage and you are preparing your own limbs to wear them. Accustomed to trample on the rights of those around you, you have lost the genius of your own independence, and become the fit subjects of the first cunning tyrant who rises.”<sup>63</sup> Douglas, Lincoln observed in his New England speeches, was the first man he had ever heard claim that the Declaration of Independence “has no application to the negro.” And now, “Here's half the people of this nation saying what they would not have said five years ago; taking man from his kind and placing him among brutes. This is a long stride towards bringing about this feeling of indifference in the minds of the people in this country. One more such stride and the object would be reached.”<sup>64</sup>

“As a nation of freemen,” Lincoln had declared more than two decades earlier, “we must live through all time, or die by suicide.” This was the animating idea of his entire public life. It is implicit in every thoughtful speech he ever wrote. Was the principle of human equality doomed to negate itself? The ancient wisdom, which Lincoln well understood and feared, is that when

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<sup>62</sup> Ibid.,3.

<sup>63</sup> Lincoln, *Collected Works*, 3:95. September 11, 1858.

<sup>64</sup> Lincoln, *Collected Works*, 4:3-9. March, 5, 1860.

men exist as equals they will gradually come to reject even the legitimate authority of law and morality, and thus become incapable of self-government. “I hope I am over wary; but if I am not, there is, even now, something of ill-omen amongst us. I mean the increasing disregard for law which pervades the country; the growing disposition to substitute the wild and furious passions, in lieu of the sober judgment of the Courts; and the worse than savage mobs, for the executive ministers of justice.”<sup>65</sup> In 1838 Lincoln feared the fraying authority of the law. In 1854 the same mindset alerted him to a dangerous denial of moral restraint. “That *perfect* liberty they hanker for - the liberty of making slaves of other people” was ultimately what the repeal of the Missouri Compromise was about, he said at Peoria.<sup>66</sup>

In one sense, Lincoln’s “over-wary” public outlook overlaps with conservatism, especially in so far as it enjoins a respect for even unjust laws. Since liberty is fragile, it cannot be extended and perfected by indelicate means. Certainly, this outlook distinguishes him from the radicals. But there is a great difference between caution and conservatism. A man who sees a snake in the bed of his children is in no sense devoted to preserving the status quo. When the whole Republic began to crumble, Lincoln did not give an inch to the serpent menacing its existence. “I know and all the world knows, that revolutions never go backward,” Seward declared, beginning the rousing peroration of his Irrepressible Conflict speech. It is not an exaggeration to say that Lincoln’s entire political career after 1854 was animated by the fear that the American Revolution, the hope of mankind, was one long stride away from retreating into utter darkness.<sup>67</sup>

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<sup>65</sup> Ibid. 1:109. Speech before the Young Men’s Lyceum in Springfield, Illinois, January 27, 1838.

<sup>66</sup> Ibid., 2:250 Speech at Peoria, October 16, 1854.

<sup>67</sup> I’ve based this discussion of Lincoln on my own reading of his key antebellum speeches, but I obviously owe a huge debt to the many more knowledgeable scholars who have gone before me. I hope, however, to have made a contribution in isolating the crucial element of Lincoln’s worldview that distinguishes him from many, perhaps, most of his fellow Republicans. The works that I have found most insightful on Lincoln are, Harry Jaffa *Crisis of the House Divided: An Interpretation of the Lincoln Douglas Debates* (Chicago, 1959). David Herbert Donald *Lincoln*

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Though sincerely antislavery, moderate Republicans tended to see slavery in the South as a complex political problem without an immediate solution – and they were equally sincere in disavowing any intention of meddling with the South’s peculiar institution within individual states. In accounting for the radicalization of this all-important group, most historians have supposed that they responded automatically, almost passively, to slaveholder aggressions. “It was the course of events in the 1850s,” Eric Foner writes, “rather than firm ideological commitments which led moderate Republicans to side more often with radicals than conservatives.”<sup>68</sup> But as Seward’s example shows, the meaning of events in the 1850s was open to interpretation. Moderate Republican attitudes in 1860 had shifted according to subjective fears, not objective facts.

“[I]f we look at the subject of African Slavery on a broad and liberal scale,” Senator Jacob Collamer, a Republican from Vermont, told his colleagues in the spring of 1858, “and with reference to great periods in the progress of the world, it is after all a very small subject, a very little affair.” Collamer was well aware that that “small subject” had preoccupied the Senate, to exclusion of virtually all else, for months. But the most important events in history are not always those which command the most attention. “At the present moment,” Colamer continued, “the great exodus of Europe, which is throwing its avalanche on the continent, joined with the emigrants from the northern and eastern portions of this country, go to swell the great tide of emigration.” Next to this, “the little accidental colonization of few Africans here...is nothing but small eddies along the margin of the great stream...it seems to be enough to agitate our day and

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(New York, 1995) and *Lincoln Reconsidered* (New York, 2001); Edmund Wilson, *Patriotic Gore* (New York, 1962). James Oakes, *The Radical and the Republican: Frederick Douglass, Abraham Lincoln, and the Triumph of Antislavery Politics* (New York, 2007); Don Fehrenbacher *Prelude to Greatness* (Stanford, 1962); and Eric Foner, *The Fiery Trial* (New York, 2010).

<sup>68</sup> Foner, *Free Soil*, 209.

time, though I can hardly consider it worthy of the great attention and deep regard of philosophic statesmen.”<sup>69</sup> No scholar today would accept this dismissive assessment of slavery’s significance, but it provides a key to understanding the worldview of many Northerners in the years immediately preceding the Civil War. The alarmist rhetoric of Republican leaders, warning of a slavepower threat to white liberties, seemed positively hysterical to some observers. And Collamer’s remarks also point to another singular aspect of the political crisis in the 1850s: The single best reason for calmly dismissing Southern aggressions was itself a source of Northern anxiety equal to that of the slavepower: the dramatic increase in immigration and the rapid industrialization and urbanization of Northern society.<sup>70</sup>

In an ominous coincidence, James Henry Hammond’s instantly notorious “mud-sill” speech occurred on the same day as a mass rally in New York City on behalf of the Lecompton Constitution. Organized by many of the richest and most powerful private citizens in the city, including August Belmont and John Jacob Astor Jr., the rally was sure to catch the attention of the entire country. With Stephen Douglas leading the attack on the Lecompton Constitution as a blatant betrayal of the popular will in Kansas, only the ruthless use of party patronage by President Buchanan – throwing all dissenters out of office – provided a nominal shell of support among Northern Democrats. And yet here were many of the country’s wealthiest, most influential citizens, unmotivated by political office or the promise of special favor, openly advocating a political fraud so blatant that not even the Little Giant, the most inveterate Northern enemy of “black Republicanism,” could stomach it.

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<sup>69</sup> New York Weekly *Tribune*, March 29, 1858.

<sup>70</sup> The psychological and political connection between the nativist backlash and the antislavery movement has been described and analyzed by several brilliant historians, from Avery Craven to William Guinapp and Michael Holt. What I hope to accomplish here is a clearer understanding of how that connection operated, not within Northern society as a whole, but within individual, thinking minds of political elites, who were capable of taking a sophisticated, if not overly philosophical, view of affairs.

Writing in the *Tribune*, Horace Greeley could only marvel in dismay at these “substantial citizens, honest citizens, high-minded citizens, claiming consideration for those moral qualities that adorn private life; yet, under no pressure of party or personal exigency, deliberately coming out and under your own signature, voluntarily indorsing and approving the crimes of lying, fraud and forgery.” Animated by a mindless, albeit well-meaning, conservatism that automatically defers to established authorities, Greeley warned, these gentlemen were sending a different message from the one they intended. “Go on in your corruption and demoralizing process, and how long think you it will be before you will find you have sown the wind to reap the whirlwind? Professing to have a stake in society, you prostrate the standard of public morality, prostrate your own characters, break down the barriers between honesty and dishonesty, and then wonder, will you, at the rising tide of crime and general debauchery?”<sup>71</sup>

But perhaps, as the New York *Herald* mischievously suggested, New York’s elite had more to gain than lose from the “general debauchery.” Seward presented a conflict between the oligarchy of the South and the free labor democracy of the North. No one could deny that the South was an Oligarchy. But, the *Herald* demanded to know, “where is the evidence to show that the absence of negro slavery in the North excludes the possibility of an oligarchy here also?”

The privileged class here are not men, but corporations; railway companies, banks, and other financial institutions, which by the aid of their immense means obtain sovereign control over the legislature...It is notorious that with rare exceptions the legislation of every Northern State is permanently under the control of some moneyed corporation, such as a bank or a railway company; even Congress – as recent events have shown – is not independent of the power of these institutions. They are the Northern oligarchy.<sup>72</sup>

If the rich in America’s foremost city were wanting in public virtue, substituting private passions for the public interest, Republicans could not sincerely pretend to believe the poor were

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<sup>71</sup> New York Weekly *Tribune*, March 6, 1858.

<sup>72</sup> New York *Herald*, March 5, 1858.

any better. James Henry Hammond's attack on the North, and his claim that all societies rest on a "mud-sill" of labor, provoked a telling response from several Northern Senators. Inevitably, they met the charge with evasions. Hammond was referring to the poor, not to labor in general, for neither he nor anyone else in America was willing to deny the existence of a "middling sort" who were neither servants nor masters. But the existence of that class was old news in 1858. Hammond was referring to squalid slums that Americans had once associated exclusively with the despotisms of the Old World. There was nothing new in observing that the urban poor, wretched, desperate and living hand-to-mouth, represented a unique threat to republican government. That such a class was incapable of political independence, and thus especially susceptible to the demagoguery of would-be tyrants, had been a staple of republican thought from antiquity through the eighteenth century. Early proslavery arguments had faltered on the objection that impoverished classes needn't exist at all in America. Now it was the Jeffersonians' turn to stumble and dissemble, as visions of a yeoman republic gave way to the reality of industrial capitalism.

Perhaps the most direct response to Hammond's speech came from Benjamin Wade of Ohio, who conceded everything the South Carolinian had said without quite realizing it.

We have a degraded class in the cities. They are the offscourings generally of the Old World – men who come here reduced to beggary by their ignorance; reduced to beggary by their vice; ignorant, vicious, dangerous. I do not deny it. They are incident in all our large cities; but the Senator [Hammond] should not complain of them. They are the chief cornerstone of your political strength in the North. Find me the vicious ward of any city that does not uphold your system of slavery, vote for its candidates, support its measures, and labor for its men. No sir, you should not complain of this vicious population. In truth and in fact, they are about the only stay and support you have there now, and you ought not to traduce them. From their very natures, they attach themselves to you, and I do not think by any treatment you will be able to drive them off. They are naturally with you; they were slaves in their own countries; they do not know anything else than to be the

understrappers of somebody; and when they hear that here are slaveholders contending with freemen, you find them with the former all the time.<sup>73</sup>

It seems not to have occurred to Wade that Hammond was in no sense complaining when he mentioned the “ignorant, vicious, dangerous” class in the North’s major cities. The swelling American proletariat was, on the contrary, the source of all his perverse confidence in the future, a future in which Thomas Jefferson’s romantic delusions would be discarded in the North as they had been more than a generation earlier in the South. Hammond might have been well pleased with the progress “Bluff Ben Wade,” plainspoken Republican of Ohio, had made toward the South Carolinian’s point of view, even if the blustering Westerner wasn’t quite aware of it himself.

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Just as Seward’s strident faith in ultimate victory was mirrored in the outlook of James Henry Hammond, Lincoln’s embattled outlook had a direct corollary in the embattled mind of Jefferson Davis. “We are on the defensive,” Davis told his Senate colleagues in 1858. “How far will you push us?”<sup>74</sup> Like Lincoln, Davis had a reputation as a moderate in the sectional conflict, though in reality his posture showed the mounting desperation of one defending an embattled way of life.

“You know the Japanese have an *ancient* custom,” James Henry Hammond noted soberly upon learning that his state was in the processes of seceding from Union, “which therefore must have its uses, of ripping up their own bowels to revenge an insult.” And that was pretty much what the South was preparing to do, he thought.<sup>75</sup> No scholar would be so foolish as to suppose that Hammond’s prudence during the sectional crisis signaled a tacit disapproval of slavery.

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<sup>73</sup> *Congressional Globe*, 35<sup>th</sup> Congress, 1<sup>st</sup> Session, pg. 1113.

<sup>74</sup> *Congressional Globe*, 35<sup>th</sup> Congress, first session, 618.

<sup>75</sup> Hammond to Sims, November 12, 1860. Cited in, Drew Gilpin Foust, *James Henry Hammond*, 358.

Indeed the opposite was the case. “When Lincoln’s election came at last,” David Potter wrote, “the people of the slaveholding states were not united in any commitment to southern nationalism, nor to a southern republic, nor even to political separatism. But they *were* united by a sense of terrible danger.”<sup>76</sup> Intelligent Southerners all understood that the Republicans did not have the power or the will to impose an abolitionist agenda on the South. Fear of their own slaves, fear of poor whites – as demonstrated by the hysteria created by Hinter Rowan Helper’s racist critique of slavery – created a profound sense of Southern vulnerability, a terror that their whole system might collapse from the mere expression of Northern disapproval. It is, therefore, unlikely a coincidence that the most impressive intellectual defenders of slavery, the ones who really meant it, were often among the most outspoken critics of secession.

Aside from Hammond, Alexander Stephens and George Fitzhugh published the clearest, most forceful statements of proslavery thought. And like Hammond, both opposed secession until they came to accept it as an accomplished fact. Fitzhugh was an even more striking ideological counterpart to Seward. “Social systems, formed on opposite principles, cannot co-endure,” Fitzhugh wrote in *Cannibals, All!*.<sup>77</sup> “Slavery will everywhere be abolished or everywhere be reinstated,” he wrote in *Sociology of the South*. Fitzhugh, like Seward, valued the Union because he believed it would bring the two antagonistic systems into harmony peacefully; he had no doubt about the ultimate outcome, and he therefore found it foolish to risk the uncertainties of war when time was sure to redound to the South’s advantage. Like Lincoln, however, Fitzhugh and the other confident proslavery extremists fixated not on the relative political power of the two sections but rather on the viability of the abstract principles they

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<sup>76</sup> David M. Potter, *The Impending Crisis* (New York, 1976), 478.

<sup>77</sup> George Fitzhugh, *Cannibals, All! Or Slaves without Masters* edited by C. Vann Woodward (Cambridge, 1960), 106.

represented – equality and slavery. Tellingly, though many Northerners dismissed Fitzhugh as a crank, Lincoln read him with horror.<sup>78</sup>

Was there any reason for fear that the Northern social order was equally vulnerable to the ideological attack of the South? In 1859, Charles Darwin published *On the Origins of Species*, a book that delivered a deadly blow, however unintended by its author, to the traditional understanding of human equality rooted in both the Enlightenment and Christianity. Darwinism's influence in America spread surprisingly fast. In an astonishing illustration of the connection between high and low culture, George Templeton Strong recorded a long critique of Darwin's book in his *Diary* in early 1860, which he also indicated was then "much discussed" in his circle. In between writing long, thoughtful engagements with Darwin's work, which were respectfully skeptical, Strong visited Barnum's circus, where he saw Walter Johnson, a deformed African American boy who was hailed as "the missing link," becoming the most famous circus freak in America. "[H]e's a great fact for Darwin," Strong recorded.<sup>79</sup>

The same economic forces that allowed American society to expand more quickly in a single generation than during the first two centuries of English colonization, also expanded the possibilities of total racial domination. Visions of slave empire that would have been unimaginable to Thomas Jefferson's generation, now seemed beguilingly possible to many. The British suppression of the Sepoy Revolt arguably marked the beginning of a new era in the age of empires. And the economic forces that allowed European peoples to dominate others also allowed them to dominate one another. Proslavery leaders had as much reason to hope as to fear, and so too did the Republicans.

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<sup>78</sup> "[*Sociology for the South*] aroused the ire of Lincoln more than most pro-slavery books," William Herndon wrote. Cited in Fitzhugh, *Cannibals All!*, xxx (C. Vann Woodward's introduction).

<sup>79</sup> Strong, *Diary*, 3:12.

Ultimately, then, narrow opinions of slavery are no more useful in explaining Northern political divisions than they are those of the South. Radicals in both sections had clamored at the margins of national politics for decades, while the elites who formed a *de facto* ruling class in the antebellum Republic governed pragmatically, above the din of ideological extremes. But that flexibility hardened into brittle defensiveness as social and economic forces corroded the political framework over which they presided. The rise of industrial capitalism did not necessarily mean the end of slavery in the South, any more than it meant the end of democracy in the North, but it did mean a decisive change in the nation's political culture, of who controlled the power of the state, the manner in which that power was exercised, and for what purposes. In the late 1850s, Republicans and slaveholders were both partial beneficiaries, and thus partial embodiments, of the same exuberant growth that had overwhelmed their Constitutional system. So they raged at one another in Congress, each side too afraid to concede an inch to the fears of the other, and thereby catalyzed the underlying revolution they struggled blindly to arrest.

### *III: George Templeton Strong: The Reactionary Becomes a Revolutionary*

George Templeton Strong's *Diary*, a meticulously detailed, beautifully written, caustically observed record of the life of an elite New Yorker in the mid-nineteenth century, serves as a kind of *Bartlett's* collection of useful quotations for historians of the Civil War era. Whenever a scholar needs to enliven his or her narrative of events with a vivid first-hand account, Strong's *Diary* is among the most promising places to turn. But Strong himself has not elicited much interest from historians, a neglect that becomes apparent in contrast with that other great Civil War diarist and quote supplier – Mary Boykin Chestnut. In one sense this neglect is

understandable. Though Strong seemed to know everyone, he himself was not especially important or influential. Since nineteenth century American history does not suffer from an absence of voices among well-educated white men, it hardly seems necessary to dwell extensively on one of them who somehow managed to avoid doing or being anything of importance. But a brilliant diary is a uniquely precious resource, an unsurpassed representation of the messy patterns that emerge out of the day-to-day habit of living and trying to make sense of one's particular place and time in the world.<sup>80</sup> Among the many striking insights Strong's diary provides is an implicit yet unmistakable presentation of the social forces that led an elitist, conservative intellectual to become a zealous advocate for the destruction of the Slave Power.

Strong's paternal ancestors migrated from England to Massachusetts before settling in New York. His grandfather had served as a judge and as a member of the Continental Congress. But both Strong's father and Strong himself showed no ambition for politics, though both enjoyed eminent professional reputations as lawyers and were energetically engaged with the civic life of their city. The triumph of Andrew Jackson's Democratic party was already complete before Strong was old enough to notice, and, as a result, his disdain for the nation's politics was that of an intellectual snob, not the visceral panic of an embattled patrician. He later reflected that Jackson had "done the country more harm than any man that ever lived in it, unless it may have been Tom Jefferson."<sup>81</sup> But in both cases, the observation was an historical account of the world as he had found it. Even as a teenager, Strong's observations were laced with the cranky social snobbery ordinarily associated with advancing age, which suggests that he acquired it automatically from his surroundings, as one does an accent. It was a mere 16 year-old boy who

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<sup>80</sup> One suspects Strong, whose diary is unmistakably a work of tremendous literary ambition, crafted his diary as a work of art. "The elements of what we called Romance" he wrote, "are but cheap substitutes, after all, for the awful interest of everyday realities." Strong, *Diary*, 1:330. Hereafter in this section the diary is cited as "Diary."

<sup>81</sup> *Diary*, 1:262.

recorded that he had spent the day on a boat, “crowded with vulgar, low people, with scarcely a single exception.”<sup>82</sup>

But the scathing, misanthropic vein in Strong’s writings, alternatively funny and shocking, coexisted with a warm personal decency, a humane, penetrating intelligence, that imbues the journal from beginning to end. And as he matured, Strong’s caustic distaste for his country’s democratic ethos combined with a truly demanding sense of social responsibility. The energy and intelligence with which he undertook his civic obligations impresses and occasionally amazes the reader, all the more so as one suspects that principle rather than inclination drove him. He was, after all, an intellectual, a lover of literature and music, and no one is greedier for leisure than an intellectual.

The point is not to suggest that Strong was a heroic benefactor of humanity; he certainly was not. But he exemplified precisely those virtues and limitations that Tocqueville had found in the temperament of the nation’s *de facto* legal aristocracy. Strong’s diary demonstrates how easily an elitist patrician reconciled a distaste for politics with a passionate engagement with his community’s cultural and civic institutions. But it is an even more poignant record of the forces corroding this compromise, and Strong’s frustration at being unable to resist them. Too honest to ignore the appalling failure of his society to supply a dignified existence to a growing number of its members, Strong could not share, indeed he despised, the self-flattering pretense that these miseries could be solved by mere moral posturing. By the 1850s, even the narrow world in which Strong could play a useful part was disappearing, and his diary bristles with that awareness.

Perhaps the best example of Strong’s civic leadership was his service as a trustee of Columbia college, a position he owed, at least in part, to his father-in-law, Samuel B. Ruggles. Strong loved his wife, Ellen, and their happy marriage is one of the diary’s most charming

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<sup>82</sup> Diary, 1:20.

aspects, but he adored his father-in-law. No personality is recorded with more warm affection or glowing admiration than that of “Mr. Ruggles” – always, it was “Mr. Ruggles.” The diarist and his beloved father-in-law make for an illuminating contrast, exemplifying two distinct veins of elite Whig thought that diverged with the party itself in the 1850s. Ruggles was an enthusiastic apostle of material progress; Strong was decidedly less sanguine about “this cold-blooded, interest calculating age...”<sup>83</sup> But the dear friends shared the same vision for Columbia, and the bitter fight they waged on its behalf shows each of them at their best.

Although tensions and conflicts over the same underlying issues persisted at Columbia college for more than a generation, they simmered quietly until 1854, when the trustees fell into a bitter, public feud. Ostensibly, Strong, Ruggles and a few other dissenters were provoked by the board’s refusal to appoint Walcott Gibbs, a renowned chemist, to a professorship in that field because he was a Unitarian. But this skirmish flared into a bitter war because it represented a fundamental conflict over the nature of the college, its future and its place in the community. Though they lost the battle, Ruggles, with Strong serving as his lieutenant, eventually won the war. “Columbia University,” Richard Hofstadter later wrote, “arose out of that case.”<sup>84</sup> The pamphlet Ruggles and Strong wrote and published in the controversy, “The Duty of Columbia College to the Community” was a brilliant and passionately argued case for a strikingly modern conception of academic integrity and purpose.

But the controversy, and especially Strong’s role in it, is also significant for what it reveals about the changing concerns of elites as the perceived threat of democracy faded at midcentury. A generation earlier, the struggle for academic freedom had been fought and won in the courts, culminating in Daniel Webster’s celebrated argument in *Dartmouth College v*

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<sup>83</sup> Diary, 2:120.

<sup>84</sup> Thomas Bender, *New York Intellectual: A History of Intellectual Life in New York City* (New York, 1987), 273.

Woodward. When New Hampshire's Jeffersonian legislature took over Dartmouth, replacing the Federalist trustees with Democrats and firing the faculty, the college fought back by insisting that it was a private corporation, not a public one, and its original charter was therefore protected under the contract clause of the Constitution.<sup>85</sup> Significantly, Ruggles and Strong made the exact opposite argument. "The College is a public, not a private institution," they wrote. "It belongs wholly to the world around us, and we are bound by every principle of law, equity and honor to render equal and exact justice to every part and portion, every sect and section alike." These were not the words of men who still felt their privileged place in American society was threatened by the *demos*. Indeed, the trustees had clearly violated the letter and spirit of the college's charter, which forbade excluding professors for religious considerations. Yet when the New York State Senate launched an investigation, thanks to the tempest Ruggles and Strong had stirred, it ruled in favor of the trustees, upholding the narrowest possible interpretation of their public obligations.

Given the narrow bigotry disputed in the case – a Unitarian excluded from an Episcopalian college – the pamphleteers showed remarkable courage in defending their principles in broad terms, expressly insisting on the college's duty to appoint Jewish and Chinese scholars as well whenever they were the most qualified. But religious toleration was not the only value at stake in the controversy. For Ruggles and Strong, the struggle involved nothing less than their city's place in world civilization. Columbia, they argued, had a duty to ensure that New York's stupendous commercial and economic growth would be accompanied by commensurate achievements in the cultural and intellectual life of the city. Instead, the college's pathetically lax standards and insular sense of purpose – coddling the mediocre sons of wealthy families through their first years of an idle adulthood – exemplified the failure of the city's leaders to live up to

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<sup>85</sup> Louis Menand, *The Metaphysical Club* (New York, 2003), 238-243.

that mission. Ruggles was the primary author of the pamphlet, but it is easy to identify Strong's primary contributions. Ruggles was the visionary; Strong the critic. Ruggles wrote the passionate plea for what the University should be; Strong penned the scathing indictment of what it was. It was undoubtedly Ruggles who wrote "Man is hourly gaining mastery over Nature, developing her hidden laws, and subduing to his service her hostile powers. Physical science must be, if it be not already, the controlling study of the age."<sup>86</sup>

But it was Strong who answered the objection that Columbia's role was to give the sons of gentlemen "culture, refinement and elegant taste." Though he refused to dispute "a construction so narrow, of our duty to the State," Strong scornfully insisted that Columbia was failing to meet even this minimal obligation. "Look at the young men crowding the drawing-rooms of our city, condemned to 'ornamental idleness' because no proper training has led them to usefulness to society, the country, or the Church, and tell me, whether Columbia College, with her twenty graduates, has done her duty, even to this small minority of people?" he asked.

No thoughtful man can look at the present elements of our society, without forebodings for the future... The very exuberance of our commercial prosperity, our rank and rapid growth in wealth and luxury, are scattering far and wide, the seeds of deep and deadly disease. The universal spirit of traffic, with its maddening love of gain, and its insolent contempt for any intellectual greatness, artistic excellence, or moral worth, that does not yield a pecuniary return, are degrading and demoralizing the whole mass. Wealth earned by cunning, is squandered in vain and empty show, until the universal axiom has come to be, that Money is the only proper aim of Man. The virtue of our public men and public bodies is sinking, as it must sink, under this debasing preference of pecuniary wealth, to the priceless treasures of liberal sciences and art. Who does not see and feel, that our trafficking, money-loving people, are treading the path of crafty, money-loving Carthage – not classic, polished Athens? Where will it lead us, if we do not erect and interpose at once, great and attractive seats of learning and science and art, to arrest this downward course?<sup>87</sup>

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<sup>86</sup> Duty of Columbia University (New York, 1854), 21.

<sup>87</sup> Ibid., 14-16.

Four years earlier, at the start of the 1850s, Strong could not know that he was living through the first decade of what was to become the greatest economic boom in history, the era in which, as Eric Hobsbawm put it, “the world became capitalist.” No one could grasp the scale of the transformation they were seeing because it had no precedent in history. But he presciently grasped the significance of the event that, more than any other, ushered in the Age of Capital and accelerated its staggering momentum. “I hate California and its gold,” Strong wrote in March of 1850.<sup>88</sup> But he marveled at the effect that gold was having on his side of the continent. “How the city marches northward! The progress of 1835 and 1836 was nothing to the luxuriant, rank growth of this year... Wealth is rushing in upon us like a freshet.”<sup>89</sup> Not one to join the exuberance, these observations only made Strong anxious. He was self-conscious enough to realize that the calamity he feared was a condition most men found perfectly tolerable, “absolute dependence on my own work and labor. The worst that can reasonably be expected would be surrendering our big house, lowering our ‘style’ of living, and a refuge in some cheap country town; nothing that a rational man need shudder at or shrink from.” Few men are rational when it comes to losing the life to which they are accustomed, of seeming less than they once were to the community and to their own families. At the same time, Strong’s anxieties made him seem preternaturally old. It is a challenge for any reader of his diary to remember that he was only 30 in 1850, an age when bright, talented and energetic men are supposed to be too busy chasing their ambitions to fret morbidly over what they might lose. Strong recognized this weakness in himself, believing that “it depends on horror of change, which seems a deep seated element in

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<sup>88</sup> Diary, 2:10-11.

<sup>89</sup> Ibid., 24.

my character.”<sup>90</sup> The following year, however, Strong’s fears were confirmed, though the cruel reversal missed the diarist and clobbered his father-in-law, Samuel B. Ruggles, instead.

The contrast between Ruggles and Strong is a useful reminder that some of the most important human differences are written in our individual natures, before the sociological categories that organize and define the broad patterns of historical experience. Both men were trained lawyers and well-educated intellectuals; they belonged to the same circle of New York patricians, and they were dear friends. Yet their attitude toward the economic changes sweeping their society could not have been more different.

A brilliant intellectual and an exuberant capitalist, Ruggles combined Strong’s cultivated sensibilities with the boundless optimism of the growing nation’s entrepreneurial ethos. He graduated Yale College at fourteen, began practicing law and entered politics as an early and ardent champion of the Erie Canal and, later, the Erie Railroad. He made a fortune while still in his 30s buying up Manhattan real estate as the city surged northward and soon abandoned his legal practice to pursue ever grander commercial and residential development projects. The great boom underway at midcentury seemed a great blessing to Ruggles, as the vast expansion of credit allowed impatient visionaries to chase their grandest ambitions all the more quickly. Like any competent businessman, Ruggles wanted to make money, but his financial interests were unmistakably aligned with an honest idealism. Even in a nostalgically softened picture of early nineteenth century civic culture, Ruggles was exceptional. He was the rare real estate developer to earn an important place in the intellectual history of New York City, and his private enterprises were guided by a profound study of public planning.<sup>91</sup> No one did more to ensure that the nation’s most densely packed metropolis would also include so many beautiful open spaces.

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<sup>90</sup> Diary, 2:122.

<sup>91</sup> Thomas Bender, *New York Intellect: A History of Intellectual Life in New York City, from 1750 to the Beginnings of Our Own Time* (New York, 1987), esp. 271 – 275.

The broad public spirit that animated Ruggles's business career exemplified the idealist strain in the economic thought of American Whigs. He was an enthusiastic apostle of the market revolution, but he did not belong to the future he helped bring into being. Like Henry Carey, the era's most influential economic theorist, Ruggles did not separate his business philosophy from his social philosophy, which was traditionally paternalistic and communitarian.<sup>92</sup> And the financial ruin that swallowed him in 1851 encapsulates the tragedy of an entrepreneurial idealism that flourished in the first half of the nineteenth century and became obsolescent in the second. Fittingly, Ruggles, an inveterate optimist, never saw his fate in those terms. But his son-in-law did.

“Mr. Ruggles suffers from the system into which brilliant and sanguine men, possessed of energy, fertility, and ambition, must inevitably be led in this age and country,” Strong wrote. “It was not in his nature to keep out of the vortex.” The accelerating accumulation of wealth, accompanied by an equally dramatic expansion of credit, allowed capitalism to assume its modern dimensions. For the first time, private enterprises began to swell into a scale that rivaled the capacities of states. To invest with vast sums of borrowed money doesn't just multiply the stakes; it changes the qualities requisite for success. Sound judgment about the prospective value of an investment was no longer enough; one must either be very lucky or possess “the unerring instinct for getting paid” that marks the true capitalist.<sup>93</sup> Ruggles was a brilliant urban planner who understood how to identify and create valuable real estate. But his first attempt at a major development project revealed him to be an amateur capitalist. Having borrowed \$325,000 to develop the Atlantic Dockyards in Brooklyn, using mortgages on the property itself and his own estate as collateral, Ruggles, in the spring of 1851, found himself unable to raise an additional

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<sup>92</sup> Howe, *Political Culture of American Whigs*, 96 -122.

<sup>93</sup> James Grant, *Mr. Speaker! The Life and Times of Thomas Brackett Reed* (New York, 2011), 212.

\$25,000 to complete the project. At that point, the true value of the assets he had put up as collateral no longer mattered. Ruggles owed money he could not pay on a project he could not finish, and his creditors had a claim on every penny to his name. He was ruined.

Though never dishonored for a moment in Strong's eyes, the public humiliation of a man he so loved and admired made a great impression on him. Newspapers as far away as Racine, Wisconsin rejoiced at the fate of one of the most ardent promoters of Whig internal improvement projects, which Democrats had denounced for jeopardizing the public credit. "The State is yet solvent, while Mr. R. is a bankrupt," the Racine *Advocate* crowed.<sup>94</sup> "People who are gentle and generous in every other relation of life are converted into harpies and devils when their dealings relate to debtor and creditor accounts," Strong wrote. In Strong's telling, the tragedy that befell Ruggles is the timeless aristocratic lament, of vice gaining an advantage over virtue – the gallant warrior succumbing to lesser men with more ruthlessly efficient methods. Ruggles's "mental constitution, talents, temperament, all combined to control his destiny and carry him into operations like those in which others engage, only without his range of view and his power of combination." He had not "a trace of the callousness to unpaid debt, the insensibility to broken engagements, which this fatal system engenders in common men." And like Achilles, killed by the arrow of a coward, Ruggles found himself under the heel of Francis Griffin, his largest creditor, to whom he owed \$70,000. Though Strong estimated Griffin's net-worth to be around \$200,000, he was himself heavily invested in building operations and was in no position to handle his difficulties with Ruggles gently. He quickly impressed Strong as "a cruel and cowardly bully."<sup>95</sup>

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<sup>94</sup> Reprinted in the New York *Tribune*, July 3, 1851.

<sup>95</sup> Diary, 2:50.

For Ruggles, even total financial ruin brought little risk of real impoverishment. He had too many resources other than capital to rely upon – including a wife with a trust of her own. Griffin was not so lucky, which was likely the source of his seething resentment toward the man whose ruin threatened him with a ruin far worse. And to his credit, Ruggles seemed to appreciate that fact more than Strong. Griffin claimed that he had been deceived by deliberate dishonesty and fraud. “The slanders he has spread so widely were not strictly malicious, perhaps, because they were flung about in reckless, vindictive excitement and passion,” Strong judged. Nevertheless, “The mischief can never be wholly cured. A man publicly accused of swindling today may demonstrate himself innocent tomorrow, but he no longer stands where he stood before.”<sup>96</sup> Griffin died suddenly the following year – a great calamity, according to Strong, as he had not yet been forced to retract his slanders. With the help of his prominent friends, Ruggles settled with Griffin’s estate, irritably but conclusively, without resorting to the courts.

“What a lesson this miserable business is against speculation!” Strong wrote. “Talents, genius, that could have gained a fortune in ten years’ legitimate labor, bearing no fruit but insolvency, bitter self-reproach, and the memory of a life’s unavailing struggle, of a long series of harrowing cares and sickening uncertainty – and ruin at last.”<sup>97</sup> A partner at one of Wall Street’s most prominent law firms, Strong would hardly qualify as an anti-capitalist and yet he detected that the system then emerging was antithetical to his own ideal economic order, one in which a man of his qualities and background, a good family, well-connected and well-educated, hard-working and honest, could be absolutely sure of his place in the world. His income would supply all the necessities of a genteel, refined life with a decent portion left to accumulate as capital, which would grow safely and steadily, multiplying with the generations of the family

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<sup>96</sup> Ibid., 54.

<sup>97</sup> Ibid., 2:46.

itself. That ideal world, to the extent that it ever existed, was passing away, at least relatively, to one that belonged entirely to the capitalist. And Strong damned unsparingly, “the system that makes the utmost fruit of steady industry vulgar and cheap when compared with the glittering results that form exceptions only to its legitimate and usual result, but yet occur often enough to lure the multitude and make us a nation of gamblers, easily classified as a minority of millionaires sprinkled through a majority of bankrupt beggars...”<sup>98</sup> It hardly needs to be said that these criticisms were laced with status anxiety, but to focus on that element alone misses the point. Artisans were also distraught by their declining status, but that hardly means their complaints had no moral weight.

And more importantly, in terms of narrow class interest, no one was in a better position to benefit from the economic boom of the 1850s than Strong. He was, after all, a capitalist himself, whose investments augmented the income of a law practice primarily devoted to protecting the capital of others. As conservative investors are all acutely aware, growing capital is easy next to the nearly insurmountable difficulty of acquiring it. Most of the city’s wealthiest residents had inherited respectable estates and turned them into tycoon-like fortunes.<sup>99</sup> It was not interest, but temperament that set Strong apart from peers who eagerly embraced the new era, including his own father-in-law, who emerged from his financial catastrophe with his enthusiasm undiminished. Ruggles’s failure as a capitalist was permanent, but he was still a brilliant attorney and he continued to be a respected and influential figure. “A cat thrown from a three story window don’t find her feet again sooner than he finds work and purpose and hope,” Strong wrote of his beloved father-in-law. “He has taken an office and got a sign, a suit, an advertisement in

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<sup>98</sup> Diary, 2:48.

<sup>99</sup> Sven Beckert estimates that in the mid-1850s, 71% of all estates assessed at over \$100,000 came from inherited wealth. Beckert, *The Monied Metropolis* (Cambridge, 2001), 36.

the papers, and has ‘resumed the practice of his profession.’”<sup>100</sup> The calamity that Strong interpreted as a scathing indictment of financial capitalism struck the man primarily affected by it as merely a bad bit of luck. Ruggles remained buoyantly optimistic about the nation’s economic future, and, though no longer in a position to lead the charge, as impatient for its hasty realization as ever.

As the decade continued to multiply the city’s millionaires, Strong’s disdain only grew more bitter. Even the panic of 1857, which proved a mere blip in the decade’s great boom, seemed to make the scramble for wealth more desperate, uglier, more vicious. “They are fighting hard for the grand, ugly house in the Fifth Avenue; for the gold and damask sofas and curtains that are ever shrouded in dingy coverings, save on the one night of every third year when they are unveiled to adorn the social martyrdom of five hundred perspiring friends,” he wrote.

They are agonizing with unavailable securities, and pleading vainly for discount with stony-hearted directors, and inflexible cashiers, lest they forfeit the privilege of inviting Joe Kernochan and Dan Fearing to gorge and prose and stupefy over the barbaric splendors of an unwholesome dinner; that they may still yawn through *Travatore* in their own opera boxes; that they may be plagued with their own carriage horses and swindled by their own coachman instead of hiring a comfortable hack when they want a ride...<sup>101</sup>

New York’s wealthy establishment had always been relatively porous compared with other important American cities – such as Boston, Philadelphia and Charleston. And the relative failure of its patricians to maintain their hold on New York’s social and economic order was both a cause and consequence of the city’s rise to unrivaled commercial preeminence. Business in New York was always riskier, rougher and grander than anywhere else.<sup>102</sup> None of this was new to the 1850s. And the self-made man had long since become a celebrated American phenomenon to which not even Strong would object. He was a snob, but not a stupid, indiscriminate one.

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<sup>100</sup> Diary, 2:58.

<sup>101</sup> Diary, 2:355-356.

<sup>102</sup> Frederic Cople Jaher, *The Urban Establishment: Upper Strata in Boston, Charleston, New York, Chicago, and Los Angeles* (Urbana, IL, 1982), 159 – 317.

August Belmont he found “pleasant and free from any offensive millionaire-isms.”<sup>103</sup> And virtually no one of his background and class was more prescient in judging Abraham Lincoln’s historic greatness. What disturbed Strong was something new and rather different. It was the sudden emergence of a whole new class of wealth, of grandiose fortunes that seemed to make a grotesque parody of Strong’s own privileged, cultivated existence.<sup>104</sup> As someone who had long resented the democratic challenge to society’s legitimate hierarchies, he was enraged to find that vision further ridiculed by the boorish culture and reckless greed of those who posed as their community’s honorable stewards.

One of Strong’s friends in New York, George William Curtis, earned a glittering reputation for his scathing, moralistic portraits of the garish excesses that so appalled genteel New Yorkers. In “Our Best Society” Curtis described one of the “brilliant balls” held by that class. “There was too much of everything,” he observed. “Too much light, and eating, and drinking, and dancing, and flirting, and dressing, and feigning, and smirking, and much too many people.” Wine and champagne, “flowed in torrents, particularly down the throats of very young men, who evinced their manhood by becoming noisy, troublesome and disgusting.” Among the revelers was one decent elderly gentlemen, who trembled at the “pompous profusion” and “rampant vulgarity”, and tried to “remember what a noble and beautiful woman is, what a manly man.” What, Curtis asked rhetorically, “is the influence of this extravagant expense and senseless show” on the nation’s moral fiber? Even European observers were “amazed and appalled at the giddy whirl and frenzied rush of our society – a society singular in history, for the exaggerated prominence it assigns to wealth.” Not even “Venice in the purple prime of luxury,” Curtis

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<sup>103</sup> Diary, 2:383-384.

<sup>104</sup> “The practical question...becomes ‘For how much is my credit good in Wall Street?’” instead of asking how much one can repay. “It is probable that every one [of our merchant princes] has been operating and gambling in stocks and railroad bonds. Any given millionaire may have employed his million, and the odds are he has employed it, in buying securities now all but absolutely unmarketable and worthless.” Diary, 2:48-49; 355.

warned, surpassed the shallow splendor “of New York to-day.” And he ended the piece, almost inevitably, with a description of Thomas Couture’s painting, “The Romans of the Decadence.”<sup>105</sup>

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These circumstances form the significant backdrop to Strong’s sudden conversion to a revolutionary hatred of Southern slaveholders. “Why *do* the people so furiously rage together just now?” Strong asked in December of 1860, soon after Lincoln’s election. “What has created our present unquestionable irritation against the South? What has created the Republican party?” The diarist a decade earlier would not have hesitated to interpret the party’s rise as the bitter fruit of a spurious egalitarian philosophy. Opposition to the Fugitive Slave Law, Strong had then insisted, represented a pernicious theory that assumed society was a mere aggregation of units; it was ultimately an attack on all law recognizing human inequalities as unjust. And he predicted that, unchecked, the radical antislavery movement would widen its targets as it gathered momentum.

But in 1860, when Strong looked back on the growth of antislavery opinion, his account differed little from that given by most historians today. Among his list of events that brought antislavery agitation into the political mainstream – *Uncle Tom’s Cabin*, the clamor over California, the repeal of the Missouri Compromise, the conflict between free and slave labor in the territories – not one seriously provoked Strong at the time. “[A]nd above all,” he concluded his one paragraph history of the Republican party, “the intolerable brag and bluster and indecent arrogance of the South has driven us into protest against their pretensions, and into a determination to assert our own rights in spite of their swagger.”<sup>106</sup>

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<sup>105</sup> *Putnam’s Monthly*, February 1853. Reprinted in George William Curtis, *Potiphar Papers* (New York, 1853).

<sup>106</sup> *Diary*, 3:68.

Significantly, Strong identified this last cause as a distinct and paramount grievance, not a summation of the others, and it was the only one that explains his own ardent support of the Republican party. “I hold the anti-slavery agitators wrong in principle and mischievous in policy,” Strong wrote in May of 1856. “But the reckless, insolent brutality of our Southern aristocrats may drive me into abolitionism yet.” Many Northerners, Strong observed in the same month, believed “that ‘Southern gentlemen’ are a high-bred chivalric aristocracy, something like Louis XIV’s noblesse, with grave faults, to be sure, but on the whole, very gallant and generous, regulating themselves by ‘codes of honor’ (that are *wrong*, of course, but very grand); not rich, but surrounded by all the elements of real refinement.” Here was a fantasy that might have appealed to an embattled conservative, and, in less absurdly romantic terms, it clearly once did. But by 1856 Strong had come to believe that “they are, in fact, a race of ignorant, lazy, coarse, sensual, swaggering, sordid, beggarly barbarians, bullying white men and breeding little niggers for sale.”<sup>107</sup>

The most interesting aspect of Strong’s growing hatred of the South’s master class is that it did not lead to any change in his attitude toward slavery. “Party feeling has not changed my views about the abstract right and wrong of the institution of slavery,” he wrote. “I still firmly believe that the relation of master and slave violates no moral law.” And yet, in the same diary entry, he wrote as searing an indictment of the South’s peculiar institution as one will find anywhere:

It strikes me that this institution – slavery as it *exists* at the South with all its ‘safe-guards’ and ‘necessary legislation’ – is the greatest crime on the largest scale known in modern history; taking into account the time it has occupied, the territory it covers, the number of its subjects and the civilization of the criminals. It is deliberate legislation intended to extinguish and annihilate the moral being of men for profit; systematic murder, not of the physical but of the moral and intellectual being; blasphemy, not in word, but in

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<sup>107</sup> Diary, 2:275.

systematic action against the Spirit of God which dwells in the souls of men to elevate, purify and ennoble them.

There is more in this same vein. Strong wrote that the slave system essentially says to three million souls that their families “shall be scattered from Maryland to Texas whenever we or our judgment creditors can make a profit thereby...Nothing of manhood or womanhood that man can take from man shall be left to you. So far as we can effect it, we decree that 3,000,000 of men and women shall be three millions of *brutes*.”<sup>108</sup> One can hardly avoid wondering why an American who expressed the evil of human bondage in such scathing terms would continue to insist that the “relation of master and slave violates no moral law.” Strong’s general hostility to democracy was relevant, of course, but hardly a sufficient explanation. After all, the British Empire, hardly a bastion of egalitarianism, was the most powerful force for abolitionism in the Atlantic world. There is plenty of philosophical space between the claim that all men are equal and that one man ought to exist as the instrument of another’s will. And Strong was too intelligent not to know that.

A key to understanding Strong’s unusual attitude can be found in his disgust at Northern labor exploitation, which could be just as severe.<sup>109</sup> In January of 1860, for example, the Pemberton Mill, a textile factory in Lowell Massachusetts, collapsed, killing an estimated 145 workers, mostly young women. In addition to those killed by the collapse of the building itself, many others, who had been trapped in the rubble, were roasted alive when a fire broke out. Writing in his diary, Strong referred to the incident as “one of the wholesale murders commonly known in newspaper literature as accident or catastrophe.” Subsequent investigation showed that the “accident” was indeed the result of a criminally reckless effort to keep costs as low and

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<sup>108</sup> Diary, 2:304-305.

<sup>109</sup> The difference, of course, being that the worst abuses in the North were exceptions, not the rule.

profits as high as possible. But Strong correctly predicted that none of those responsible would be held properly accountable.

Of course, nobody will be hanged. Somebody has murdered about two hundred people, many of them with hideous torture, in order to save money, but society has no avenging gibbet for the respectable millionaire and homicide. Of course not. He did not want to or mean to do this massacre; on the whole, he would have preferred to let these people live. His intent was not homicidal. He merely thought a great deal about making a large profit and very little about the security of human life. He did not compel these poor girls and children to enter his accursed mantrap. They could judge and decide for themselves whether they would be employed there. It was a matter of contract between capital and labor; they were to receive cash payment for their services. No doubt the legal representatives of those who have perished will be duly paid the fractional part of their week's wages up to the date when they became incapacitated by crush or combustion, as the case may be, from rendering further service. Very probably the wealthy and liberal proprietor will add (in deserving cases) a gratuity to defray funeral charge. It becomes us to prate about the horrors of slavery!

Strong's point was not that Southern capitalists were superior to their Northern counterparts. On the contrary, they were far guiltier. But the evil in both sections was the same in Strong's mind: Not slavery *per se*, but the grasping, vicious barbarism of two parasitic oligarchies heedless of any consideration save greed. "Our imminent pressing peril is neither foreign influence nor humanism nor the 'slave power,' but simple barbarism," Strong wrote in 1858. "For twenty years at least have we been gravitating that way. Life and property grow less and less secure. Law, legislature, and judiciary are less respected; skepticism spreads as to the existence anywhere of anybody who will not steal if he have official opportunity. Our civilization is decaying. We are in our decadence."<sup>110</sup> Strong was not the only Northern intellectual who feared the South represented the future of a civilization descending into barbarism.

"Slavery has its origin in the essential conditions of human society," Andrew Preston Peabody, editor of New England's most influential quarterly, the *North American Review*, wrote

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<sup>110</sup> Diary, 2:425.

in April 1861. Laws, institutions and “the moral elements in society” may intensify or restrain the disparities between classes, but there is “an antagonism of interests between the privileged and the proletarians. The former will seek from the latter as much work, and at as low a cost, as possible; and the auguries of success are all on their side.”

Because every practical advantage favors the rich, their struggle with the poor inevitably results in slavery unless the privileged class adopts the virtues and obligations incumbent upon the stewards of a Christian civilization. “Wherever there is selfishness on the part of the employers, and a low standard of self-respect on the part of the employed, there is slavery...Even in New England we have our slaves...In some branches of manufacture and of manual labor, the employed are so needy and depressed as to be wholly subject to the arbitrary and irresponsible control of their employers...In fine, just so far as the power which position and wealth confer is untampered by high moral principle, slavery exists...”<sup>111</sup>

Far from chivalrous patriarchs, then, Southern slaveholders had devolved into the most rapacious capitalist oligarchs the world had yet seen. Their system was barbaric, but it was not a barbarism that an intelligent Northerner could believe had been safely relegated to past by the ambivalent progress of the nineteenth century. “Southern chivalry is a most curious and instructive instance of the perversion of a word from its original meaning,” Strong wrote in 1860. “Burke announced sixty years ago that the ‘age of chivalry’ was gone, and ‘that of calculators and economists had succeeded it.’ The Cotton Kingdom was not immune to this regime change; it was indeed a product of it. But the period of the calculators and economists “has likewise passed away now, south of the Potomac, and has been followed by a truculent mob despotism that sustains itself by a system of the meanest eavesdropping and espionage and of utter

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<sup>111</sup> *North American Review* (April, 1861), 492 – 515, esp. 495-498.

disregard of the rights of those who have not the physical power to defend themselves against overwhelming odds...”<sup>112</sup>

Strong readily perceived that the South’s “reactionary enlightenment,” as Louis Hartz later put it, “exchanged a fraudulent liberalism for an even more fraudulent feudalism.”<sup>113</sup> The abandonment of Jefferson’s egalitarian delusions for the brutal, bullying ethos of exploitation, which Southerners absurdly boasted of as chivalry, represented an appalling corruption, but it was inseparable in Strong’s mind from the corruption of the North. The same fraudulent philosophy that had corrupted the South was eating away at his own society, liberating the powerful from all moral restraint in their dealings with the weak by giving all an equal license to pursue their own narrow interests. Perhaps it was only a matter of time before the victors took notice of the predictable results and adjusted their philosophy accordingly. In the South’s pretensions, Strong saw a grotesque mirror reflection of the fate possibly awaiting his own reactionary impulses, a rich and honorable intellectual tradition converted into a meretricious defense of absolute rapacity.

“There’s a bad prospect for both sections of the country,” Strong wrote in 1860. “Southern ruffianism and brutality are very bad, but the selfishness, baseness, and corruption of the North are not good at all.”<sup>114</sup> He never stopped insisting that he had no respect for “Progress, Democracy, Free Thought and Equality” but he did not hesitate to adopt the cause of these shibboleths against “an effete, corrupt aristocracy of slave breeders.”<sup>115</sup>

Strong’s conservatism was a marrow deep distrust of the tendencies others hailed as progress. But the staggering rapidity of those changes brought out the antithesis of his

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<sup>112</sup> Diary, 3:8.

<sup>113</sup> Louis Hartz, *The Liberal Tradition in America* (New York, 1954), 148.

<sup>114</sup> Diary, 3:94.

<sup>115</sup> Diary, 3:142.

temperament, for the future he darkly feared was too imminent to be resisted by a stubborn fealty to a real or imaginary past. Once again, the contrast between Strong and his father-in-law illustrates the difference between reactionary and conservative strains of thought among Northern elites on the eve of the Civil War. Though often used as synonyms, in a nation generally enamored with the idea of progress, a conservative is not easily defined, since the status-quo to which he is devoted presupposes gradual change for the better, while a reactionary is often on the same side as the radical moralist in violently rejecting these conveniently sanguine expectations. Samuel Ruggles shared his son-in-law's disdain for the South but not his alarmed pugnacity toward it.

“I advise the South before they go further into this business to look into the arithmetic,” Ruggles confidently suggested in a speech expressing indignation at the caning of Charles Sumner in 1856. “There are more free white men within one mile of this platform than in the whole state of South Carolina.” Unlike Strong, however, Ruggles did not support the Republican party in 1856 or in 1860. “There was no one in the State,” Horace Greeley wrote in the *New York Tribune* shortly after the election of President Buchanan, “who opposed us more industriously, more insidiously, we might add more vindictively, in 1856, than Samuel B. Ruggles.”<sup>116</sup> Greeley was specifically referring to Ruggles's brilliant rebuttal of a speech by Nathaniel Banks at the New York Merchant's Exchange, in which the latter had argued that the economic supremacy of the North entitled it to control over the federal government – an object, it went without saying, that the Republican party alone promised to deliver. Ruggles devoted most of his response to a devastating attack on statistical facts Banks had marshalled in his argument, which had been effective political hyperbole on the stump but appeared childishly exaggerated under Ruggles's withering scrutiny. Banks's statistics, Ruggles concluded of the

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<sup>116</sup> *New York Tribune*, July 24, 1856. Cited in Brinton Thompson, *Samuel Ruggles*, 122.

Speaker of the House, were delusional. “And yet with this empty and shadowy coinage, you have sought to buy the votes of the sober, experienced and sagacious merchants, mechanics and land-owners of this great metropolis – to cure them of their undue appreciation of the importance of the South – to lead them head-long down the dark abyss of national disunion and ruin.”<sup>117</sup> No one did more than Ruggles to preserve the ideological purity of the antebellum Republican’s antislavery agenda from an alliance with New York’s financial elite, though party leaders hardly considered this a cause for gratitude.

And yet Ruggles’s conception of the Union was essentially the same as Seward’s, who was, not incidentally, a close personal friend. In his vision of a continental empire, mighty and prosperous beyond the wildest hopes of all past civilizations, Southern bluster and the outrage it provoked in the North were mere distractions. He disliked sectional agitation as impractical folly, but he was not overly anxious about the Southern threat of secession. Though easily taken for granted now, Ruggles believed the greatest challenge of the era, and the one most auspicious for the future of mankind, was keeping the Pacific states within a single continental republic. With that tremendous prize secure, the temporary madness of the South could be safely left to resolve itself. His mindset during the secession crisis is well captured in a remarkable vignette Strong recorded in his diary.

Ruggles was in Washington lobbying for the transcontinental railroad on the day South Carolina seceded from the Union. “At about sunset of the day on which Clan Carolina ‘seceded,’ the eyes and noes were being called on the question of appropriating ninety-six millions for a great national work! Mr. Ruggles says he went out on one of the Capitol terraces or porticos and saw the sun going down in splendor after a stormy day, and that it was *the* moment of his whole

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<sup>117</sup> Review of Samuel B. Ruggles of the Address of the Hon Mr. Banks, at the Merchants Exchange (New York, 1856), 33.

life. He saw the Pacific Coast in the glow and glory of the western sky, and saw, moreover, the sign and token that a great nation was saved.”<sup>118</sup>

When Seward introduced the railroad appropriation bill in the Senate, it was Ruggles who wrote the preoccupied senator’s speech for the occasion.<sup>119</sup> And the collaboration illustrates the ideological affinity between the two men. Railroads and canals were the indispensable bonds of Union. If the railroads and canals beginning to connect the Oriental and Occidental civilizations in the Old World had been undertaken in the time of the Ptolemys, Seward and Ruggles asserted, the imperial foundations laid in antiquity “would have been a progressive civilization ever since, instead of an ephemeral one, rising and declining according to the tempers and passions of the belligerent nations of Europe and Asia.” Here was a crucial lesson for the American people, who were yet free of the petty rivalries that hobbled the destiny of the Old World and could therefore lead the way “on this continent, while we are yet young and vigorous, and strong, and rich, and hopeful, and ambitious.”<sup>120</sup>

Strong did not criticize his father-in-law’s tendency to equate the health and vigor of a civilization with its commercial grandeur, but he clearly had a different view. Like most educated Americans, he was heavily influenced by the strain of classical republican and Calvinist thought that posited the exact opposite correlation. As the South seceded, and New York’s financial class was seized with panic, Strong saw nothing tangible to be gained by war or lost by compromise, and yet he still seethed with indignation at the passivity of the “spiritless, money-worshipping North... Southerners rule us through our white slaves of Fifth Avenue and Wall Street.” And when the guns finally erupted, Strong rejoiced at the horrors to come. “This is to be

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<sup>118</sup> Diary, 3:80.

<sup>119</sup> Diary, 3:86. Strong may have exaggerated the extent of Ruggles’s authorship, but given how busy Seward was at the time, it is hardly an implausible claim.

<sup>120</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 2<sup>nd</sup> Session, 251.

a terrible, ruinous war, and a war in which the nation cannot succeed. It can never subjugate these savage millions of the South...but I welcome it cordially, for it has shown that I belong to a community that is brave and generous, and that the City of New York is not sordid and selfish.”

And then the middle-aged lawyer, who even in adolescence seemed to see the politics of his country through the weary, jaded eyes of an octogenarian, suddenly cried out with boyish pride at his own exuberance for the coming revolution. “Hear THIS, ye old men, and give an ear all ye inhabitants of the land. Hath this been in your days, or even in the days of your Fathers?’ New York lavishly tendering life and money to sustain a righteous cause, and without one dissenting voice from Forty-ninth street to the Battery!”<sup>121</sup>

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<sup>121</sup> Diary, 3:132-133.

### 3

## *Earnest Men, Honorable Men and Confidence Men*

### *I: Honor and National Political Culture in the 1850s*

“The time for argument has gone by,” Senator John Hale of New Hampshire growled as the long session of Congress dragged to a close in the summer of 1858. “I never thought much of that man’s courage who, when his hat was knocked off, asked the man that did it if he meant to insult him, or threatened if he did it the second or third time he would resist it. No, sir, I think this matter has been discussed long enough.” Hale, a Republican antislavery leader, wanted war immediately, but not against the South and certainly not, in this instance, against slavery. Instead, Hale was roaring for retaliation against the British Navy for daring to interfere with American vessels while policing the slave trade. “Our commerce has been invaded over and over again; the act is persisted in, and is done by authority of the British Government,” Hale said. “The only position this country can take with dignity or with honor is to treat it as an act of war, and to meet it as such.”<sup>1</sup>

No one disputed the facts of the situation. British Naval forces, after a long period of acknowledging the independence of American ships, had once again begun asserting the right to board and search American commercial vessels both in the Gulf of Mexico and in the Caribbean. Ships that attempted to flee were fired upon and compelled to surrender. Equally certain was the reason for the change in policy: The dramatic resumption of the Atlantic slave trade in the Deep South, and the notorious fact that slave traffickers were using the American flag to ply their trade

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<sup>1</sup> *Congressional Globe*, 35<sup>th</sup> Congress, 1<sup>st</sup> Session, (May 29, 1858), 2495.

with impunity. The British Navy had captured twenty vessels trafficking slaves under the American flag, and it obviously could not have done so without occasionally interfering with the legitimate commerce of American citizens.

The flag of the United States, Henry Wilson of Massachusetts acknowledged, “that flag of whose honor we are so jealous, has been, and now is, prostituted, shamefully prostituted, by pirates engaged in inhuman traffic in the bodies of our fellow men.” But that fact, however deplorable, was not the issue, he continued. “Our business now...is to vindicate, not the prostitution of our flag by the pirates engaged in the slave trade, but to vindicate the violation of the rights and honor of our flag by the naval forces of England, almost within cannon-shot of our shores.” He therefore insisted that the Senate should authorize the President to send a naval squadron “with positive orders to sink or capture the British ships of war that have committed the belligerent acts.”<sup>2</sup>

Lord Napier, the popular British Ambassador to the United States, was understandably alarmed by such talk, especially from antislavery Republicans. “The agitation here about the detention of American vessels...has risen with a rapidity and a violence which I never anticipated,” he wrote in a confidential dispatch to the Foreign Office. “Since the debate on the 29<sup>th</sup> in the Senate [in which Wilson and Hale spoke], I cannot do otherwise than treat this affair as a serious international emergency.”<sup>3</sup>

The War of 1812 was caused in large part by Britain’s refusal to recognize American sovereignty on the high seas, even to the point of impressing American sailors for compulsory service in a foreign navy. In less dramatic form the issue had arisen intermittently ever since. No issue touched American national pride at a more sensitive point. It was, as Henry Wilson said, a

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<sup>2</sup> Ibid., 2498.

<sup>3</sup> Napier to Malmesbury, 31 May, 1858. Cited in James Barnes and Patience Barnes, ed. *Private and Confidential: Letters from British Ministers in Washington to the Foreign Secretaries, 1844 – 1867* (Toronto, 1993), 200

matter of honor. So it is not surprisingly that antislavery Republicans refused to concede the right of British visitation, i.e. searches, even to police the slave trade. But their bellicosity in asserting this right was another matter. The response of Southern Senators, who were hardly insensitive to questions of honor or slavery, seemed positively meek next to the saber-rattling of New England Republicans.

The resolutions proposed by the Committee on Foreign Relations in response to “the British outrages,” written by the proslavery fire-eater James Murray Mason, demanded that Britain disavow its right to visit or molest American ships, and approved of President Buchanan’s decision to send a naval squadron into the Gulf to protect American vessels from further abuse. Hale characterized this policy as cowardly. He and Wilson both proposed and argued for an amendment authorizing the President to attack the British Navy, without waiting for an explanation. That was what Hale meant when he said when someone knocks your hat off, it would be cowardly to ask why.<sup>4</sup>

In this *rage militaire* South Carolina’s dueling code appeared as a veritable beacon of civility. Arthur Hayne, responding implicitly to Hale, observed that it is not necessarily disgraceful to demand an explanation from an assailant. “If I am insulted, it is not right nor just that I should challenge my opponent,” Hayne explained. “I make a statement of my case; I ask for honorable reparation, and if that is given I am satisfied.”<sup>5</sup>

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<sup>4</sup> A comprehensive history of this issue is Hugh G. Soulsby, *The Right of Search and the Slave Trade in Anglo-American Relations, 1814-1862* (Baltimore, 1933). Soulsby describes this controversy, which led to Great Britain expressly disavowing the right to search American vessels for the first time. But he fails to note two other significant features of this particular episode. The first was the reason for the sudden aggressiveness of Great Britain, starting in 1857, in policing the slave trade in the Gulf of Mexico. Soulsby describes this development as mysterious. But the British were almost certainly provoked by the highly publicized increase of the slave trade in the Deep South. And Soulsby simply takes it for granted that Americans would be entirely unified in opposing these heavy-handed efforts to suppress the slave trade. But Republican support for the most combative possible response, despite their often bitter condemnation of America’s failure to suppress the slave trade, is a significant anomaly.

<sup>5</sup> *Congressional Globe*, 35<sup>th</sup> Congress, 1<sup>st</sup> session, (May 29, 1858), 2497.

James Henry Hammond also argued against the rash bellicosity of Hale and Wilson's proposed amendments. He thought it best to wait for Britain's explanation, and he insisted that the Republicans' proposed resolutions calling for an immediate retaliation amounted to "a declaration of war by indirection." If there was no point in discussing the matter further, Hammond said, "let us at least cast the bloody spear in due and solemn form. I am not willing to be swept by the very first wave of public excitement into so great a war as this...let us give [Britain] a chance to postpone an event which, whenever it comes, will change the whole face of human affairs."<sup>6</sup> Significantly, not one Republican Senator dissented from the basic premise that Britain's attempts to suppress the Atlantic slave trade amounted to an act of war. And the most bellicose speeches came from New England.<sup>7</sup>

The crisis with Britain passed as quickly as it came, and politicians in both sections returned to threatening one another. But there are few more dramatic examples of the increasingly unhinged militancy of national political leaders in both sections, a phenomenon that cannot be reduced to the conflict over slavery. Men unmoored by the baffling changes sweeping their society felt an ever great need to stand firmly on principle – to guard their honor at all costs.

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This chapter analyzes competing conceptions of masculine honor among national political leaders in the period immediately preceding the Civil War. Bertram Wyatt-Brown's seminal study of honor established the concept's centrality in the political history of the South.

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<sup>6</sup> Ibid., 2530.

<sup>7</sup> Don Fehrenbacher is the only historian I am aware of who has noted that Republicans eagerly participated in denouncing British "outrages" in this brief political crisis. But his brief account does not convey the full extent of Republican saber-rattling, nor does he indicate that a few Republicans demanded a more aggressive response than anything contemplated by their proslavery rivals. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery* (New York, 2001), 183-187. More often, historians who note this controversy with Great Britain assume that it was driven exclusively or primarily by slaveholders and their northern allies. For example, Michael Todd Landis, *Northern Men with Southern Loyalties: The Democratic Party and the Sectional Crisis* (Ithaca, 2014), 174-175.

Though scholars, including Wyatt-Brown, have noted that Northerners also entered the Civil War with an exacting sense of personal and sectional honor, its significance among Northern political leaders has remained elusive. The Republican concept of “earnestness” – of blunt, combative sincerity – overpowered and displaced cultural norms that had channeled and restrained political conflict at the national level. When Republicans proclaimed themselves “in earnest,” they were assailing both the elitist conception of gentlemanly courtesy in managing sectional differences and the professional politician’s commitment to amiable pragmatism.<sup>8</sup>

The work of cultural historians has indirectly suggested why the concept of sincerity acquired such a powerful salience among Republicans. Perhaps the most important function of honor as an ethical system is to provide a cultural consensus on the appropriate response to an insult or an attack. The Southern planter elite still possessed a coherent concept of honor, which varied only in the intensity and bellicosity with which individuals adhered to a common cultural script. But among Northern political elites, the concept of honor was beset by a welter of confused and competing notions. Far from diminishing the significance of honor, however, this confusion only intensified the bristling defensiveness of Republicans who felt themselves under attack. Men unmoored from inherited cultural certainties felt an ever greater need to insist in earnest upon that which they could no longer precisely define – the status and integrity implicit in their sense of honor.

Conceptions of honor in the nineteenth century were inseparable from constructions of elite masculinity, for both were inherently about status. Aside from its most direct purpose –

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<sup>8</sup> The seminal study of Southern honor culture is Bertram Wyatt-Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York, 1982). See also, Brown, *The Shaping of Southern Culture: Honor, Grace, and War, 1760s - 1890s* (Chapel Hill, 2001). Lorien Foote has brilliantly analyzed the clashing ideals of manhood within the Union army. And as she notes, cultural concepts of manhood and honor were virtually interchangeable. Foote, *The Gentlemen and the Roughs, Manhood, Honor and Violence in the Union Army* (New York, 2010). Joanne Freeman has shown how elite honor culture mediated political disputes in the early Republic. Freeman, *Affairs of Honor, National Politics in the New Republic* (New Haven, 2001).

defining one-half of the relationship between men and women – the cultural model of masculinity that shaped American men’s understanding of themselves served two interrelated functions. It established a hierarchy of values attached to individual virtues and accomplishments, vices and failures – a figurative scoreboard that allowed men to compete intelligibly over status. No cultural model can entirely foreclose personal idiosyncrasies, of course, but few men are immune to their culture’s assumptions about what sort of man is most honorable, what personality failings are forgivable and what weaknesses must be avoided at all costs. The second function is to define morally upright behavior and its opposite; it differs from the first function as shame differs from guilt, or honor from conscience.

Scholars focusing on gender as a category of historical analysis have shown that the concept of masculinity was undergoing a complex transformation in the nineteenth century.<sup>9</sup> Market forces asserted an ever more pervasive influence in American life, undermining the legal, cultural and economic system of patriarchal authority that rested on men’s autonomous control over their own households. Gender ideologies diverged sharply in response, enflaming a more strident and aggressive commitment to patriarchal beliefs even as it led others to embrace a commitment to complete gender equality. Between these two extremes there was a great deal of confusion and ambivalence. Samuel Gridley Howe’s avowed support for feminist causes did not prevent him from being an overbearing, fretfully insecure husband, demanding control over his wife’s property and cruelly insisting that her public activism called into question the paternity of

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<sup>9</sup> The historiography on American masculinity begins with E. Anthony Rotundo, *American Manhood: Transformations in Masculinity from the Revolution to the Modern Era* (New York, 1993). It is, of course, impossible to separate constructions of masculinity from their formations within particular social classes and ethnic groups. Thus, most studies of masculinity have focused on specific groups – e.g. *Meanings for Manhood: Constructions of Masculinity in Victorian America*, ed. Mark Carnes and Clyde Griffen (Chicago, 1990). Only in the South can one identify a conception of masculinity that clearly predominated among elites in the 1850s.

their children.<sup>10</sup> Mary Boykin Chestnut's passionate loyalty to the patriarchal world of South Carolina's planter elite did not prevent her from eagerly absorbing the most advanced currents of nineteenth century feminism.<sup>11</sup>

These immense cultural and economic changes undeniably influenced the nation's politics in the pivotal years and decades leading up to the Civil War. And it has always been tempting to see the Republicans as unequivocal champions of emerging bourgeois values against reactionary elements in the North and South. One historian has gone so far as to argue that Lincoln's election "in 1860 constituted a victory for a new set of gender ideologies."<sup>12</sup> In this interpretation, Northern gender ideologies precisely echoed, and reinforced, partisan divisions over slavery: Democrats advocated patriarchal conservatism, Republicans advocated modest institutional reform and abolitionists advocated sweeping social change in favor of gender equality. A great deal of evidence supports this argument, but it credits the Republicans with an ideological coherence that the party's leaders, at least, did not actually possess.<sup>13</sup>

The Republicans opposed the cultural model of patriarchal masculinity that slaveholders stridently upheld as a class. But they did so without asserting a coherent cultural model of masculinity of their own. Within regional and class subcultures, in upstate New York or New England, a particular conception of elite masculinity predominated without being challenged by rival alternatives. Boston's working class and immigrant communities could uphold their own notions without posing any threat to the norms that prevailed among polite society on Beacon Hill. And radical reformers, almost by definition, disdained the status conflict that is an essential,

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<sup>10</sup> James W. Trent Jr. *The Manliest Man: Samuel G. Howe and the Contours of Nineteenth Century American Reform* (Amherst, 2012), 253.

<sup>11</sup> C. Vann Woodward, ed. *The Diary of Mary Boykin Chestnut* (New Haven, 1981).

<sup>12</sup> Michael D. Pierson, *Free Hearts and Free Homes: Gender and American Antislavery Politics* (Chapel Hill, 2003), 7. Amy S. Greenberg has connected the contrasting conceptions of masculinity in this era, which she characterizes as idealizing restraint and aggression, to Americans' attitudes toward expansionism. Greenberg, *Manifest Manhood and the Antebellum American Empire* (Cambridge, 2005).

<sup>13</sup> Pierson, *Free Hearts*, 1-24.

inextricable element of political power. Hence the unique problem so acutely felt by Republicans: In struggling for power, they confronted the coherent model of masculinity upheld by the Southern planter elite without upholding an unambiguous alternative of their own.<sup>14</sup> They could not agree, even among themselves, on the sharp cultural lines that separated prudence from cowardice, shameful dishonest from polite discretion, and gracious forbearance from emasculating dishonor.

By 1860, the loose consensus on the norms governing both private and public conduct had fragmented against the challenges posed by accelerated growth in every sense, territorial, demographic and economic, forcing leaders to improvise their own rules of ethical conduct. Even in the spheres that Americans tried hardest to isolate from one another – the norms governing sexual and commercial relationships – the same pattern emerges, as some openly flouted the intensifying moral restraints of others. Conflict over basic questions of propriety and decency did not always follow sectional divisions, but the less citizens could agree on, the more was at stake in the struggle for power. These tensions were acute within individual communities, but the national capital contained them on a whole other scale. Dapper Wall Street millionaires, pious New England reformers, hard-drinking Indian fighters and swaggering slaveholders could hardly coexist in even the most sprawling society, let alone as leaders vying for preeminence within a single ruling class.

“The difficulty between you and us, gentlemen” Senator Louis Wigfall of Texas declared in 1861, with a graceful wave of the hand to the Northerners crowded in the galleries, “is that you will not send the right sort of people here. Why will you not send either Christians or

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<sup>14</sup> Any list of prominent Republican leaders in this era would reveal the absurdity of the proposition that they shared a conception of masculinity that distinguished them from their Northern opponents. Benjamin Wade and Charles Sumner did not represent similar gender ideologies, but they recognized one another as sincere men. Republicans’ emphasis on sincerity was not an expression of a shared ideal of masculinity. Rather, it acquired a unique importance precisely because sincerity was the one quality associated with manliness that they all could agree on.

gentlemen?”<sup>15</sup> Wigfall’s characterization of the “difficulty” was a gross simplification, but he hit an important truth. As elite conceptions of masculinity fragmented into discordant models, the most exaggerated antitheses began to appear. Wigfall himself was the most glaring example of the profoundly different embodiments of respectable manhood that had come to proliferate in the Senate. Born into a wealthy South Carolina family, he managed to get himself ostracized in that feverish state for his blustering fanaticism – a feat that hardly seems possible, like being too eccentric for an insane asylum. Men who considered the *code duello* the cornerstone of civil society also considered Wigfall murderously vindictive.<sup>16</sup> Until the late 1850s, the idea of Wigfall as a United States Senator would have appalled virtually all Southerners. Sam Houston, who revered Andrew Jackson as his political idol, believed Wigfall was absolutely deranged. And yet a correspondent for Harper’s *Weekly*, perhaps the most influential magazine expressing Northern genteel opinion, considered Wigfall “witty and smart” and “the most charming [orator] in the Senate.”<sup>17</sup>

The confusion over competing models of masculinity was compounded by the problem of sincerity in a rapidly urbanizing society. In his influential study of the Civil War era Senate, Allan Bogue identified the importance of the word “earnest” in the political vocabulary of the period. “Once attuned to its significance, a reader is struck by the constant reiteration of this rather prim word in the discourse of the day,” he observed.<sup>18</sup> Why were Republicans so fond of proclaiming their own earnestness? Why were they so quick to question that quality in others? An indirect but compelling answer to these questions can be found in a study of American

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<sup>15</sup> *Harper’s Weekly*, March 16, 1861. The *Congressional Globe*, which is not necessarily more accurate in reporting insulting remarks, recorded Wigfall somewhat differently. “One of the complaints that we have against the North ...[is that] they will not send here at all times representatives who are either gentlemen or Christians, [laughter] who will exercise that charity and good breeding which belongs to the Christian...” *Congressional Globe*, 36<sup>th</sup> Sess. 2<sup>nd</sup> Cong. 1361.

<sup>16</sup> Alvy L. King, *Louis Wigfall: Southern Fire-Eater* (Baton Rouge, 1970).

<sup>17</sup> *Harper’s Weekly*, March 16, 1861.

<sup>18</sup> Allan G. Bogue, *The Earnest Men: Republicans of the Civil War Senate* (Ithaca, 1981), 333-334.

culture that has virtually nothing to say about politics, Karen Halttunen's *Confidence Men and Painted Women*. The unprecedented fluidity of antebellum American society, both the geographic and economic mobility of citizens in a democratic, capitalist nation spreading rapidly across a continent, created a crisis of identity and authenticity that was symbolized in the problem of hypocrisy. More than a personal vice, the outward mask of moral decency that disguised the hypocrite's true nature seemed to attack American society precisely where it was most vulnerable.<sup>19</sup>

Halttunen concisely describes the broad social and economic forces that presented this problem to middle-class Americans, the most important of which by far was the rapid urbanization of American society. Between 1820 and 1860, the nation's urban population grew at the fastest rate in American history, exploding by 797%. Seemingly overnight, the hometowns of millions of Americans went from being communities in which anonymity was impossible to communities in which it was inescapable. And the residents of these swelling cities were not culturally or psychologically equipped to adapt readily to their abruptly changing circumstances. What made the figure of the confidence man – the outwardly friendly, inwardly devious individual – so troubling was that many otherwise worldly men and women had not learned how to guard against him. They had not learned the attitude of qualified, skeptical trust that has since become a standard part of our mental equipment.<sup>20</sup> Republicans prated constantly about being in earnest because they could no longer agree, even among themselves, what that word meant; they were not as certain of the stark moral categories that defined an absolute purity of purpose.

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<sup>19</sup> Karen Halttunen, *Confidence Men and Painted Women: A study of Middle Class Culture in America, 1830—1870* (New Haven, 1982).

<sup>20</sup> For an indirect but compelling illustration of this point, see Thomas J. Balcerski's study of intimate male friendships. The intensely intimate friendships of antebellum political actors, Balcerski argues, engendered a correspondingly virulent enmity toward political antagonists, for the two sentiments are psychologically connected. Balcerski, "'A Work of Friendship,' Nathaniel Hawthorn, Franklin Pierce and the Politics of Enmity in the Civil War Era" *Journal of Social History* (Summer, 2017), 655-679.

Ironically, if understandably, the more Americans suffered from the moral contradictions and ambiguities of their culture, the less comfortable most of them became with the moral ambiguities inherent in politics.<sup>21</sup> Moral dogmatism and self-deception offered a comfortable refuge from the anguished uncertainty of men measuring themselves by an erratic and conflicting standard. Plato argued that the nature of a political regime is best observed in the souls of those living under it. A political order ultimately establishes a society's assumptions about the proper ends of life, and when it begins to break down upon its own internal contradictions, one will necessarily find the same turmoil manifested in the souls of its leading citizens. So it was among antebellum political leaders. The fraying consensus on all fronts added incalculably to the furious will to fight.<sup>22</sup>

## *II: "A Very Reckless Gaiety"*

To understand the social climate of Washington in the 1850s, Virginia Clay-Clopton, the wife of an Alabama Senator recalled, "it must be borne in mind that the period was one of general prosperity and competitive expenditure. While a life and death struggle raged between political parties, and oratorical battles of ominous import were fought daily in Senate Chamber and House, a very reckless gaiety was everywhere apparent in social circles."<sup>23</sup> The contrast

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<sup>21</sup> There is an interesting parallel suggested by Mark Summers's study of corruption in antebellum politics and Halttunen's study of hypocrisy in the same era. Americans in the 1850s perceived both vices as threats to the very foundations of their society. By the late nineteenth century, however, Americans had calmed down, regarding both corruption and hypocrisy as private vices – problems within the social order rather than threats to its very existence. Summers, *The Plundering Generation: Corruption and the Crisis of the Union, 1849-1861* (New York, 1987).

<sup>22</sup> This study focuses primarily on the North, but the South was hardly isolated from these changes. The key difference, however, is that the planter elite still maintained a coherent worldview. For all the important internal divisions within Southern society, historians can still identify a culturally distinct ruling class. Indeed, this is an important part of what made the "slavepower" seem so formidable: They were united, not only by a shared interest but a shared sense of honor.

<sup>23</sup> Virginia Clay-Clopton, *A Belle of the Fifties: Memoirs of Virginia Clay-Clopton* (Tuscaloosa, 1999), 86.

between these two emotional climates, and the way one influenced the other, deserves greater scrutiny than it has received heretofore: Charles Sumner beaten within an inch of his life on the Senate floor, prominent leaders on all sides gravely threatening the horrors of civil war, and yet surrounding it all, an atmosphere of “fashion and mirth, beauty and wit.”<sup>24</sup>

One might suppose that the social revelry was strictly divided along partisan or sectional lines, but the chumminess of elite politicians proved surprisingly resilient in both parties. Amid the bright glare of seething feuds and exploding tempers, it is easy to overlook the equally remarkable sociability that usually returned to men who had momentarily, but quite seriously, contemplated murdering one another. And even the most heated Congressional sessions had to make time for spending the people’s money, a task that inevitably reminded warring partisans of the advantages of friendliness. “With regard to a multitude of money projects involving subsidy bills and appropriation items, Democrats and Republicans worked together in the closest cooperation,” one historian has observed.<sup>25</sup>

But an equally important source of cohesion was the sense, among elites in both parties, that political differences were no excuse for bad manners. Class solidarity, to put it bluntly, meant recognizing a gentleman as a gentleman and treating him as such. Washington’s political culture sternly reinforced this sensibility; one could count on allies in a bitter partisan feud but

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<sup>24</sup> Ibid., 87. There are surprisingly few histories of Washington society in the antebellum period, though of course high politics overlaps with the subject to a certain extent. The most notable exception is Rachel A. Sheldon, *Washington Brotherhood: Politics, Social Life and the Coming of the Civil War* (Chapel Hill, 2013). Sheldon’s study offers an important correction to the view of Washington as the scene of ever-escalating partisan bitterness in the 1850s. But ultimately it is an overcorrection – an account of elite insider chumminess that ignores how that social order unraveled. In her analysis, elite social life in the capital did not change meaningfully until the Civil War abruptly but temporarily interrupted it. Other important works on Washington social life in the nineteenth century are Kathryn Jacobs, *Capital Elites: High Society in the Gilded Age* (Washington, D.C., 1995), and *King of the Lobby: The Life and Times of Sam Ward, Man about Washington in the Gilded Age* (Baltimore, 2010). Both of Jacob’s studies begin in the late antebellum period. Susan Radomsky, *The Social Life of Politics: Washington’s Official Society and the Emergence of a National Political Elite, 1800 – 1876*. University of Chicago Doctoral Dissertation (March, 2005), 260-295; and Constance McLaughlin Green, *Washington: Village and Capital, 1800–1878* (Princeton, 1962).

<sup>25</sup> Roy Nichols, *The Disruption of American Democracy* (New York, 1948), 139.

breaches of etiquette risked alienating everyone. Class solidarity among political insiders did not trump partisan ideology – that would be a gross exaggeration. Rather, it contained these quarrels within a framework established by a separate set of standards. “Though a Whig he seems a gentleman” was a characterization that proliferated in the diary of President James K. Polk.<sup>26</sup> To a man like Polk, this certainly seemed a strange and lamentable incongruity, but it could not be denied. And over the next decade, as partisan labels scrambled into chaos, the second distinction became all the more important to those who acknowledged it.

Hamilton Fish, a Whig/Republican Senator from a wealthy New York family, was one of the most significant examples of this important but generally neglected political type – “the gentleman statesman” who enjoyed considerable prestige within elite circles while remaining little known outside of them. His influence lay in being a widely respected and widely liked by other powerful people.<sup>27</sup> More than any other influential Republican, however, Fish embodied the paradox of a powerful insider who was also a political cipher. He so perfectly reflected the political culture he represented that he could not possibly influence it. Perhaps he thought for himself, but if he did he was too polite to show it. Academic historians are a slightly chauvinistic bunch when it comes to elites – only the intellectual variety can hope for respect. But Fish’s virtues were considerable, and to overlook them is to miss what made him influential. He was

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<sup>26</sup> Bernard DeVoto, *The Year of Decision: 1846* (Boston, 1943), 7.

<sup>27</sup> “The prototypical self-righteous, flag-waving, narrow-minded, patrician son of a bitch – that was Hamilton Fish,” Philip Roth has one of his narrators say in *I Married A Communist*. Of course, the narrator was talking about our Fish’s grandson. Roth, *Communist*, (New York, 1998), 10. New Between 1843 and 1994, a Hamilton Fish, father, son, grandson and great-grandson, all served in Congress for a family total of 62 years. One interesting historiographical note: Allan Nevins’s admiring biography of Hamilton Fish, which is still the standard work on the subject – indeed the only biography of Fish—was published when Hamilton Fish number three had become one of the most prominent critics of Franklin Roosevelt. Nevins dedicated his book to Cordell Hull, Roosevelt’s Secretary of State, which suggests just how much continuity existed between Hamilton Fish and his isolationist grandson. Of course, Fish’s whole tenure as Secretary of State reflected a general hatred of Great Britain and considerable sympathy with the nation whose recent history under Bismarck seemed to so closely resemble that of the United States. Nevins managed to handle that aspect of the story delicately. Nevins, *Hamilton Fish: The Inner History of the Grant Administration* (New York, 1936).

kind and funny, well-mannered and courteous, and he combined cultivated tastes with sound practical sense. Though he lacked the imagination, if not the moral courage, to defy political orthodoxy, the integrity with which he upheld his principles was unimpeachable. He was very intelligent in the narrow way that most useful people are intelligent – not in dreaming up new ideas but in applying existing ones. And he demonstrated an extraordinary capacity for labor, working constantly and competently at the organizational tasks that more interesting minds tend to avoid as onerous.<sup>28</sup>

These were the qualities that made Fish irresistible to many who did not share his politics. Though Fish deplored most antislavery agitation, he and Charles Sumner became intimate friends. Indeed, Sumner spent so much time in Fish's home that he later claimed to have reared Fish's children on his knee.<sup>29</sup> But Fish's home was also open to many Southerners. And so men who would have crossed the street to avoid Sumner in other circumstances often found themselves socializing amiably with him in a mutual friend's parlor.

One anecdote neatly captures the patrician manner in which civility was preserved within Fish's social circle, and, by extension, Washington society more generally. During the bitter debate over the Kansas-Nebraska Act, Fish and his wife, Julia, hosted a large dinner party in honor of Lord Elgin, the British Ambassador, that also brought together a number of those who were more bitterly divided than ever before over slavery. Fish himself voted with the Free Soilers throughout the session, and he considered the Kansas Nebraska Act "the most flagrant outrage which a dominant faction has ever yet ventured upon in this country." But that did not stop him from being a cordial host to Robert Toombs of Georgia, a raging proponent of the bill Fish so detested. Though guests generally reciprocated their host's civility on political questions,

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<sup>28</sup> This interpretation is based on my own study of Fish's speeches and correspondence, but it also owes a great debt to Allan Nevins's biography. Nevins, *Hamilton Fish*.

<sup>29</sup> Nevins, *Hamilton Fish*, 46.

Toombs could not help himself. “Yes, my Lord,” he declared loudly to the British Ambassador, “we are about to relume the torch of liberty upon the altar of slavery.” At that point, Julia Fish, the only woman present, “with a winning smile, and in the most silvery of accents imaginable,” one guest recalled, “said, ‘Oh, I am so glad to hear you say that again, Senator; for I told my husband you had made exactly the same expression to me yesterday, and he said you would not have talked such nonsense to anybody but a woman!’”<sup>30</sup>

The roar of laughter that greeted this remark seemed to shake even the invincible arrogance of a proslavery fire-eater like Toombs, momentarily at least. Toombs’s surely expected his grandly declared opinions to offend, but he was not prepared to be mocked as a bore by a woman whose feigned modesty merely accentuated a sense of dignity as imposing, in its own way, as the swaggering bravado of Southern chivalry. “Unconsciously,” Varina Davis, the future first lady of the Confederacy, recalled, “all tentative subjects were avoided by the well-bred of both sections; it was only when some ‘bull in a china shop’ galloped over the barriers good breeding had established, that there was anything but the kindest manner apparent.”<sup>31</sup>

There was a striking symmetry in “well-bred” Washington’s attitude toward Toombs and toward Sumner. Both were prone to unseemly tirades, at once vulgar and pompous. Hamilton Fish was appalled by Sumner’s “Crime Against Kansas” speech, and if he had not been savagely beaten for it soon afterward the speech may well have brought an end to their friendship. “How *could* a man of his cultivation have committed so egregious a blunder as this whole speech certainly is!” one of Fish’s closest friends asked. Worse insults had been heard in the Senate but

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<sup>30</sup> Laurence Oliphant, *Episodes in a Life of Adventure* (London, 1888), 46. A briefer account of the anecdote is cited in Allan Nevins, *Hamilton Fish* (New York, 1936), 45.

<sup>31</sup> Varina Davis, *Memoirs of Jefferson Davis* two vols. (New York, 1890), 1:574. Varina Davis was almost certainly thinking of Julia Fish when she wrote in the same paragraph, “I remember a general start at a dinner party, when Mrs. F. a very well-bred, refined, excellent woman, said, ‘An abolitionist friend of ours.’ Those of us – at least half the company – who were from the South felt the neutrality of the feast had not been preserved.”

only in the heat of a violent debate – gentlemen are expected to lose their tempers. But the personal insults in Sumner’s “vulgar tirade” were clearly premeditated, and that made all the difference. “[I]t was wholly unworthy of a scholar, a gentleman, or a Senator.”<sup>32</sup>

Laments like this were increasingly common in Fish’s voluminous correspondence in the later 1850s. Significantly, however, until the very end of the decade, most letters deploring these affronts to good breeding and decorum treated them as exceptions to the rule of polite civility that still held among elites at Washington. Fish left the Senate after 1856, but only in 1859 and 1860 did his former colleagues complain that the capital had ceased to be any fun. “[O]ur associations [in the Senate] are by no means as pleasant as they have been,” Senator James Pearce of Maryland wrote in July 1860. “We seem to be more and more classed by sections and involved in controversies which forbid us to hope for cordial relations between the different parts of the country...”<sup>33</sup> Note well the date of that lament. Every significant landmark on the road to civil war had passed except Lincoln’s election and the first shot, yet Pearce, a Senator and Congressman of more than 20 years, has only just noticed that cordial relations “seem” to be fraying between the leaders of the different sections. “In the winter of ’59 and ’60,” Virginia Clay-Clopton recalled, in a magnificent understatement, “it became obvious to everyone that gaiety at the capital was waning.”<sup>34</sup>

Significantly, as the sectional bitterness waxed at Washington, antislavery enthusiasm waned in the North as a whole. The rupture of the Democratic party over the Lecompton Constitution, and the resulting failure of proslavery ambitions for Kansas, allowed many Northerners to breathe a sigh of relief. For most committed antislavery Republicans, of course, the danger remained as serious as ever, but the party itself successfully broadened its appeal into

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<sup>32</sup> D.D. Barnard to Hamilton Fish, May 28, 1856. Fish Papers. Library of Congress.

<sup>33</sup> James Pearce to Fish, July 31, 1860. Fish Papers. Library of Congress.

<sup>34</sup> Clay-Clopton, *Belle*, 138.

one capable of mobilizing more than antislavery voters, inevitably softening the moral fervor that characterized the party at its formation in the process. As the proslavery menace receded among moderate Northerners, however, most white Southern Unionists felt their loyalty shaken, and their worst suspicions confirmed, by John Brown's raid on Harper's Ferry.

The collapse of civility at Washington reflected this broader shift in the political desperation felt in both sections. So long as Southerners had dominated Washington politically and socially, most of them had been willing to differ good-naturedly over slavery, and most Northerners, including Republicans, were willing to reciprocate these social courtesies, however much they resented the outrages imposed upon them politically. "I fear I have not been either so polite or so generous to you as on a similar occasion you were to me," James Henry Hammond wrote to Seward in April of 1858, before professing himself eager to have his new friend and colleague over for dinner.<sup>35</sup> One wonders if either man ever noted the irony, as they exchanged pleasantries, that each was the most notorious political villain in the other's section. But after 1858, as the Republican party's ascendancy became unmistakable, Southerners confronted their imminent loss of power and prestige at the capital. And they were unwilling or unable to face this eventuality calmly or politely. "Mr. Seward appeared in the Senate yesterday, and not a man from the Democracy save Douglas only came to greet him," William Pitt Fessenden wrote to Fish as Congress convened in the aftermath of John Brown's raid. "Damn their impudence. I wish they would try it on me."<sup>36</sup> Gaiety was indeed fading at the capital.

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A fitting climax to the reign of civility at Washington, the last and most memorable social event that brought warring political elites together, was also a garish display of the sudden

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<sup>35</sup> James Henry Hammond to William Henry Seward, April 30, 1858. Seward Papers, University of Rochester.

<sup>36</sup> William Pitt Fessenden to Hamilton Fish, January 10, 1860. Fish Papers, Library of Congress.

splendor that helped drive them apart. This was the costume ball hosted by Mary Gwin, wife of the Senator from California, in the spring of 1858, during the same session in which Seward declared the battle for freedom won and Hammond proclaimed cotton King.<sup>37</sup> Nearly half a century later, Virginia Clay-Clopton devoted a full chapter to “Mrs. Gwin’s fancy ball,” which, she explained, eclipsed “every gathering of the kind that had ever been given at Washington... [and] has remained one of the most brilliant episodes in the annals of the ante-bellum days in the capital.”<sup>38</sup>

Mary Gwin decided to throw the season’s most extravagant party before making up her mind about what kind of party it was to be. Some of her friends favored a masquerade ball, then a novel affair in American culture, but that risked going too far. When the New York Academy of Music announced plans to hold a masquerade ball that same spring, public outrage and even threats from the state legislature forced an abrupt cancelation. *Harper’s Weekly* warned that such an event risked causing “a moral earthquake.” Interestingly, *Harper’s* observed that no entry price could be high enough to keep out the city’s prize-fighters, gamblers, and prostitutes. “All of that class whom it is ruin to meet would infallibly collect in great force at a public masked ball given in this city.”<sup>39</sup> Costumes, then, were more than enough to make the Gwin’s party a sensation. And Senator Gwin, deferring just a little to old fashioned notions, also insisted that he and his colleagues would appear in the modest garb of republican statesmen. For everyone else, however a costume was mandatory. “The fact that almost everyone was more or less disguised, added to the brilliancy of the scene and to the general enjoyment,” the *New York Times* observed.<sup>40</sup>

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<sup>37</sup> See above, pp. 75-80.

<sup>38</sup> Clay-Clopton, *Belle*, 137.

<sup>39</sup> *Harper’s Weekly*, April 24, 1858.

<sup>40</sup> *New York Times*, April, 12, 1858.

Those who have money usually find ways to distinguish themselves from those who do not, but the prosperity of the 1850s, combined with the financial depression of 1857, gave this ageless contest a sharper edge than it ever had before in America. “People are mad with vanity and rivalry,” Virginia Clay marveled in a letter home to her family in March of 1858.<sup>41</sup> Gwin was rumored to have spent \$12,000 on his great party, part of \$75,000 he expended annually. And at least two other Southern planters in Buchanan’s Cabinet were said to be keeping up with him.<sup>42</sup> Relative to the cost of goods and services, \$75,000 was equivalent to about \$2 million today, but that hardly captures its full value. In terms of economic status, as a share of per-capita GDP, Gwin was spending the equivalent of \$26.6 million in today’s dollars. The difference between these two wealth measures is an important point in itself. As Americans developed an industrial economy of ever greater abundance, the meaning of money changed far more rapidly than the purchasing power of the dollar. For the first time in history, a wealthy class of Americans, as opposed to a few exceptional individuals, were able to spend as extravagantly as their counterparts in Europe. Never before had the nation’s leaders spent so lavishly; never before had private wealth and public power seemed so closely or ominously synonymous. To the majority of Americans still living in rural communities, the Senator’s annual salary of \$3,000 surely seemed adequate and perhaps even excessive. It did not seem so to those who relied on that salary in the Capital itself.

Senator Gwin excused his colleagues from buying an expensive costume, but their wives were not so lucky. Wealthy women went to New York to shop for gowns reminiscent of those worn at the courts of the *Ancien Regime*. But ladies of lesser means had to be more inventive.

The New York *Herald* reported a few weeks before the party that the clerks of the Congressional

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<sup>41</sup> At the risk of confusing readers, I have referred to Virginia Clay by her name at the time when referring to what she wrote or did then and to her name after a subsequent marriage when referring to her memoirs.

<sup>42</sup> Clay-Clopton, *A Belle of the Fifties*, 86

Library were besieged by women seeking ornaments for costumes at once eye-catching and cheap. Intentionally or not, Virginia Clay seemed to play upon these anxieties by attending the ball as a popular fictional character, “Aunt Ruth Partington,” A plain, provincial Yankee woman, Aunt Ruth’s strongly expressed opinions contained sound wisdom amusingly mixed with bad grammar. And so as Varina Davis impressed guests with her fluent French and biting wit as Madame de Stael, her friend Virginia Clay earned hearty laughs with one malapropism after another and even delighted Seward with her remarks on the “slave oligawky.” Guests inclined to read into this performance a message about who belonged at the ever-more opulent court of the American Republic had no trouble doing so.

The party stretched from dusk to dawn and was such a great success that one guest was even inspired to write a lengthy poem about it: “No carking cares of State can enter here, to damp the spirits or repress the cheer/ No Slavery, but to Beauty, here is seen/ Nor Abolition, save of Discord’s mein.”<sup>43</sup> The *New York Times*, observing that the Gwins’ anticipated ball had been more frequently discussed than the Lecompton Constitution, believed “the joys of realization have eclipsed the delights of anticipation – and those who were fortunate enough to be present will long treasure in their hearts this matchless festival.” In a somewhat curious compliment, the *Times* also declared that it was the most memorable costume ball since King Gustav of Sweden, defender of the *Ancien Regime*, was assassinated at a masquerade ball during the French Revolution.<sup>44</sup> Not everyone was impressed however. James Doolittle, a Republican Senator from Wisconsin serving his first Congressional term, was at once overwhelmed and appalled. “There was a great crowd,” he wrote home to his wife.

so many and of course so close together that you could not see much of the dresses  
except the upper part of the person and to tell the truth I could have wished to see a little

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<sup>43</sup> John von Sonntag de Haiviland, A metrical description of a fancy ball given at Washington (Washington, 1858).

<sup>44</sup> *New York Times*, April 13, 1858.

more in some places if not any less in others. Mrs. Gwin was dressed in the costume of the time of Louis 14<sup>th</sup>. It was pink satin with a kind of tuck up at the sides...Her hair was powdered white and over all was a wig of curly powdered hair and a kind of Crown wreath. On the breast in front there was – just nothing at all above the nipples...There was some dancing, splendid music, lights all brilliant...The whole thing last evening was an affectation, unnatural, unreal, unsatisfactorily theatrical – a splendid show.

But for those enraptured by the fashionable life of French vanity, Doolittle conceded, the party was “a splendid success.”<sup>45</sup>

Doolittle, who proudly noted that the Senate “is Esteemed the highest and most honorable political station upon Earth,” was surely troubled by the unapproachable extravagance with which some of his colleagues advertised their own importance.<sup>46</sup> Soon after attending Gwin’s \$12,000 party, Doolittle was dismayed to learn that his wife had contracted to build a new house in Wisconsin. Though, at \$2,800, the cost was less than a third of what his colleague spent on a single party, it was enough to throw Doolittle back into debt, a prospect from which he recoiled in horror. “You know I was rejoiced in the hope of being free from every debt this summer and of feeling myself a free and independent man,” he wrote his wife.<sup>47</sup> Having struggled with debts throughout their life together, he now felt like a prisoner who had somehow escaped his cell only to be immediately recaptured. With their oldest son finishing his first year at Harvard, the expenses were not likely to diminish any time soon. A letter from a New York banker received around the same time informed Doolittle that he had been denied a \$2,000 loan.<sup>48</sup>

In these trying circumstances, Doolittle found himself enthralled by John Cumming’s *Apocalyptic Sketches*. Connecting the prophecies in the book of Revelation to events in the recent past, beginning with the French Revolution and ending, most recently, with the cholera

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<sup>45</sup> James Doolittle to Mary Doolittle, April 19, 1858. James Doolittle Papers. Wisconsin Historical Society. Madison. Wisconsin.

<sup>46</sup> Doolittle to Mary, May 6, 1858.

<sup>47</sup> Doolittle to Mary, May 16, 1858.

<sup>48</sup> A.C Flagg to Doolittle, May 15, 1858.

epidemic, which was thought to be caused by the literal corruption of the air, Cumming predicted that the Apocalypse was imminent.<sup>49</sup> Doolittle found Cumming's historical parallels convincing enough to strengthen his already formidable faith in the Bible's prophecies. And the slightly French style of Washington social life likely strengthened his affinity for Cumming's strident anti-Catholicism. Commenting on Gwin's ball, the *New York Times* observed that if readers of the more partisan journals North and South could "have seen their Senatorial idols indulging in the most familiar and friendly conversation, they would have thought the millennium really arrived. Guelphs and Ghibellines – radicals and fire-eaters – fraternized cozily."<sup>50</sup> But some Senators shared the outlook of their constituents. At his post in the Senate, Doolittle reflected after reading Cumming's lectures on the End of Times, "I desire humbly if I know my own heart to follow after God, to be a co-worker with Him in bringing out this grand plan."<sup>51</sup> He did not intend to be a political trimmer on Judgment Day.

The same could not be said Senator William McKindree Gwin, whose extravagant costume ball so appalled Doolittle. The son of a frontier Methodist parson, who was also, more significantly, a neighbor of Andrew Jackson and a veteran of the Battle of New Orleans, Gwin was one of many early Americans whose modest origins belied a future fortune inherited at birth. After his father's friend became President of the United States, Gwin, though still in his twenties, was launched on his career as a well-connected political hustler. His first lucrative place at the federal trough was the U.S. marshalship of Southern Mississippi, an office valued at \$75,000 a year, the most lucrative in the state. Powerful local politicians bitterly contested the appointment of a Tennessee outsider to such important office, however, and the ensuing struggle cost Gwin the life of his brother (in a duel) and, more significantly, made him eager to spread Federal

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<sup>49</sup> John Cumming, *Apocalyptic Sketches, or Lectures on the Book of Revelation*. (London, 1848).

<sup>50</sup> *New York Times*, April 13, 1858.

<sup>51</sup> Doolittle to Mary, May 6, 1858. Doolittle Papers.

patronage and power westward, where there was no limit to how much a man like him might profit from it.

Soon after the United States acquired California from Mexico, Gwin told his friend Stephen Douglas that he planned to help organize the booming territory's government, correctly predicting that he would return within a year as the Golden State's first Senator. Gwin's political opportunism served him well in California. Though he credited John Calhoun for inspiring him to go to California in the first place – characteristically, Gwin managed to ingratiate himself with Jackson and Calhoun without offending either – he proved remarkably flexible when it came to slavery. Southerners dominated California's politics, and Gwin, who meant to keep it that way, understood that an aggressive position on slavery would supply a potent weapon against “the Chivalry,” as his political organization came to be known. And so, as a delegate to the state's Constitutional Convention, Gwin shocked everyone by supporting a ban on slavery, never mind that, as Calhoun told him with dismay upon his return to Washington, California represented the slavepower's last real hope for maintaining its control over the Union. For Calhoun, Gwin had acquiesced in what was, effectively, the deathblow to slavery in the Union, though less perceptive minds took longer to see it.

Gwin had profited mightily through his political connections in the Jacksonian era, but after the Mexican-American War, it was as though a dam had burst at the Treasury, and those who specialized at siphoning funds from the Federal stream suddenly found themselves awash in a flood. Although political patronage was the crucial organizing instrument within the two party system, Washington insiders, in these heady times, quickly learned to appreciate the mutual interests that set them apart from their quarrelling constituencies, turning many party labels into a confusing sham.

In the mid-1840s, for example, Gwin acted as agent on a Chickasaw Indian claim of \$112,000, charging half the prospective award for his services. Secretary of War William Marcy, a New York Democrat who actually coined the phrase “to the victor belong the spoils,” peremptorily refused Gwin’s claim, telling his fellow Democrat that he’d rot in his grave before approving it. There the matter might have ended. When the Whig party came into power with the election of Zachary Taylor, it went without saying that Gwin would lose his lucrative post as commissioner of the New Orleans customhouse, but the Whigs had mighty claims of their own to make on the Treasury. And it only made sense that, if all shared the wealth, no party could be implicated too greatly in the scandal. So Gwin got his \$56,000 and the Chickasaws perhaps received some small fraction of the rest.<sup>52</sup>

Political scientists now distinguish between the spoils of party politics, as understood by Marcy, and the more insidious form of corruption practiced by Gwin. Political patronage, the practice of rewarding one’s supporters, is a crucial instrument for creating genuinely democratic institutions. It not only supplies politicians the direct economic incentives with which to mobilize voters but also instills the habit of democratic accountability, since leaders must continue to look after their supporters if they wish to remain in power. Antebellum Americans, however, failed to make a clear intellectual distinction between this necessary element in their political system and the far more insidious practice of raiding the Treasury to enrich well-connected insiders. The antebellum definition of corruption was both simple and entirely subjective. Corruption meant placing one’s personal interests ahead of his public obligations, a definition that in almost all cases indicted one’s enemies while absolving one’s friends. As a result, the constant antebellum attacks on corruption were inevitably too broad, unable to distinguish the abuses that threatened the

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<sup>52</sup> Mark Summers, *The Plundering Generation*, 157; Arthur Quinn, *The Rivals* (New York, 1994), 1- 20; Cohen, *Business and Politics*, 18-122.

legitimacy of the political system from the indulgence that made it work. Max Weber labeled the undemocratic form of corruption prebendalism, as it involves feudal assertions of public power as a private right interacting with the institutions of a bureaucratic state. Given Weber's definition, it is striking to note how Southern elites, who railed against the petty corruption of Democratic spoils, could engage in prebendalism without the slightest sense of wrongdoing.<sup>53</sup>

One astonishing example of the different forms of political corruption, and their perception North and South, happened to involve Senator James Doolittle. During the same week in which Doolittle learned that his wife had contracted to build a new home, as he wrote several agonized letters about going back into debt, he had a heated debate over an appropriation bill with Robert Toombs of Georgia, who, with maliciously good timing, had threatened to block a related provision allowing newly elected Senators like Doolittle to collect mileage compensation for the emergency session called the previous spring. Clearly, Doolittle needed that money. To be pressed in such a personal way, on such a vulnerable point, was surely more infuriating than Doolittle could say.<sup>54</sup> Even worse, he could not acknowledge the attack without revealing himself to be what Toombs and his ilk snobbishly despised – a Senator dependent on his salary. But surely the most infuriating aspect of Toombs's manner was his sincere obliviousness to his own hypocrisy.

The skirmish between the two Senators began when Doolittle sponsored an appropriation in a deficiency bill to pay the Senate reporters for the previous session as the same bill had done for the House reporters. This provoked a long harangue by Toombs about fleecing the taxpayers

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<sup>53</sup> On the functional differences between clientelism and prebendalism see Francis Fukuyama, *Political Order and Political Decay* (New York, 2014), esp. 91.

<sup>54</sup> *Congressional Globe*, 35<sup>th</sup> Congress, 1<sup>st</sup> Session Appendix. 351-361. Oddly enough, the debate between Toombs and Doolittle was on the salaries of reporters for the *Globe* and one of Toombs's complaints was that the reporters were often inaccurate, a point illustrated by the fact that his threats to Doolittle were not reported, though Doolittle described them to his wife.

and an insinuation that Doolittle was acting as an interested party on the reporters' behalf. Irritated at being scolded by Toombs "on the score of profligacy," Doolittle suggested that it "may be well for him not to push that matter too far."

"I defy all scrutiny," Toombs replied.

"Has the honorable Senator ever heard of Galphinism?" Doolittle asked. When Toombs answered menacingly that he had, Doolittle proceeded carefully. He said nothing about the notorious extravagance of the claim itself, except to suggest that in supporting it, Toombs seemed to have taken "different ground from what he does now." In fact, the Galphin claim was one of the most egregious public plunders of the antebellum era, and Toombs had been its foremost political advocate. George Galphin's claim of \$44,000 rested on a debt the British government refused to pay after Galphin joined the patriot cause during the Revolutionary War, 75 years before his claim was paid in full by the United States Treasury in 1850. For most of its history, Galphin's claim had been pressed on the State of Georgia, which declined to pay it. Only much later did anyone think to press it on the United States. After the claim passed Congress, however, the Secretary of the Treasury, again under Toombs's prodding, awarded an additional \$190,000 as interest on the claim deferred for so many years. The chief agent on the claim was Toombs's good friend, and the Secretary of War, George Crawford of Georgia, who received half of this enormous bounty for his services. The Secretary of Treasury later claimed to be unaware that his fellow cabinet member was in any way interested in the matter.

After Doolittle alluded to this story, Toombs declared himself unequivocally proud of his role in finally rendering justice to a long-dead American patriot. "The denouncers of it were all miserable slanderers and cowards," he insisted. And he virtually dared Doolittle to say otherwise. "I undertake to say that he who assails the justice of it or the motives of my friend, then

Secretary of War, cannot maintain as a gentleman what he will say as a Senator.” That last line was the polite Southern way of threatening murder. And, just to be sure, he repeated the threat at the close of his remarks.<sup>55</sup>

Like many spirited men trounced by a bully, Doolittle decided that he had really delivered the best licks. “It was more the manner and tone and looks which I exhibited,” he explained to his wife in sending her a copy of the *Congressional Globe*. “The Lion was roused in me, and the clear, deep tones of his roar made Toombs turn pale...”<sup>56</sup> But Toombs was not simply bluffing in declaring himself proud of his work on behalf of the Galphin claim while sneering at the self-interestedness of a Senator like Doolittle. “The present Congress furnishes the worst specimens of legislators I have ever seen here, especially from the North on both sides,” Toombs wrote privately in the same year that the Galphin claim was paid. “With a large number of them their position is chiefly valued for the facilities it gives them for a successful foray upon the national treasury.”<sup>57</sup> Such a profound lack of self-awareness was often the active ingredient in what nineteenth century Americans celebrated as manliness. And those who confronted such an adamant personality were likely to experience their honest self-doubts as effeminate weakness.

“My honor and my truth is worth more to me than heaps of gold,” Doolittle informed his wife, but he felt as acutely as anyone the pressures of political life in the 1850s, as public honesty collapsed and the heaps of gold piled up. The absence of clear rules made it difficult to separate the complicit from the truly guilty, leaving everyone appalled and no one innocent. Mark Summers’s lively, deeply researched monograph on the rampant political corruption of 1850s

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<sup>55</sup> *Congressional Globe*, 35<sup>th</sup> Congress, 1<sup>st</sup> Session, Appendix. 351-361.

<sup>56</sup> Doolittle to Mary, May 19, 1858.

<sup>57</sup> Ulrich Bonnell Phillips, ed. *The Correspondence of Robert Toombs, Alexander Stephens and Howell Cobb* (Washington, 1913), 2:188.

has demonstrated how the perceived collapse of public integrity fueled the general sense of crisis that culminated in the Civil War. Significantly, Summers, who has also written on political corruption in the Gilded Age, presents a narrative that compliments the transformation of middle class culture over the problem of hypocrisy described by Karen Halttunen. In both cases, public hysteria hardened into cynicism. A profound threat to the old order gradually became the vices of the new.<sup>58</sup>

### III: “*The Most Lawless Place in the World*”

“During the past five years Washington has made amazing strides toward permanent grandeur,” *Harper’s Monthly* observed in 1859. The capital was finally keeping pace with the nation as a whole, where progress was measured in months, not centuries, and the sudden improvements at Washington were but “faint symbols of... that mighty providential fiat which, from the chaos of a continent overbrooded by the still darkness of barbarism has in two short centuries called forth villages, town, cities, states – a whole nation – full of restless enterprise and led continually forward by the promptings of some yet unrecognized purpose.”<sup>59</sup> The cornerstone of a new Federal Capitol building was laid on July 4, 1851, part of an ambitious construction project that transformed Washington architecture into the style that has characterized the city ever since. The original capitol dome, built out of wood and brick and rising 144 feet, was demolished, and in 1855 construction began on the 288 foot cast-iron dome that took its place. Like the nation itself, however, Washington seemed to be moving in two directions at once, making the city of “magnificent intentions” the city of startling contrasts.

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<sup>58</sup> Mark Summers, *The Plundering Generation* (Oxford, 1987); and *The Era of Good Stealings* (Oxford, 1993).

<sup>59</sup> *Harper’s New Monthly Magazine*, “Washington in 1859,” (December, 1859), 1.

“Washington advances rapidly and will soon be a most desirable diplomatic station for the European *attaches*,” the New York *Herald* cheerfully boasted in the spring of 1858.<sup>60</sup> “Washington,” the same paper observed less than a month later in reporting the murder of a messenger for the Treasury Department, “has become the most lawless place in the world.”<sup>61</sup> Washington’s actual atmosphere was well captured by Charles Mackay, a British traveler in 1858. “All is inchoate, straggling, confused, heterogeneous and incomplete. In the same street are to be found a splendid marble edifice of a magnitude such as would make it the ornament of any capital in the world; while opposite and on each side of it are low brick houses, crazy wooden sheds, and filthy pigsties.”<sup>62</sup> These contrasts were built into the very texture of the buildings that housed the federal government, as the local yellow sandstone that composed the original public edifices was replaced, haphazardly and incongruously, with extensions made of New England marble. “[I]t is a matter of great importance that the sandstone in the old walls be replaced as soon as possible...[and] the really grand design may not be marred by a want of uniformity in the materials,” *Harper’s Monthly* noted.<sup>63</sup> Jefferson Davis, perhaps only partially aware of the symbolic power of architecture, was among the foremost champions of the project in the Senate.

The changing norms surrounding three ancient vices, drunkenness, illicit sex and gambling, provide a dramatic example of the diverging responses to the pressures that formed a more delicately controlled personality structure among antebellum Americans. In every case, a similar pattern emerged as widely shared norms — the tacit compromises and restraints of small towns and villages — fragmented along class and region lines. Within a given region, upstate

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<sup>60</sup> New York *Herald*, March 09, 1858.

<sup>61</sup> New York *Herald*, April 5, 1858.

<sup>62</sup> Charles Mackay, *Life and Liberty in America* two vols (London, 1859), 123.

<sup>63</sup> *Harper’s Monthly*, December 1859.

New York, for example, or New England, the increasingly strict moral restraints associated with an emerging middle class clearly predominated. Working class and immigrant communities might reject these values, but they could not assert a rival alternative. But in Washington D.C., the ideological battles recorded in the *Congressional Globe* were even more viscerally present within the warring cultures that met at the capital, in the stark differences that became ever more prominent in the moral and material texture of the city itself.

Of all the social evils reformers combated in the nineteenth century, drunkenness was perhaps the only one that unambiguously diminished before Americans began to denounce it as grave menace. Alcohol consumption peaked in the 1830s, two decades before the first major prohibition movement in American history got underway. As Neal Dow, renowned as the “Napoleon of Temperance” recalled, nearly everyone drank excessively in the Early Republic and visible drunkenness was no cause for scandal even among the nation’s most eminent statesmen – a point demonstrated by Daniel Webster of New England at least as often as by Henry Clay of the West. Immigration was one important cause for changing sensibilities; familiar vices are always more appalling in unfamiliar peoples. But the most important impetus was the changing class and social structure brought by urbanization and industrialization. The organic modes of social control that prevailed in small villages could not restrain young men and women enjoying the anonymity of crowded cities, and paternalistic forms of labor discipline among artisan manufacturers and voluntaristic charities of religious institutions proved woefully inadequate at meeting the challenges posed by a large working class.

But however contested social norms surrounding alcohol may have seemed in individual cities, they were nothing compared to the chaos that reigned at the nation’s capital. Was it necessary or desirable to serve alcoholic drinks at fashionable parties? William Henry Seward

thought so; his wife emphatically disagreed. In this, as in almost every other respect, the conflict between Frances Seward and her husband represented a broader division between the moral rectitude of upstate New York and the fashionable debauchery of Washington society. These quarrels led Frances to spend less and less time with her husband in the nation's capital. "Father was confined to his bed and room all day yesterday," Seward's daughter wrote while serving as his hostess. "The dinners and parties do not agree with him." In fact, they agreed with him only too well.<sup>64</sup>

But Seward was a veritable teetotaler next to Stephen Douglas, whose tremendous political energy, influence and skill were all the more astonishing in light of the fact that he was literally drinking himself to death during the most important phase of his career. And at least Douglas could hold his liquor. Many young Congressmen, away from their families and crowded into boarding houses with their colleagues, were beset by temptations unlike any they ever encountered before. During the bitter fight over the Lecompton Constitution, one of the gravest controversies in the history of the Republic, several Congressmen were dragged bodily into the chamber – too drunk to walk on their own but just sober enough to bark a monosyllable vote. Alexander Stephens, who managed President Buchanan's party in the House during the session, wrote bitterly that the hardest part of his job was preventing allies from wandering off and getting lost in a drunken fog before a critical vote. During one late night session a massive brawl involving about 30 members erupted in which alcohol was doubtless a principal agitator. One can imagine how such spectacles appeared to members who considered even mild intoxication to be a sign of gross moral weakness and alcohol consumption a criminal act.<sup>65</sup>

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<sup>64</sup>Frances (Fannie) Seward, Jr., *Diary* January 29, 1859. William Henry Seward Papers. Rochester University.

<sup>65</sup>Roy Nichols, *The Disruption of American Democracy*, 166.

The appalling behavior of many politicians in Congress, however, was but a pale reflection of the sinful excesses some of them indulged beyond the view of the press gallery. Though still a relatively small city of only 60,000 residents, Washington D.C. was a significant hub of one the nineteenth century's booming industries – commercialized vice. Gambling resorts, or “gambling hells” as they were often referred to, “have increased fearfully at Washington within the last ten years,” the New York *Herald* reported in 1858, “and it is notorious that they have done more to demoralize legislation than all the other debasing and corrupting influences which have been brought to bear upon weak, venal, or needy members of Congress.” Gambling was not the only illicit passion that attracted swarms of skilled professionals to the nation's capital. And the most notorious vice plied in these so-called “hells” could only be described with the most delicate euphemisms. “All gamblers are libertines,” Horace Greeley declared in the New York *Tribune*. It was assumed that anyone who won money at these establishments would automatically exchange it for liquor and women. Simple brothels were available for those seeking sex devoid of companionship. But a far more disturbing element in the city, precisely because it was far more tempting, was the “female delegation” as the Chicago *Times* described them – stylish, charming women whose methods of influencing unwary Congressmen blurred the line between the genteel fashions of the drawing room and the unabashed lechery of the brothel.<sup>66</sup> Some of these “lady lobbyists” were the widows or daughters of once important men, forced to sell respectable company to men who craved it. Others, deprived of respectability by scandal, skillfully enticed men with the opposite reputation. And still others, perhaps most, occupied an ambiguous place in-between.

The most famous gambling house in the antebellum period was run by Edward Pendleton. Renowned as the “The Hall of the Bleeding Heart,” though Pendleton preferred to

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<sup>66</sup> See the New York *Herald*, January 18, 1858.

call it “the Palace of Fortune,” his establishment sat conspicuously on Pennsylvania Avenue just two blocks from the Capitol. Himself the son of a prominent Virginia family, Pendleton married Jacqueline Smith Mills, daughter of Robert Mills, the architect who designed the Treasury Building that Pendleton so adeptly helped plunder. Officially, Pendleton was a pariah, a disgrace to his illustrious name; unofficially, he was one of the most influential men in the country. According to Benjamin Perley Poore, a journalist in Washington, the gravitational pull of Pendleton’s was one of the last forces left in the capital capable of bringing Democrats and Republicans together socially. His wife rolled through Washington in the most lavish carriage the city had ever seen. She “looked a very queen,” the *New York Times* noted, “being quite undisturbed by any thought that her presence sent a dagger through scores of hearts, whose patrimony unlawfully obtained, had contributed to her enjoyment in the same proportion that its loss had added to the woes and wretchedness of the beholder.”<sup>67</sup> But Pendleton did not become a Washington institution purely by sending daggers through people’s hearts. Those seeking to endow a college or build a church could expect to find no more generous benefactor than Pendleton. And powerful men who lost a fortune at Pendleton’s could confidently expect to have their debts patiently laid aside, if not quite forgotten.

Only after his death, in the fall of 1858, was Pendleton’s influence over Congress openly discussed in the press, though without implicating anyone still living. “[E]ven the imperfect disclosures which have reached me accidentally exhibit a state of morals in Congress which would astonish the country if exposed.”<sup>68</sup> It was hardly news that lobbyists were manipulating appropriations legislation for personal gain. But even cynical observers of Washington were

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<sup>67</sup> *New York Times*, November 5, 1858; *Chicago Press and Tribune*, November 23, 1858. *New York Herald*, November 5, 1858; Herbert Ashbury, *Sucker’s Progress: An Informal History of Gambling in America* (New York 1938), 141—146; Benjamin Perley Poore, *Sixty Years in the National Metropolis* two vols. (New York, 1887), 2:48-49.

<sup>68</sup> Reprinted in the *New York Herald*, November 15, 1858.

mortified by rumors that, during the Lecompton Constitution fight, “the scale would be turned by a turn of the screw upon particular members who were known to be in the power of the gamblers,” as a correspondent for the *Philadelphia American* reported.<sup>69</sup> Even men who would not sell their principles for a fortune might feel compelled to do so to avoid disgrace and ruin. And there were many in Washington who specialized in putting unwary Congressmen in precisely that position.

The timing of Pendleton’s death, following the financial panic of 1857, added to the moral anxieties expressed in his less-than admiring obituaries. As Anne Fabian has argued, the ideological distinction between illicit gambling and legitimate financial speculation emerged only gradually during the nineteenth century, and Horace Greeley and many prominent reformers continued to insist that there was no difference at all.<sup>70</sup> For middle class moralists, gambling was one of the most conspicuous cultural links that connected the slave oligarchy in the South with the emerging financial oligarchy in the North. Chivalrous slaveholders loved to prate about the money-mad civilization of the North, and such criticisms hit an especially raw nerve, especially after the widespread bankruptcies that followed the Panic of 1857. But the most glaring symbol of financial avarice had a distinctly Southern flavor even as they proliferated in Northern cities. On Wall Street, the connection between finance and commerce was occasionally spurious, but gamblers disdained even the compliment of hypocrisy that vice gives to virtue. Gambling is the vice of aristocracies – of a leisure class that celebrates the possession of wealth unconnected with labor.

Moral and status anxieties are inherently related, and the commercialized vices that emerged in the mid-nineteenth century represented more than mere bad behavior. Diverging

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<sup>69</sup> Ibid.

<sup>70</sup> Ann Fabian, *Card Sharks, Dream Books and Bucket Shops: Gambling in Nineteenth Century America* (Ithaca, 1990).

attitudes toward these vices were perhaps the most dramatic example of the failure of prevailing social norms to adjust to the staggering changes in the material and economic realities of American life. Tensions that calloused into hypocritical accommodations in the later nineteenth century – for which Victorian Americans became infamous – were initially a source of profound torment. Sexual mores became much more stringent as sexual licentiousness became much more conspicuous. Especially in major cities, prostitution in the mid-nineteenth century attained a greater visibility than ever before or since. In the 1840s, the same cheap printing technologies that allowed for daily newspapers in cities like New York also led to the proliferation of “sporting male” periodicals that described and celebrated a libertine subculture.<sup>71</sup> Respectability became more difficult, and those who were naturally vulnerable to sexual temptations could no longer hope to avoid them. “If your sex would guard the outworks of *thought*, you would never fall – and when so dizzying so astounding are the advantages which Satan takes it scarce is implying a doubt to say ‘be cautious,’” Harriet Beecher Stowe wrote in response to a remarkably candid letter from her husband, Calvin, in 1845.<sup>72</sup>

Antebellum Americans had a remarkably democratic attitude toward sexual disgrace – it found not only the innately bad or ill-bred but, potentially, anyone. Stowe’s warnings were prompted by a letter from her husband, in which he wrote with dismay and honest foreboding about a spate of scandals that had recently disgraced several ministers, including one who “committed adultery with a member of his own church; and lately he has cut his throat and killed himself in the agony of his shame, while pastor of one of the most respectable churches of

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<sup>71</sup> Recent scholarship has brought this subculture brilliantly to light. See Timothy Gilfoyle, *City of Eros: New York City, Prostitution, and the Commercialization of Sex* (New York, 1992); Gilfoyle, Patricia Cline Cohen and Helen Lefkowitz Horowitz, *The Flash Press: Sporting Male Weeklies in 1840’s New York* (Chicago, 2008); and Donna Dennis, *Licentious Gotham: Erotic Publishing and Its Prosecution in Nineteenth Century New York* (Cambridge, Mass., 2009).

<sup>72</sup> Cited in Edmund Wilson, *Patriotic Gore* (New York, 1962), 22.

Exeter.” For obvious psychological reasons, most human beings do not sincerely believe an act is a heinous, unforgivable crime when they can simultaneously imagine themselves committing it. And yet Calvin Stowe, who had been away from home for several months raising money for his ministry, wrote candidly of his desperate need for his wife’s moral and physical companionship, acknowledging the crisis that might come from his own “indescribable admiration and most overflowing delight in handsome young ladies...” Significantly, Calvin’s letter also prompted his wife to express grave fears about her charismatic brother, Henry Ward Beecher. “Henry came from Crawford uncommonly depressed and sober and spoke in church meeting of unexpected falls among high places in the church and the need for prayer for Christians. He seemed so depressed that a horrible presentiment crept over me,” she wrote. The later scandals that found Henry Ward Beecher, and the way he bluffed his way through instead of cutting his own throat “in the agony of his shame,” encapsulates how earnest desperation gradually relaxed into polite hypocrisy in some men’s unwinnable struggle with the demands of Victorian morals.<sup>73</sup>

As Adam Smith, who himself witnessed the dizzying social transformation of a rural society by capitalism, noted, in a country village good conduct is enforced by the close supervision of one’s neighbors. “But as soon as [the villager] comes into a great city he is sunk in obscurity and darkness. His conduct is observed and attended to by nobody; and he is therefore very likely to neglect it himself, and to abandon himself to every low profligacy and vice.” For many Congressmen and Senators used to the quiet life of Buncombe county, crowded into uncomfortable boarding houses, and separated from their wives, the novel temptations of the capital were surely hard to resist. “The parlors of some of these dames were exquisitely furnished with works of art and bric-a-brac, donated by admirers,” Benjamin Perley Poore recalled of the female lobbyists of the antebellum period, and they served exquisite food and fine wines. “Who

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<sup>73</sup> Ibid., 18 - 22.

could blame the Congressman for leaving the bad cooking of his hotel or boarding house, with an absence of all home comforts, to walk into the parlor web which the adroit spider lobbyist had cunningly woven for him,” he asked rhetorically.<sup>74</sup> Their wives, surely, but for many in the capital that restraining influence was only present in their minds. “I feel your absence very much,” James Doolittle wrote his wife in the winter of 1858. “I miss it more than before you came. As you were with me so constantly every day – every night, and without any little children with us, it seemed very much like another *honeymoon*, and I miss you very, very much.”<sup>75</sup>

Gambling, like prostitution, is as old as civilization itself, but once again, broader economic and social changes had swelled a tolerable private vice into an intolerable public menace.<sup>76</sup> In any tavern or grog shop, one could always find games of chance separating winners from losers, the prosperous from the poor. Yet the professional gambling house, the “splendid hells” or “skinning houses” or “wolf traps” that provided the scenes of countless Victorian melodramas were virtually unknown in America only a generation earlier. The first successful gambling house in New York City was established in 1825. Five years later there were twelve such outfits operating in the city. By 1850, 6,000 gambling houses had sprung up in Manhattan, and no less than 5% of the city's inhabitants made their living in that booming industry.<sup>77</sup>

Within rural communities and small towns, where the family was the primary economic unit and cash was scarce, the destructive power of these vices was sharply limited, and it was therefore unnecessary for individuals to internalize defenses against them. “The bourgeois no longer lived either in a family economy of scarcity or in a rank of society remote from the temptations of high society,” Eric Hobsbawm observed of the 1850s. “Their problem was

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<sup>74</sup> Benjamin Perley Poore, *Sixty Years in the National Metropolis* two vols. (New York, 1887), 2:48-49.

<sup>75</sup> James Doolittle to Wife, April 25, 1858.

<sup>76</sup> David Schwartz, *Roll the Bones: The History of Gambling* (New York, 2006), 5.

<sup>77</sup> *Ibid.*, 269-272.

spending rather than saving.” The professional gambling house and the brothel represented the most threatening aspects of that problem. Communal defenses against these ancient vices collapsed, forcing individuals to regulate themselves – and many were scarcely prepared to do so. The more erratically and inconsistently outer status pressures reinforce moral standards of behavior, the more important it is for men and women to internalize these norms. An urban environment, so to speak, presented Americans with a strange electromagnetic field, and those who encountered it struggled to keep their balance as their moral compass began to swirl.

#### *IV: “The Rage of Man”*

The single outsized persona of Daniel Sickles, a character too fantastic for any work of fiction, perfectly embodied the double threat of oligarchic arrogance and urban chaos that fueled the sense of crisis among Republicans. His dramatic ascent in Washington society during President Buchanan’s administration provided the culminating scandal of an elite society that had spun dangerously out-of-control. In late February, 1859, Sickles shot his wife’s lover, Philip Barton Key, in broad daylight on Lafayette Square, mere steps from the White House lawn. The ensuing trial became a cultural melodrama as enthralling and revealing as the ideological battles that raged in Congress.<sup>78</sup>

The son of a Wall Street speculator, Sickles was a Tammany Hall politician, a diplomat, a Congressman, and a Union Army General and Medal of Honor winner. He was also technically a pimp, a thief and a murderer. The action for which was awarded the Medal of Honor was emblematic of his career as a whole: He defied General Meade’s orders at Gettysburg and nearly

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<sup>78</sup> Except when otherwise indicated, the information in this section comes from W.A. Swanberg, *Sickles the Incredible* (New York, 1956), and Thomas Keneally, *American Scoundrel: The Life of the Notorious Civil War General Dan Sickles* (New York, 2002).

lost the battle, but he played his part so heroically, excited such glowing admiration from those under his command, that only a few fussy experts noticed the underlying lunacy of actions. In everything he did, Sickles was charismatic, brilliant and brave, qualities he refused to clothe in the mundane garb of professional competence or a principled sense of purpose.

The same grandiose style allowed Sickles to overcome the salacious scandals that surrounded him at every stage of his career. In an era of confused morals and conflicting conceptions of manliness, this amoral adventurer and romantic libertine had obvious appeal among men adrift between uncertain standards of conduct. Many democratic politicians have pompously described their indifference to popular prejudices, but Sickles was surely the first to do so by way of explaining his resolve to continue visiting prostitutes. "I cannot play the courtier to the multitude much less to individuals," Sickles responded to a friend who worried that his flamboyantly bad behavior might hobble his political prospects. "I know all the consequences of yielding to this idiosyncrasy and have many a long year since resolved to enjoy it even at the price which must inevitably be paid," he continued. "I do not deem it a wise course, nor recommend it to any friend; but I have adopted it; it is mine, and I will follow it come what may."

That last sentence sounds like something John Brown might have written on his way to Harper's Ferry, rather than a declaration of war on society's cruel bias against married men consorting openly with prostitutes. Those who dismissed such posturing, however, discovered to their horror that Sickles somehow pulled it off. Sickles "belongs to the filthy sediment of the [legal] profession," George Templeton Strong wrote in 1851. "Perhaps better to say that he's one of the bigger bubbles of scum of the profession, swollen and windy, and puffed out with fetid

gas.”<sup>79</sup> But the bubble of scum was undeniably ascending quickly in the world. Within two years, Sickles was in London, representing the United States as Secretary of the Legation under James Buchanan at the Court of St. James. In that position, Sickles penned the Ostend Manifesto demanding that Spain hand over Cuba, which remains the most shamefully bellicose document in the history of American foreign policy. (And if that outrage on Spanish dignity weren’t enough, Sickles later served as the Minister to Spain under President Grant, where he had a highly publicized affair with the Queen while once again scheming to start a war over Cuba.) After serving in London, Sickles was elected to Congress, where his friendship with President Buchanan instantly marked him as a man of influence and importance at the Capital.

Aside from his close relationship with the President, Sickles’s abrupt rise in Washington society was due to the charms of his beautiful young wife, Teresa Bagioli Sickles. The daughter of an extraordinary family of Italian intellectuals and artists, Teresa had first met her future husband at the age of three, when Sickles came to live with her family as a 17 year old student of her grandfather, Lorenzo Da Ponte. Her mother was Da Ponte’s adopted and probably illegitimate biological daughter. And Teresa’s father was Antonio Bagioli, a famous Opera instructor and orchestra conductor. This remarkable household, which was a formative influence on both Teresa and her future husband, was almost singularly responsible for the popularity of Italian music in America during the Jacksonian period. And in Da Ponte, Sickles seems to have found a model for his philosophy that life is best lived as an amoral adventure. Before becoming a professor at Columbia, Da Ponte had been a Catholic Priest in Venice, where he had also been the owner of brothel and a friend to Casanova. Legally expelled from Venice, he went to Vienna where he became a famous Librettist. He wrote the libretto to Mozart’s *Don Giovanni*, among others.

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<sup>79</sup> Strong, *Diary*, 2:77-78.

It is unclear when Sickles's friendship for the little girl he lived with in the Da Ponte home became a romance, but the transition could only have been abrupt. Teresa was 15 and Sickles 32 when they married, and at the church ceremony, held six months after the civil marriage, the bride was visibly pregnant. Even the most ordinary marriage is an impenetrable mystery to outsiders, and the Sickles marriage was anything but ordinary. But it is impossible to believe Teresa was capable of taking a candid view of the charismatic man who seduced her just before the age at which she would have experienced the flirtations and courtships of a fashionable girl on her way to marriage. If she was unaware of Sickles's reputation, or expected him to reform, she was disillusioned soon enough. Teresa seems to have adjusted to her husband's serial betrayals with the flexibility that is the strength and weakness of youth. Though initially made miserable by her husband's neglect, when the couple moved to Washington, she giddily embraced her role as fashionable hostess, becoming one the most captivating ladies in the capital and an even more conspicuous presence than her flamboyant husband.

The Sickles rented a three story mansion in the Lafayette Square, the most prestigious residential district in the Capital. At \$3,000, the rent was as much as Sickles's entire Congressional salary – without even covering the cost of the large staff necessary to keeping it up – but his lavish lifestyle was heavily subsidized by a New York steamship company, which expected great things from the rising young politician. Though still shunned by many respectable elements in his own city, he was remarkably successful at ingratiating himself with the Southern-dominated aristocracy at the Capital. Of all their new friends, however, none was a more frequent or welcome guest than Philip Barton Key. The son of the famous author of the Star Spangled Banner and a nephew of Roger Taney, Key was the District Attorney at the Capital. “In appearance an Apollo,” Virginia Clopton-Clay recalled, Key “was a prominent figure at all the

principal fashionable functions; a great dancer, he was a favourite with every hostess in the city.” 40 years old, an amiable and somewhat frivolous widower, he was everyone’s idea of a desirable match. But he fell in love with his new friend’s wife.

By all accounts, Teresa possessed the rare, almost incompatible, combination of qualities that approximated the Victorian ideal of femininity. She was beautiful, brilliantly educated and witty; she spoke five languages, and easily surpassed, in genteel cultural attainments, the Southern ladies who wielded those qualities as cudgels against vulgar Yankees. Yet Teresa also projected an air of childlike simplicity and innocence, an unconsciously alluring modesty in the company of men. Though unmistakably sincere – Teresa was only 21 when she first moved to Washington and plainly delighted in her new role – it was also artifice, one that made men desperate for her approval without being intimidated by her attention. “There was something inexpressibly fascinating and delightful about her fresh girlish face, and her sweet amiable manner,” one admirer recalled.<sup>80</sup> Indeed, the powerful impression she made in Washington was what partly caused her affair with Key to erupt in scandal; she was not a woman who could hope to dissolve easily into the anonymity of Washington’s crowded streets. A young man who had fallen madly in love with her, a clerk named Samuel Beekman, jealous at the time she spent with Key, followed her closely and gossiped spitefully at what he saw.

Despite the gossip, Key and Teresa became steadily more brazen in carrying on their affair. When rumors finally reached Sickles, he confronted Key, who professed to be outraged. His very honor called into question, Key vigorously investigated the source of these vicious calumnies back to Beekman. The lovesick pup had not intended to put himself in this dangerous, virtually unwinnable position. He swore he had never uttered a word against Mrs. Sickles’ virtue, insisted that anyone who said otherwise was a liar, resigned his government job and scurried out

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<sup>80</sup> Cited in, Thomas Keneally, *American Scoundrel* (New York, 2002), 66.

of town, doubtless relieved to have avoided getting shot. One can hardly blame Key for feeling emboldened by the episode. Only a few weeks later, he and Teresa caused another stir at the most conspicuous occasion possible. At the celebrated costume ball thrown by Senator Gwin, they danced and flirted together happily, she as Little Red Riding Hood and he as the huntsman. The big bad wolf, meanwhile, stayed home with the flu. Teresa and Key even left the party together in the same carriage, taking a long route home through some of the city's unlit back streets.

The murderous denouement of the affair came during the short session of Congress the following year. Sickles had won reelection and had been appointed to the Committee on Foreign Relations, a prestigious post. His career seemed more promising than ever. With only a few days left in the Congressional session, he received an anonymous letter detailing a number of easily verifiable facts about his wife's assignations with Key. He confronted his wife with his information, and she told him everything. Holed up in his unhappy home, pacing wildly among a few trusted friends, alternatively shrieking, sobbing and muttering morbidly about his public disgrace and ruin, Sickles happened to spot Key lurking just outside his home. Had he been summoned? The scene that followed struck many as a coordinated ambush.

Sickles's accomplice left the house and stopped Key with a friendly greeting. Moments later Sickles was rushing toward him. "Key you scoundrel, you have dishonored my house – you must die!" he yelled rather theatrically according to several witness. The first shot hardly grazed Key's hand but hardly wounded him. Key then lunged at Sickles and the two men wrestled desperately in the middle of the street. They were almost directly in front of the White House. Breaking free from his victim, Sickles drew another pistol. Key flung his opera glasses at his assailant and tried to flee, but the second shot hit him in the upper leg. He staggered to a tree and

fell, shouting “murder! murder!” and begging Sickles not to shoot again. He was obviously unarmed, as he would have hardly resorted to flinging his opera glasses otherwise. Sickles advanced on him shouting variations on the same theatrical line. “You villain, you have dishonored my bed. You must die!” His next shot misfired. He cocked his gun again and fired a bullet through Key’s chest. Standing directly over his victim now, Sickles took aim for one final shot, his gun just inches from Key’s head. But the shot misfired and a bystander, finally, intervened. Key was already dead.

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“A session of Congress without a murder, or something approaching it, would be an anomaly,” the Philadelphia *Bulletin* observed. Sickles’s grisly murder of Key “occurs just in time to sustain the character of the session of 1859, which narrowly escaped from being a bloodless one.” The violence of American politics, even the brutal murder of a District Attorney by a Congressman, was no longer a source of shock to the public. Later the same year Senator David Broderick would be killed in a duel that really amounted to a political assassination. But the Sickles-Key murder and subsequent trial became a national sensation because the event resonated with Americans’ most deeply rooted anxieties. The story brought together everything: Political corruption, infidelity and the moral debauchery of fashionable society; the permeable barrier between the sanctity of the home and the amoral world beyond; the ambivalence of male friendships in a society of fluid, competitive status identities; and of course, the changing concept of gender in an industrial capitalist society – the threat this posed to men’s control over women, over their own families – over the irreducible unit from which the American man’s political sovereignty and freedom emanated upward into the body politic.

“The prevalence of the detestable doctrines of ‘women’s rights’ which tend to absolve the wife from her allegiance to her husband, is the source of ten thousand domestic sorrows,” The New York *Day Book* observed of the Sickles case.<sup>81</sup> As Herndrik Hartog, a scholar of marriage law has noted, by the 1850s, an American husband “was no longer sure of his legal rights over his wife, no longer sure of his rights over his children...wives had gained public legal rights, and that necessarily meant losses of the rights of husbands.”<sup>82</sup> And as the law evolved to grant women a measure of personal and financial autonomy in marriage, the growth of large cities and changing social mores gave them far more freedom. Nowhere was this more evident than at Washington. “The Member of Congress who takes his wife to Washington, and while he is engaged for half the day at the session, or at a caucus or among the Departments, leaves her in a big public house, crowded with adventurers, male and female, from all parts of the country, runs a great risk of being dishonored,” a Philadelphia paper noted in one of the most widely reprinted essays on the Sickles affair. “The balls, routes, hops, receptions, dinners, and general excitement of Washington bring women into contact with many dangerous companions. The natural modesty of the sex is soon worn off in such scenes, and when modesty begins to fail, virtue finds no lack of tempters.”<sup>83</sup> And so, in what amounted to a cosmic joke, Sickles became a celebrated symbol not only of defiant masculinity, for which he was well suited, but of the sanctity of marriage.

That Sickles’s personal history made him grotesquely unfit for this part was the only seriously contested point in the public’s perception of the case. “The republicans think that Mr. Sickles ought rather to have rung the bell for family prayers when he saw the seducer of his wife

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<sup>81</sup> Reprinted in the *Daily South Carolinian*, March 4, 1859.

<sup>82</sup> Hendrik Hartog, “Lawyering, Husbands’ Rights, and the ‘Unwritten Law’ in Nineteenth-Century America” *Journal of American History* (June, 1997), 67.

<sup>83</sup> Reprinted in New York *Tribune*, March 1, 1859.

inviting her, by signals, to repeat the act of dishonor,” the Charleston *Mercury* noted, ever eager to scoff at the manhood of antislavery men. In fact, public opinion rallied overwhelmingly behind Sickles. Even his bitterest critics accepted as a matter of course that he would be acquitted. George Templeton Strong, who detested Sickles, was shocked he was even indicted.<sup>84</sup> Though a few Republican editors, such as Greeley, William Cullen Bryant and George William Curtis, plainly disapproved of such an expansive conception of a husband’s rights, they all tended to insist on the more favorable point that a notorious philanderer like Sickles forfeited whatever rights might be claimed by an honest husband. As the *Tribune* noted, if a wife also had a duty to vindicate the honor of her marital bed, then poor Teresa would have been compelled to become a one-woman death-squad.

Yet even the objection that Sickles routinely committed the same crime for which he murdered Key was generally dismissed as perverse. Virtually no man, the *New York Times* thundered, “will be found to endorse the savage assumption that the errors and the excesses into which a man may at one part of his career have fallen, afford a valid excuse to a hostile and partisan journalist for denying him the possession of the commonest instincts of humanity, and for insisting that he ought to have dismissed the conviction of his wife’s ruin, and of his children’s dishonor, with a ‘sly allusion,’ a knowing look’ and ‘a pleasant jest.’”<sup>85</sup> Harper’s *Weekly* claimed that “In Washington it would be difficult to find a man, especially in public life, more irreproachable in his habits, or more devoted to his family, than [Sickles] has been during his residence in the capital.” Though no one considered the verdict a surprise, the courtroom erupted with hurrahs when Sickles was acquitted, and Washington residents celebrated wildly

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<sup>84</sup> Strong, *Diary*, 2:438.

<sup>85</sup> *New York Times*, March 2, 1859.

throughout the night.<sup>86</sup> The nearly unanimous public support for Sickles, even in the capital, was all the more striking for the fact that he was a relative newcomer to Washington, while the unarmed man he had murdered belonged to one of neighboring Baltimore's most eminent families, and had been a popular figure in the capital for nearly a decade.

The response to the Sickles case reveals more than a reaction to the diminished rights of husbands, however. Three particularly significant aspects are worth stressing here. First, a general, unambiguous legal and cultural consensus emerged to identify a form of conflict that the law could not resolve. The provocation of an adulterer, it was generally admitted, had no adequate legal remedy, and a husband was therefore justified, if not compelled, to satisfy himself. "Terrible as homicide is, this method must, on the whole, be admitted to be the most effectual, the wisest and the most natural revenge of an outraged husband," Harper's *Weekly*, perhaps the most influential arbiter of professional middle class tastes, argued. American law had traditionally excused the homicide of an adulterer if the husband caught him in the act and acted in the extreme duress of the immediate provocation. The idea was that a husband who witnessed the unspeakable act would naturally assume rape and act accordingly. Thus the legal principle was the same as that which absolves a man for shooting an intruder in the middle of the night even if turned out the intruder had meant no harm. But in the Sickles case that tacit, narrowly applicable principle of forgiveness was broadened and formalized into a right in which the seducer of a married woman essentially forfeited his life to the aggrieved husband. The private right of self-defense became the private right to vengeance. Evidence of the affair was legally admitted as evidence in the Sickles trial. The crucial shift was from the traditional personal right of defense to a personal right of punishment.

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<sup>86</sup> See, for example, *Harper's Weekly*, May 7, 1859.

“This right of assassination is now practically so well settled that legislation has become necessary to regulate and define it and prevent its abuse,” George Templeton Strong observed. But no amount of legislation could efface what amounted to a retreat from the most fundamental prerogative of the state’s authority over civil society: Its monopoly on illegitimate violence, a blanket denial on the private citizen’s right to exact justice on his own authority. Unsurprisingly, the prosecution in the Sickles case hinged its argument on that very point – that the peace of the community requires the law to deny men a right of private vengeance, no matter how unspeakable the crime committed against them, and that the very existence of civil society was imperiled by the legal doctrines espoused by the defense. To this argument, Sickles’s attorney – and the future Secretary of War under Lincoln – Edwin Stanton, essentially shrugged. “Now if it were so, if this land were to be a scene of blood, and if it were necessary to make it so, I ask whether blood had not better run in torrents through our streets than that the homes of men should be destroyed by the adulterer at will?”<sup>87</sup> There are few more dramatic examples of the extent to which the American polity was crumbling at all levels under what Machiavelli called “the confusions of a growing state.”<sup>88</sup>

Another significant aspect of the Sickles episode was the peculiar manner in which his attorneys valorized the concept of psychological insanity as manly rage. Legal scholars often cite the Sickles case as the first in which the concept of temporary insanity was successfully invoked. But the defense complicated that argument, if they did not flatly negate it, by simultaneously arguing that Sickles had a moral and legal right to kill Key. The argument on behalf of the accused, as Stanton summarized it in his closing remarks, rested on “two consistent lines of

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<sup>87</sup> *The Trial of Daniel Sickles*, (New York, 1959), 93.

<sup>88</sup> Machiavelli cited in Nichols, *Disruption*, 514. On the changing legal rights of aggrieved husbands, see Hendrik Hartog, “Lawyering, Husbands’ Rights, and the ‘Unwritten Law’ in Nineteenth-Century America” *Journal of American History* (June, 1997).

defense – one that the act of the prisoner at the bar is justified by the law of the land under the circumstances of its commission; the other that, whether justified or not, it is free from legal responsibility, by reason of the state of the prisoner’s mind, occasioned by the crime committed against him by the deceased.”<sup>89</sup> But, as the prosecution vainly pointed out, these two lines of defense were *not* consistent. The defense argued Sickles’s actions were morally and legally justified, and that he was absolved from all guilt because he was temporarily incapable of comprehending their moral or legal consequences. Clumsy logic, however, is not the same as a clumsy defense.

The absence of any calculation of the consequences, the absolute overthrow of reason by passion – it was this (possibly fictitious) quality in Sickles response to Key’s treachery that made him an objection of public sympathy and even admiration. Citing eye-witness testimony from Sickles’s friends, his lawyer described “the distraction, the bitter woe, the wild desolation, the frenzy, the despair, the strange unutterable, unearthly agony [of] Daniel Sickles on the afternoon of that memorable Sunday.”<sup>90</sup> Again and again, Sickles’s attorney quoted the same Biblical Proverb: “For jealousy *is* the rage of man; therefore he will not spare in the day of vengeance.” Sickles, his own defense attorneys argued, murdered Key in a jealous rage, and a civilization that suppressed that impulse suppressed manhood itself. Jealous rage and blood in the streets chaos – these were the images painted *by the defense*.

The ambivalence that defines most relationships in an advanced capitalist society was experienced as a profoundly unsettling change among Americans living through the period of most rapid economic, demographic and territorial expansion in the nation’s history. Americans had to adjust quickly to the emotional reticence, the defensive isolation, of being an individual in

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<sup>89</sup> Argument reprinted in *New York Times*, April 27, 1859.

<sup>90</sup> *Trial*, 102.

a competitive society that assigned no one a definite place – and the one haven in this heartless world proved to be no haven at all.<sup>91</sup> As is usually the case, this process sparked a powerful cultural reaction. The same dynamic that characterized the evolution of women’s legal rights in marriage –reflecting the moral and economic reality of a wife’s separate identity and a hysterical ideological denial of it at the same time – also characterized Americans’ response to the emotional discipline of living in a complex society. Sickles was a hero to those who, like Ishmael, felt the ambivalence of modern existence as “damp, drizzly November” of the soul.<sup>92</sup>

A final aspect of the Sickles case worth emphasizing is the confused relationship between moral norms and social status, the uncertain boundary between the fashionable excesses of the elite and the squalid depravity of the hustler or prostitute. “Gambling houses, drinking saloons, and manifold filthy or fashionable resorts of licentious indulgence are...universally understood and admitted to exist at Washington,” the *Independent*, a Congressionalist paper editorialized on the Sickles-Key affair. “The hotels are frequented, the Winter through, by male and female adventurers and sharpers, from all parts of the country, and a more absolute mixing up of maidenly women and courtesans, of decent men and profligate scamps, of every degree and under every outward disguise, can hardly be imagined, then is presented on almost any day in the dining or supper-rooms of the one of those great and crowded caravanserais [i.e. hotels]” at the capital.<sup>93</sup> The social division presented in this passage was simple, and the only problem was that respectable society is surrounded and infiltrated by adventurers in disguise. But the writer immediately proceeded to offer a more complicated picture. In fact, fashionable society was itself the corrupter of virtue, where the simplicity and innocence of modest rural communities

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<sup>91</sup> That phrase comes from Christopher Lasch, *Haven in a Heartless World: The Family Besieged* (New York, 1977).

<sup>92</sup> Herman Melville, *Moby Dick* (New York, 2003), 1.

<sup>93</sup> Reprinted in the *New York Daily Tribune*, March 3, 1859.

dissolved in “a circle of genteel scoundrels, some of them in Congress and more of them out of it, who know how to utter the vilest sentiments in form the most sugary, and who do the vilest deeds with an easy sparkle and dash of manner that makes them look like innocent recreation.”<sup>94</sup>

The antebellum period saw a dramatic increase in Americans’ preoccupation with the formal rules of etiquette. Prosperous, upwardly mobile men and women eagerly studied the elusive but essential rules of proper dress and behavior that were the outer stamp of inner gentility. The same period, however, as Karen Halttunen has argued, brought increasingly shrill warnings from sentimental critics of middle class culture that etiquette “was poisoning American society with hypocrisy.” A cultural contradiction resulted, in which “the contents of polite social intercourse, as perceived by sentimentalists, were natural and sincere feelings; but the forms of polite conduct, as evidenced in the detailed complexity, were deliberate and restrained.”<sup>95</sup> An important test of any cultural system is its capacity to assimilate such contradictions, to make the inevitable compromises between competing values seem natural, and by that measure elite political culture at Washington was experiencing a nervous breakdown in the late 1850s.

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<sup>94</sup> Ibid.

<sup>95</sup> Halttunen, *Confidence Men*, 92-93.

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### *William Henry Seward and the Failure of Antislavery Optimism*

#### *I: The Irreverent Champion of Earnest Men*

“Are you in earnest?” William Seward asked his audience as he took the platform at Rochester, New York to deliver his “irrepressible conflict” speech. His listeners, having greeted him warmly, responded to his question with silence, supposing it to have been the rhetorical beginning of his speech. And so he asked them again. “Are you in earnest?” Now the crowd erupted with a roar.<sup>1</sup> *Of course* they were in earnest. They were anti-slavery Republicans and this was western New York, the burned-over district, the epicenter of the Second Great Awakening and almost every evangelical reform movement that swept American culture in the mid-nineteenth century. “The unmistakable outbreaks of zeal which occur all around me, show that you are earnest men – and such a man am I.”<sup>2</sup> Though the audience at Rochester was beyond suspicion, many antislavery leaders were beginning to have their doubts about Seward. And these suspicions only grew as the sectional conflict reached its climax.

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“Mr. Seward is a force in the state,” Wendell Phillips declared in early 1861. “His position decides that of millions. The instinct that leads him to take it shows his guess (and he rarely errs) what the majority intend.”<sup>3</sup> Whether or not Phillips intended it, Seward himself would have appreciated the ambiguity in that assessment. Was he the “force” whose position

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<sup>1</sup> Account of William C. Wilkinson. Cited in Walter Stahr, *William Henry Seward: Lincoln's Indispensable Man* (New York, 2012), 174.

<sup>2</sup> George Baker, ed. *The Speeches and Writings of William Henry Seward* (New York, 1861), 4:289.

<sup>3</sup> Wendell Phillips, *Speeches, Lectures and Letters* (Boston, 1864), 352.

decided the minds of millions, or was he merely the clever courtier who anticipated the whims of his sovereign, the *demos*? The ambiguity is inherent in the ideal of democratic statesmanship, of leading a people who are free not to follow. Seward was hardly the first leader to juggle the competing imperatives of authority and deference, but, more conspicuously than any other American figure, he understood the ambiguity of his role – and delighted in it.

Always a happy political warrior, Seward did not try to soften or disguise the conflict between the political philosopher and worldly strategist that animated his nature. In learning, power of thought, and eloquence, Seward's speeches are equal to those of any American statesman. But the wily tactician was never absent from Seward's speeches, in which argument and insight coincide with clever, calculated efforts to manipulate public opinion. "He speculated boldly," Charles Francis Adams observed, "but he was an actor all the while, and effected events."<sup>4</sup> It is not surprising that the younger members of the Adams clan worshipped Seward, for he possessed their expansive intellectual gifts, and their passion for politics, without their temperamental inhibitions. During his eulogy of John Quincy Adams, Seward, in a moment of insight that says more about the eulogist than his subject, observed that "the model by which [Adams] formed his character was Cicero:"

Not the living Cicero, sometimes inconsistent; often irresolute; too often seeming to act a studied part; and always covetous of applause. But Cicero, as he aimed to be, and as he appears revealed in those immortal emanations of his genius which have been the delight and guide of intellect, and virtue, in every succeeding age...

Seward began by distinguishing between Cicero the great orator with the living, breathing man of affairs. Though the salient parallel with Adams went unsaid, Seward's listeners would have readily made the connection: Cicero's greatest orations were fiery denunciations of

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<sup>4</sup> Charles Francis Adams, "An Address on the Life, Character and Services of William Henry Seward," (Albany, 1873).

those conspiring to overthrow the republic.<sup>5</sup> Adams, Seward claimed, resembled the ideal Cicero rather than the actual, temporizing politician. But within a few sentences, Seward shifted the comparison.

In moral courage, therefore, he excelled his model [Cicero] and rivalled Cato. But Cato was a visionary, who insisted upon his right to act always without reference to the condition of mankind, as he would have acted in Plato's imaginary republic. Adams stood in this respect midway between the impracticable stoic, and the too flexible academician.

Here the contrast has become a much more ambiguous one between the "impracticable" stoic and the "too flexible" Cicero, suggesting a difficult trade-off between one virtue and another, for Cato's moral courage was inseparable from his stubborn defiance of all political expediency, just as Cicero's flexibility was inseparable from his eagerness for fame. Seward was dwelling on the dilemma he found in his own model of statesmanship. He considered Adams not only the "purest and wisest statesman I ever knew" but also "a patron, guide, counselor and friend." But purity and wisdom alone are not enough to command influence over the public.

Adams, for all of his splendid qualities, had "died despairing of a peaceful solution of the problem of slavery, on which he was so intently engaged throughout his life," Seward later observed. Indeed, "No age or country has been illustrated by public characters of greater genius, wisdom and virtue," than the America of Clay, Webster and Adams, but all of them had failed to resolve the most dangerous conflict threatening their country. Statesmen of true moral courage and vision had neglected or despised the party organizations that alone confer power, while successful party managers had built their machines out of local factions without any honest regard for national principles.<sup>6</sup>

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<sup>5</sup> "Shame on the age and on its principles! The senate is aware of these things; the consul sees them, and yet this man lives. Lives!...And we, gallant men that we are, think that we are doing our duty to the republic if we keep out of the way of his frenzied attacks."

<sup>6</sup> Seward, *Works*, 4:306.

All political parties in American history, Seward insisted, “were organized, not specially to establish justice and maintain freedom and equality among honest, jealous, and liberty-loving people, but to achieve some material public advantage of temporary importance...”<sup>7</sup> From the beginning of his national career, Seward announced his belief that the evil from which the country suffered was “not the fierce conflict of parties...but...the agony of distracted parties – a convulsion resulting from the too narrow foundations of both and of all parties...”<sup>8</sup> Political parties were local in their orientation, statesmanship was national, and the result was confusion and chaos. National political crises generated great passion but never a resolution. What the nation needed, then, was a leader who combined the shrewd partisan mind of Martin Van Buren with the lofty intellectual vision of John Quincy Adams. And who might that be?

William James argued that it is impossible to separate the philosopher from his temperament, but that was precisely what Seward attempted in learning from his political mentor. Privately commenting on Adams’ austere manner, Seward noted that despite his personal decency and intellectual brilliance, the New Englander was “a man...hardly possessing traits of character to inspire a stranger with affection...I could plainly answer how it happened that he, the best President since Washington, entered and left the office with so few devoted personal friends.”<sup>9</sup> In this respect Seward made for the most glaring possible contrast. He was a warm, happy soul, who made friends instinctively and easily. “He was a man who was all his life in controversies,” Charles A. Dana recalled, “yet he was singular in this, that, though forever in fights, he had almost no personal enemies.”<sup>10</sup> Even many slaveholders who despised and distrusted him politically loved him personally. “Too amiable and serene for stinging wit or

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<sup>7</sup> Seward, *Works*, 4: 307. Speech of 1860.

<sup>8</sup> Seward, Speech on the Compromise of 1850. *Congressional Globe*, 31<sup>st</sup> Congress, Appendix, 266. March 11, 1850.

<sup>9</sup> Seward, *Works*, 4:305; William Henry Seward, *Autobiography* ed. Frederick Seward (New York, 187), 206-207.

<sup>10</sup> Charles A. Dana, *Recollections of the Civil War* (New York, 1902), 169.

biting sarcasm,” James Blaine recalled, “he had a playful humor” that put men at ease and made the power of his convictions all the more forceful. He “possessed a characteristic rare among men who have been long accustomed to lead, – he was a good listener. He gave deferential attention to remarks addressed to him, paid the graceful and insinuating compliment of seeming much impressed, and offered the delicate flattery, when he came to reply, of repeating the argument of his opponent in phrase far more affluent and eloquent than that which it was originally stated.”<sup>11</sup> William Howard Russell, the great London *Times* correspondent, penned a memorable portrait of the Senator:

A well-formed and large head is placed on a long, slender neck, and projects over the chest in a argumentative kind of way, as if the keen eyes were seeking for an adversary; the mouth is remarkably flexible, large but penetrating, and lively with humour of some kind twinkling about them; the brow bold and broad, but not remarkably elevated; the white hair silvery and fine – a subtle, quick man, rejoicing in power, given to perorate and to oracular utterances, fond of badinage, bursting with the importance of state mysteries, and with the dignity of directing the foreign policy of the greatest country – as all Americans think – in the world.<sup>12</sup>

Seward possessed remarkable guile, but he could not hide his own inner-nature. He lacked true discretion, which goes unnoticed, and instead gave the impression of being “a sort of political wizard who knew all the secrets and who commanded political forces unknown to all the world,” as Carl Schurz recalled.<sup>13</sup> “Conceited as we all are,” Horace Greeley observed, “I think most men exceed [Seward] in the art of concealing from others their overwhelming faith in their own sagacity and discernment.”<sup>14</sup>

He was both a gregarious democrat and a principled statesman, a combination Seward considered natural even if others saw it as a contradiction. He took a lively interest in people. While travelling as Governor and Senator, he had a habit of conversing with strangers to get their

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<sup>11</sup> James Blaine, *Twenty Years in Congress*, 2:67.

<sup>12</sup> William Howard Russell, *My Diary North and South* ed. Fletcher Pratt (New York, 1954), 19.

<sup>13</sup> Carl Schurz, *Reminiscences* 3 vols (New York, 1907), 2:34.

<sup>14</sup> Horace Greeley, *Recollections of a Busy Life* (New York, 1868), 312.

political views without disclosing his identity – and his unprepossessing appearance assured that few would have guessed it. In social life, Seward seemed as artless as a child. Carelessly dressed, though he liked to opine knowingly on fashion, his hair uncombed and his posture whatever undignified pose suited him, Seward delighted or astonished new acquaintances as he merrily discussed any trivial or profound subject that popped into his head, belching, cursing, laughing and smoking all the while. His manner of delivering speeches was also strikingly unaffected. One witness of his famous “Irrepressible Conflict” speech recalled how he paced back and forth, his hands in his pockets, “Altogether...as if a self-absorbed man, in a tense state of moral and mental excitement, had got a couple of thousand of us closeted alone with him there, and was thinking aloud to us.”<sup>15</sup>

And yet the outward simplicity of his manner coincided with an intellectual approach to politics that was Machiavellian in its sophistication. In an era of mounting political dogmatism, riven by a stark moral conflict, this was Seward’s most serious liability. He was the “intellectual leader of political antislavery,” but in both temperament and outlook, he stood apart from the movement he led. He was the irreverent champion of earnest Americans. He managed the psychologically difficult task of taking a detached, clinical view of the political situation without loosening his commitment to the moral values that nourished the body politic. Almost alone among antislavery leaders, Seward understood that, in a democracy, the best way to destroy an adversary is to let him abuse his power. And that perception, though ethically treacherous for someone in a position of responsibility, allowed him to see how every proslavery “outrage” hastened the triumph of freedom. “If I was willing to advance a cause that I deem sacred by dishonest means,” Seward rather slyly said in his first major Senate speech during the crisis of 1850, he could think of no better measure than the fugitive slave act. “[T]he spirit of the people

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<sup>15</sup> Cited in Frederick Bancroft, *Life of William Henry Seward* two vols. (New York 1900), 1:191.

of the free states is set upon a spring that rises with the pressure put upon it, That spring, if pressed too hard, will give a recoil that will not leave here one servant who knew his master's will and did it not."<sup>16</sup>

There were many other instances in which Seward happily noted the political benefits of a policy he denounced. On the most notorious outrage of all, the repeal of the Missouri Compromise, Seward even played a hidden part.<sup>17</sup> This double mindset, and his unabashed, boyishly proud way of advertising his own political sophistication, became increasingly problematic for Seward as the sectional crisis reached its climax. "Two thirds of Republican Senators are as reckless in action as the South," Seward wrote his wife during the secession crisis. "I am the only *hopeful, calm, conciliatory* person here." As his party moved away from him, Seward despairingly concluded that "Mad men North and mad men South are working together to produce a dissolution of the Union."<sup>18</sup> Though Henry Adams, writing that same winter, considered Seward "a perfect giant in all this howling," the fact is that Republicans were then responsible for one half the howling. And most of them had come to distrust Seward as "not frank and straightforward; only a cunning contriver of little plots; and not a true man."<sup>19</sup>

Though Seward has not exactly suffered from overwhelming scholarly neglect, his antebellum career has received less attention than it deserves.<sup>20</sup> In part, the reason is obvious.

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<sup>16</sup> Seward, *Works*, 1:67-68.

<sup>17</sup> Van Deusen, *William Henry Seward* (Oxford, 1967), 150-153. Seward himself subsequently claimed he suggested outright repeal to Senator Dixon, a proslavery Whig from Kentucky. There is a large historiographical controversy over Seward's role, and, like many other historiographical controversies, it basically boils down to a metaphysical problem of causation. There is no reason to doubt Seward's account of his own role in the repeal, whatever one may make of its significance.

<sup>18</sup> Seward, *Seward at Washington*, 2:496-497.

<sup>19</sup> David Herbert Donald, *Charles Sumner and the Rights of Man* (New York, 1970), 20.

<sup>20</sup> This point is most striking when one compares Seward with Stephen Douglas. Seward was ten years older than Douglas, and easily his rival for political significance throughout the 1850s. But Douglas's early death forces scholars to treat the antebellum period as the climax of Douglas's career. And so Douglas's best biographer devotes more than 600 pages to the period that Seward's best biographer covers in 170 pages. Robert Johannsen, *Stephen A. Douglas* (Oxford, 1973), 235 – 874; Glyndon Van Deusen, *William Henry Seward* (Oxford, 1967), 99 – 269. Major Wilson and Daniel Walker Howe have written two excellent interpretive essays on Seward's antebellum political

Seward's grand strategy ended in failure. He may have been the crucial figure in the formation of the Republican party, but he lost control of the party just as it came to power. Seward was more successful at carrying out his political vision in the realm of foreign policy, as Secretary of State under Lincoln and Johnson, not in his domestic strategy against slavery, and most scholarly emphasis has reflected the fact. More than anyone else in the country, however, Seward was responsible for building the coalition that made Abraham Lincoln president.<sup>21</sup>

Between 1858 and 1861, Republicans in Washington grew increasingly restive under Seward's leadership. There was no open breach or sudden defection. Seward and his colleagues both were too politically savvy for that. But, for a number of closely related reasons, more and more Republicans came to reject Seward's conceptualization of the sectional conflict and his envisioned solution to it. The more confident Seward became of a Republican victory in 1860, the more fraught his leadership became. What began as an unlikely but effective harmony between two competing messages, an optimistic celebration of free labor society and a shrill warning of the slavepower menace, began to diverge sharply as the Republican party approached its likely ascent to power. Ultimately, leaders would have to govern according to one mindset or

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thought, and my own interpretation owes a great deal to theirs. My analysis attempts to build on their insights by explaining why Seward's political philosophy made him so influential among prominent Republicans in the early 1850s only to alienate these same individuals on the eve of the Civil War. Daniel Walker Howe, *Political Culture of the American Whigs* (Chicago, 1980); Major Wilson, *Space, Time, and Freedom: The Quest for Nationality and the Irrepressible Conflict* (Westport Conn., 1974). Two other biographies of Seward that I have found especially useful are Frederick Bancroft, *William Henry Seward* two vols (New York, 1900), and Walter Stahr, *Seward: Lincoln's Indispensable Man* (New York, 2012). Finally, all scholars interested in the secession crisis are necessarily interested in Seward, whose position was uniquely enigmatic among the central figures in that decisive moment. Most leading figures staked out an unambiguous position, but Seward's course is obscured by contradictions and intrigue at every stage. Scholars who have expertly traced the evidence during this brief period have come to radically different conclusions as to what Seward was really up to. I will present some important, heretofore overlooked evidence on this question in due course. Too often, however, scholars have considered the problem in terms of relative commitments -- to antislavery and to the Union. The key to understanding Seward and his fraught relationship with other Republicans -- the reason for all the ambiguity and underhanded intrigue -- as I will argue, is in their conception of the political danger posed by slavery. There are too many important works on the secession crisis to list here, but the most recent is Michael Robinson, "Seward and the Onset of the Secession Crisis" *Civil War History* (March, 2013). Robinson persuasively stresses the extent to which Seward, like everyone else, was forced to respond to events with no way of knowing where they were tending.

<sup>21</sup> The *Liberator*, Speech of Jefferson Davis, November 11, 1858.

the other – either as the patient benefactors of progress or as the last line of defense against the apocalypse. The paradox, however, was that the Republicans could not win, and therefore could not govern at all, without the combined appeal of these incompatible mindsets. Seward understood this dilemma, but he failed to master it. As a result, he found himself increasingly marginalized from his own party, overwhelmed by more willful leaders who were emboldened by a starker vision. A close study of Seward’s antebellum career, therefore, not only provides insights into how one of the most politically astute minds viewed the sectional crisis, it also offers, even more significantly, a perfect foil for understanding the mentality and motives of those who took the reins of power away from him.

## *II: “Bristles, Bristles On All Sides”*

The issue that first brought Seward into a sharp conflict with his Republican allies, sowing seeds of distrust which gradually sprouted into open animosity, came early in the first session of Congress under President Buchanan, when the New Yorker, alone among Republican Senators, supported an army appropriation bill to put down a domestic rebellion, not of slaveholders but of those associated with that other “relic of barbarism” named in the Republican platform. By 1857, the violent conflicts that had followed the Mormons westward from the beginning of their history, from New York to Illinois to Missouri, had found them again in Utah. Except this time it was the Mormons who were fighting to expel outside intruders. In the Midwest, Mormons had appealed (mostly in vain) for state protection against other Americans, but Utah was their country, and they meant to keep it that way. In September of 1857, a Mormon-Indian attack, conducted without the approval of Brigham Young or the official

Church, slaughtered 137 settlers bound for California. President James Buchanan authorized a military expedition against the Mormons, and that required a larger Federal military than what was currently available.

Ironically, President Buchanan's forceful response was a concession to public sentiment inflamed by the Republicans themselves. The issue of polygamy in Utah had provided an excellent argument against Stephen Douglas's doctrine of popular sovereignty in Kansas. That was why the Republicans, in their 1856 national platform, had combined polygamy with slavery as the "twin relics of barbarism" that Congress had a duty to suppress in the nation's territories. As slippery slopes go, this one may seem curiously inverted: *If slavery, why not polygamy?* But for the Democrats to defy public opinion on polygamy, for the sake of logical consistency, would have been as fatal as for Republicans to do the same on racial equality. And so Stephen Douglas, despite his earlier support of the Mormons, favored suppressing that embarrassing sect as quickly and effectively as possible.

Douglas, however, was as adept as Lincoln in conceding an unwinnable point without surrendering the underlying principle. He pointedly arraigned the Mormons for their hostilities against American settlers, not for the insufferable perversity of their own laws. A sincere adherent to his creed of popular sovereignty, he naturally wished to avoid upholding it in a context that would have discredited the whole principle. But to the chagrin of Douglas, and to the horror of the Republicans, President Buchanan chose a different course.

Though Buchanan had already indicated his support of the Dred Scott decision, which asserted that slaveholders had a Constitutional right to their "property" in the territories, presidents traditionally enjoyed considerable leeway as to how far to enforce new doctrines expounded by the Supreme Court. Since he had been elected on a platform pledged to support

popular sovereignty, it was not unreasonable to suppose that Buchanan might avoid directly committing his administration to the extreme proslavery position even if he did not repudiate it. Instead, his first message to Congress signaled his determination to impose a proslavery Constitution on Kansas against the overwhelming opposition of its inhabitants. This “Lecompton Fraud,” named after the Kansas town at which the proslavery Constitution was framed, instantly convinced Republicans that a nefarious proslavery plot, in which the President was a mere pawn, was determined to spread slavery at the point of the bayonet. Under these circumstances, Buchanan’s request in the same message for additional troops to subdue the Mormons could not have alarmed the Republicans more if they had been Mormons themselves.

As the Republicans themselves had invoked polygamy in Utah primarily to discredit popular sovereignty in Kansas, it is hardly surprising that they viewed Buchanan’s military expedition there as a mere pretext to smother liberty in Kansas. Indeed, the Lecompton issue so overwhelmed the minds of most Republicans as to make the Mormon question virtually irrelevant in considering whether to enlarge the military under the command of Buchanan. The Federal government’s increasingly aggressive proslavery position provoked Republicans into expressing a high regard for the sacred prerogatives of local self-government, and a dread, even to the point of paranoia, of centralized power and military rule. “The question of increasing the military power has been a question which has divided the friends and the opponents of free government in all times,” Senator John Hale of New Hampshire declared. “There is not a crowned head in Europe that would desire a greater power over the standing army of his realm than to make him the guardian to see that the laws are faithfully executed, and under that grant to have power to call in the army to do it.” That doctrine – “most dangerous,” “most fallacious” and

“most monstrous” – “is a usurpation... one that if it be tolerated by this Government, will bury our liberties beyond the reach of resurrection.”<sup>22</sup>

It did not require a prophet to foresee how such position might become inconvenient for the Republican party in the near future. No rebellion in history was more widely advertised in advance than that of the South in 1861. But Republicans were not the only ones who let the immediate issue cloud their perception of impending events. It was none other than Jefferson Davis, chairman of the Senate committee on Military Affairs, who insisted that the country could not rely on local and state militia to preserve domestic tranquility, hardly imagining that he would provide a much more convincing demonstration of the point soon enough.<sup>23</sup>

Seward, however, had no fear of what Buchanan might do in Kansas. Like all other Republicans, Seward denounced the Lecompton Constitution as a proslavery outrage. But his view of the situation differed starkly from that of his colleagues. While most Republicans were in an apocalyptic fury, feeling more desperately pressed than ever, Seward was exultant. In the schism between Douglas and Buchanan, Seward saw something far more significant than a mere intraparty feud. He saw a fatal, permanent rupture of the insidious alliance, originally forged by Martin Van Buren, between Northern democracy and Southern slavery. “You will go before the people no longer in the character of a party that balances equally between freedom and slavery, but in the detested character of a party intervening for slavery against freedom,” he cheerfully warned his colleagues in the Senate.<sup>24</sup> There was no escape, for the proslavery wing of the party, critical to its national success, now demanded an absolute, aggressive intervention in favor of slavery without any of the evasions that made such a position tenable in the North.

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<sup>22</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 1<sup>st</sup> Session, 520.

<sup>23</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 1<sup>st</sup> session, 407-408.

<sup>24</sup> Seward, *Works*, 4:614.

Seward's optimism began to set him apart from his colleagues immediately. Under his leadership, Republicans initially restrained themselves in reacting to Buchanan's message, allowing the intraparty feud among Democrats to acquire as much venom as possible. Such artful scheming was distasteful to many on so momentous a question, especially since it seemed to defer leadership to Stephen Douglas.<sup>25</sup> But most Republicans were too desperate to defeat the Lecompton Bill to resist the best strategy for doing so. Seward's support of the Army Appropriation bill, however, was another matter. Viewed through the dispassionate lens of hindsight, the controversy over the Army appropriation bill seems rather trivial. But in that feverish emotional atmosphere, as most Republicans reacted to what they were convinced was a naked plot to nationalize slavery, it is impossible to exaggerate how perverse Seward's support of the Army Bill seemed. Here was the acknowledged leader of the political antislavery movement supporting a measure to give the sinister proslavery cabal a larger army! If, in 1775, John Adams had supported appropriating funds to enlarge King George's army of Hessians for some supposedly benign purpose in the Great Lakes region, – the apparent inconsistency could hardly have been more shocking.

Of course, John Adams did not imagine that a democratic election would sweep King George III aside and put Adams in his place – and there was the crucial difference. In favoring the Army Appropriation, Seward's language clearly shows that his eyes were trained not on the Mormons, or on residents in Kansas, but on the far graver threat looming at the end of Buchanan's proslavery administration. “[H]aving been unwisely favored by the Government of the United States with the appointment of their own officers and the making of their own laws,

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<sup>25</sup> Among those alarmed by this turn of events was the Little Giant's foremost rival in Illinois. “Have [the Republicans at Washington] concluded that the republican cause, generally, can be best promoted by sacrificing us here in Illinois?” Lincoln asked Lyman Trumbull. Lincoln to Lyman Trumbull, Dec. 28, 1857. Lincoln, *Collected Works*, 2:430.

and the administration of their own laws, and the execution of the judgments,” Seward said in the Senate, the Mormons had “come to regard themselves as independent in their isolation and to defy the Government.” But Seward did not want to wage war on the Mormons – or anyone else for that matter. “[T]here will be no civil war,” he insisted, “but it is upon one condition, and that is that an armed demonstration...shall be made so imposing as to command respect and to extort obedience.”<sup>26</sup> Seward was the only Republican Senator who did not have to reverse himself abruptly in denouncing Buchanan’s helpless timidity during the secession crisis.

A reporter for the New York *Herald* had no trouble interpreting the Senator’s remarks. “Mr. Seward simply means, that Lecompton or no Lecompton, the administration and the democracy are all broken to pieces; and that his first thought should be to secure the army required to hold the Southern fire-eaters in check, when he shall become the President or Emperor of ‘this imperial power.’”<sup>27</sup> Most Republicans did not quite see it that way, however. “Seward...is perfectly bedeviled,” William Pitt Fessenden, the most powerful Republican Senator aside from Seward wrote privately. “He will vote alone, so far as Republicans are concerned, but he thinks himself wiser than all of us.” When Seward concluded his speech, Hale rose to describe his “extreme pain and disappointment and mortification” upon hearing the great antislavery leader, like Daniel Webster before him, “bring himself and his fame and his reputation, and lay them down as an offering at the footstool of the slave power.”<sup>28</sup>

One might wonder whether the *Herald* reporter and Seward’s Republican colleagues were listening to the same speech. And yet both interpretations were valid. For ultimately, the dispute over the Army Appropriation Bill, like so many critical disputes among Northern politicians in the 1850s, turned on whether slavery posed a legitimate threat to free government.

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<sup>26</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 1<sup>st</sup> session, 518.

<sup>27</sup> *New York Herald*, February 8, 1858.

<sup>28</sup> *Congressional Globe*, 36:1, 519.

On this question, Seward had differed with Daniel Webster in 1850, proclaimed a “higher law” than the Constitution and made himself the champion of the political antislavery movement. And on this vital question, the question that defined and animated the Republican party from its inception, Seward, by 1858, believed circumstances had shifted, irrevocably, in favor of freedom. Hale’s attack on Seward, essentially threatening to read him out of the party, provoked from the *New Yorker* a revealing burst of candor:

I am very sorry that the faith of the honorable Senator from New Hampshire is less than my own. He apprehends continual disaster. He wants this battle continued and fought by skirmishes, and to deprive the enemy of every kind of supplies. *Sir, I regard this battle as already fought; it is over. All the mistake is that the honorable Senator and others do not know it* [my emphasis]. We are fighting for a majority of free States. There are already sixteen to fifteen; and whatever the Administration may do – whatever anybody may do – before one year from this time we shall be nineteen to fifteen. If that is so, what danger are we exposed to? It is that the free States will nevertheless go for slavery. If they will, that is a matter that we are not to help in this way. I do not believe it either. I think it is simply a question whether the Administration shall surrender, and grant freedom to Kansas, under the constitution of her choice, or whether they shall break their necks in resistance to it.<sup>29</sup>

To his son, Seward wrote philosophically that “the onslaught upon me was a breaking out of discontents, among my associates,” which he felt had done more good than harm.<sup>30</sup> But that was before he realized what a storm his comments raised within Republican party. Horace Greeley, who harbored a personal grudge against Seward, penned a scathing attack in *The New York Weekly Tribune*. “[W]e do not share the sanguine anticipations of our Senator. On the contrary, we consider this battle so far from being ‘over’ that it is barely begun. The fact that such a measure as the Lecompton Constitution is now before Congress, with a strong probability that it will go through, is strikingly at war with the Senator’s exultation.”<sup>31</sup> Greeley also sneeringly insisted that a mere “majority of free states” was “certainly not the limit of our

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<sup>29</sup> *Congressional Globe*, 35<sup>th</sup> Congress, 1<sup>st</sup> Session, 521.

<sup>30</sup> Seward, *Seward at Washington*, 2:335.

<sup>31</sup> *New York Weekly Tribune*, February 13, 1858.

aspiration.”<sup>32</sup> Far more alarming, for Seward, was the incoming flood of outraged and dismayed letters from many who professed themselves to be among his warmest supporters. Though his “Higher Law” and “Irrepressible Conflict” speeches were far more controversial with the American public as a whole, Seward, like any good politician, understood the difference between antagonizing one’s inveterate enemies and alienating one’s strongest supporters.

In a private, indirect response to Greeley, Seward complained that the Republicans were defeating their own cause by clinging to the mentality of a minority party. Mindlessly opposed to the majority on everything, the Republicans drove natural allies into the opposition. “Thus we put on the skin of a hedgehog and present nothing but bristles, bristles on all sides, bristles always raised against everybody.”<sup>33</sup> Seward’s political manager Thurlow Weed wrote angrily that his support of the Army Bill was not “half so bad as saying that you care nothing for party, and that the battle has been fought. There are not fifty men in the entire North who know what the latter expression means, or who comprehend the sense in which it is true.”<sup>34</sup> In a hurt response, Seward insisted that he was being punished for the success of his leadership and declared himself finished with public life. “My work is done. The very policy which is now condemned by my party has become as it was intended to be the means of securing the triumph of freedom in Kansas and such a combination North and South as will give the Republican party the control of the government in 1860.”<sup>35</sup>

Historians have paid little attention to this episode and even Seward’s biographers have given it only a passing notice. But this was the crucial turning point in Seward’s antebellum career, the moment when the dangerous evil he had confronted for more than a decade was

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<sup>32</sup> Ibid.

<sup>33</sup> Seward to Richard Blatchford, February 13, 1858. Horace Greeley Papers, New York Public Library.

<sup>34</sup> Ibid.

<sup>35</sup> Seward to Weed, March 18, 1858.

transformed, in his own mind at least, by the Republicans' success in meeting it. Everything Seward wrote on the subject in the spring and summer of 1858 shows his conviction that the Slave Power had permanently lost its hold on the Federal government. "You have discovered clearly that this negative antislavery policy of the times is soon to cease because it has practically effected all that it can," Seward wrote in a complimentary letter to Theodore Parker. By "negative" Seward meant the entire *raison d'etre* of the party he led – the policy of containing slavery in the South. And he agreed that the next logical step for political antislavery leaders was to take "positive action directed towards the removal of slavery from the country."<sup>36</sup>

Unfortunately, devising a strategy that had even a prayer of gaining public support was a challenge that no realistic leader could face with any confidence. "I confess that I have been unable to satisfy myself with any course that offered itself," Seward admitted in the same letter. "We can, all or any of us, strike out a system of action at a blow, but to devise one that a demoralized nation will adopt and raise itself up by, that is the work of practical reformers."<sup>37</sup>

The great problem, then, was how to maintain the alliance between the idealistic and practical elements within the Republican party as the territorial issue that had brought them together lost its relevance. Ironically, Seward eventually found a solution to this dilemma by harnessing the same morbid fears that he had earlier denounced. "I am above all things thankful for your persistence in treating this slavery as a thing that must and will be ended," he wrote to Parker in March of 1858. "The hopeless despair, expressed by many reformers discourages and so hinders the success of that question." But he soon learned that these fears were the only hope for keeping Republican voters from becoming demoralized and apathetic. "Had we gone to the people in 56 with a platform like Abe Lincoln's 'The Union all Free or All Slave' how

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<sup>36</sup> Seward to Theodore Parker, June 28, 1858.

<sup>37</sup> Ibid.

immeasurably better off we should be now!” George Ellis Baker, Seward’s editor and personal secretary, wrote to him in July of 1858.<sup>38</sup> As Seward’s subsequent speeches show, he saw the political wisdom of this slogan. The only problem was he didn’t really believe it.

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Seward learned several important lessons during the controversies that surrounded his leadership in the spring and summer of 1858. First and most important was the ideological distance that had opened between him and many of his most ardent followers. For Seward, the slave power had never been a positive threat to the North’s free labor society. He never feared for a moment that even the most aggressive efforts by Buchanan’s administration could impose slavery where the people were properly organized against it. Though his speeches powerfully expressed that confidence, his support of the Army Bill demonstrated it in a way that could not be finessed or ignored by allies that did not share his sanguine faith. And the ensuing backlash taught Seward just how little tolerance the core of the Republican party had for any deviation from a position of inflexible resistance to the slave power menace.

Historians have usually interpreted Seward’s shift to a more conciliatory or conservative posture as a strategic maneuver to capture the Republican presidential nomination in 1860. That motive cannot be dismissed entirely, of course, but its explanatory significance is often vastly overstated. As Seward well knew, his path to the nomination lay with the most advanced antislavery elements of the party, and, as we will see, he lost the trust of many crucial allies in that group. More importantly, his support of conciliation was most pronounced during the secession crisis, after Lincoln’s election.

For President-elect Lincoln and many other Republicans, opposition to the extension of slavery in the territories was the one issue on which there could be no compromise. Though

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<sup>38</sup> George Eillis Baker to Seward, July 11, 1858. Seward Papers, University of Rochester.

Seward carefully avoided an open breach with his party on the question, he clearly believed the Republicans could afford to surrender on the issue without the risk of adding a single square inch of slave territory. Seward's private letters to his wife have all been destroyed during this period – all we have are the selective quotations published by his son – but his wife's letters have survived and they are full of well-informed worry that he is to betray principle in favor of expediency. In one instance she helpfully quoted Seward's words back to him. "I presume I do not get your meaning when you say 'the Republicans must give up their ultra sentiments as belonging to an issue on which they have already won the administration of the government,'" she wrote in February of 1861. Surely he did not mean the disavowal of the "principles which enabled them to obtain the government as that would clearly be wrong."<sup>39</sup> But that was precisely what Seward meant. Now that an antislavery majority in the North controlled the Federal government there was no reason to dissolve the Union or fight a civil war over the constitutionality of slavery in the territories: The Republicans could tactfully surrender the point and still administer the government in a way that assured the triumph of freedom – and not just in the existing national territories, where it was a moot point regardless of who controlled the government.

Indeed, it is likely that Seward considered the concession the Republicans did make a more damaging antislavery setback than the one they refused to consider. Though Lincoln firmly opposed any compromise on the territorial issue, he quietly approved of the proposed constitutional amendment, which passed both houses of Congress, guaranteeing slavery within the individual states. Although some Republicans demurred from having the word "slavery" branded into the Constitution, virtually all of them believed the amendment merely reflected existing law. But Seward considered these legalistic squabbles a deadly distraction. He was one of very few Republicans who privately endorsed the idea, popular in certain abolitionist circles,

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<sup>39</sup> Frances Seward to W.H. Seward, February 22, 1861. Seward Papers.

that the Federal government could abolish slavery in the South under the Constitutional provision guaranteeing each state a republican form of government.<sup>40</sup> The only important barrier to effecting such a transformation was the sovereign will of the American people.

Seward was the only important Republican who believed slavery, as opposed to secession, posed a more dangerous threat to the Union, and its historic mission, in 1850 than he did a decade later. And he himself later claimed, with considerable justification, that the political vision he outlined from the beginning of his national career was the one he had followed, with unwavering consistency, in the tumultuous decade ahead. The supposed inconsistencies of his leadership were, according to Seward, actually just advances toward the objective he had identified from the beginning. It is therefore worthwhile to analyze briefly the political ideas that Seward set forth during the first decade of his career in national politics.

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Seward's grasp of the crucial importance of national parties distinguished him from most antislavery radicals, both in his stubborn adherence to the Whig party until it was hopelessly broken to pieces and in his wavering commitment to the Republicans. A purely sectional party could not ultimately accomplish national ends. But Seward's understanding of the national party system also allowed him to see, more keenly than almost anyone, the grave threat posed by the nation's sudden expansion to the Pacific. "[T]he law of nature, of physical geography, the law of the formation of the earth," Webster declared in his Seventh of March speech, "settles forever, beyond all terms of human enactment, that slavery cannot exist in California or New Mexico."<sup>41</sup>

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<sup>40</sup> Seward to Theodore Parker, June 28, 1858.

<sup>41</sup> Daniel Webster, *Great Speeches* (Boston, 1891), 615.

Seward emphatically disagreed with these sanguine predictions.<sup>42</sup> After all, slavery had once existed in every state in North America and indeed in every part of the world. It was not climate but economics that encouraged the spread of slavery into unsettled lands. No climate on earth could make slave labor more productive than free. But where land and resources are plentiful and labor scarce, the owner of slaves can make a quick and easy fortune. Without a captive labor force, however, the opportunities of the frontier only ripen gradually as the risks and privations become less daunting to ordinary laborers. That was why Europe, having long since rid itself of the curse of slavery, nevertheless planted it in the New World. And, as all subsequent history had shown, the short-term advantages of slavery became ruinous in the long, as free labor, instead of following the laws of supply-and-demand to high wages, is repelled by competition with slaves.<sup>43</sup> And so, against every consideration of economy, morality and politics, slavery might entrench itself in the Great West, where its blighting influence would cripple the prospects of the nation for generations to come.

Only a determined, united political opposition could reliably prevent the spread of slavery. But the federal government was dominated by a faction determined to do the opposite. And new states relied far more on the federal government than older states. The outsized importance of federal patronage in states without large populations or developed economies allowed interested parties in Washington to dominate the internal politics of newly organized states. “The concentration of the slave power” in the Federal Government, and the disorganized apathy of the free states, assured that California’s political leadership would reflect the views of the South more than those of their own constituents until truly democratic organizations and institutions gradually asserted themselves.

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<sup>42</sup> “Sir, there is no climate uncongenial to slavery.” Speech on the Compromise of 1850.

<sup>43</sup> Seward, Speech in the Senate, March 11, 1850. And *Works*, 2:51-93.

And finally, Seward's assessment of the nation's two parties also convinced him that there was no real threat of disunion in 1850. "[R]evolutions which begin in the palace seldom go beyond the palace walls, and they affect only the dynasty which reigns there." Much as proslavery leaders might like to effect a total revolution rather than submit to the diminution of their influence in the corridors of power, they could not carry the people with them. "[T]he popular passions of the country are not at all, I think, in danger of being inflamed to excess," Seward insisted. The real danger, rather, was that Northerners, in tamely submitting to these idle threats, would allow the power of slavery to grow to the point where its inevitable demise would be ruinous for the whole country.<sup>44</sup>

Seward's purpose, even in the most combative speech of his career, was to avoid an upheaval over slavery, not to foment one. He never believed, for a moment, that the slaveholders threatened the mature free labor civilization of the North. Their system was doomed, but their power over the Federal government gave them a unique opportunity to condemn the Great West with the same ruin. At stake, in 1850, was not the freedom Americans had already achieved but the continental grandeur they were yet destined to attain. Emancipation was inevitable, Seward said, "all measures which fortify slavery or extend it, tend to the consummation of violence; all that check its extension and abate its strength, tend to its peaceful extirpation."<sup>45</sup>

How different the situation had become by 1858! With the political threat posed by slavery safely overcome, Seward's faith in progress once again began to distinguish him from some of his colleagues. In a major Senate speech in 1860, his last address before the Republican national convention, Seward framed the national conflict as one between free states and capital states. Radicals saw this as another sign of Seward slouching toward conservatism (and it's

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<sup>44</sup> Ibid.

<sup>45</sup> Seward, *Works*, 1:87.

amusing to think how the formulation would have baffled the likes of Charles Beard). But Seward had always tried to muddle purely sectional divisions by casting the conflict between slavery and freedom in terms of a much broader historical transformation. With the territorial issue effectively settled and the predominance of free states assured, the cause of freedom in the South could only be advanced by broadening the appeal of the Republican party. After all, the country could not be governed by a blatantly sectional coalition forever. And even if it could, it would hardly be desirable since, short of a military invasion that neither Seward nor any other Republican desired, the party of freedom could not have any influence in the South unless it appealed to voters there.

### *III: "Hence Will Proceed the Spirit Which Shall Renovate the World"*

Seward's faith in progress pointed the way out of this dilemma. Whenever Seward lifted his gaze from immediate controversies, he transitioned from the politics of classical republicanism, and the perpetual struggle between the few and the many, to the politics of universal equality and the ultimate liberation of mankind. Classical republican authors taught Seward how to think about politics, but his view of history was of a march ever onward, ever upward, "the following of an endless chain, suspended from the throne of God."<sup>46</sup>

If Southerners were not yet prepared to hear discussions of emancipation without becoming hysterical – fine. Education and economic advancement would smooth the way soon enough. "Popular government follows in the track of the steam engine and the telegraph," he

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<sup>46</sup> Seward, *Works*, 4:193

declared.<sup>47</sup> One form of human advancement inevitably pushes forward all others. Slavery was an anomaly, “temporary, accidental, partial and incongruous,” even in the South.<sup>48</sup>

“Laws, however erroneous, or however arbitrarily established, acquire a supposed sanctity from the ceremony of their enactment, and derive great strength from protracted acquiescence,” Seward observed, subtly critiquing this legalistic mindset by describing it. At the same time, however, Seward was convinced that all genuine progress was gradual, not sudden. “It is a law of human progress, that no work or structure proceeding from human hands shall come forth complete and perfect.” A genuine reformer must have the courage to brave controversy and the discretion to avoid unnecessary aggression. “Truth is not aggressive; but, like the Christian religion, is first pure, then peaceable. Nor need the reformer fear that occasions for duty will be wanting. Error and injustice never fail to provoke contest; because, if unalarmed, they are overbearing and insolent; if alarmed, they are rash, passionate, and reckless.”<sup>49</sup>

Revolutions were not the agents of progress but “the natural penalties for unwise persistence in error, and servile acquiescence in injustice and oppression.” Six years before the onset of the Civil War, Seward precisely expressed his future attitude toward self-proclaimed radicals. “Most men engage readily enough in civil wars, and for a flash are hot and active; but they cool from natural unsteadiness of temper, and abandon their objects, and destitute alike of principle, honor and true courage, betray themselves, their associates, and even their cause, however just and sacred.”<sup>50</sup>

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<sup>47</sup> Cited in Foner, *Free Soil*, 39. Seward actually wrote this after the war, but it nicely reflects his thought in the 1850s as well.

<sup>48</sup> Seward, *Works*, 1:74 The quote is from his speech on the Compromise of 1850, March 11, 1850.

<sup>49</sup> Seward, *Works*, 4:180-181.

<sup>50</sup> Seward, *Works*, 4:180-181.

Seward's political philosophy owed a large intellectual debt to the works of Francis Bacon, whom Seward considered "the founder of modern philosophy."<sup>51</sup> No other writer appears more frequently in Seward's antebellum writings. Bacon's essay, *Of the true greatness of kingdoms and estates* supplied the theme of Seward's antebellum career. Bacon, like Seward, considered himself well suited to the greatest task of statesmanship – to "make a small state great" – for he had "long-continued experience in business of estate, and much conversation in books of policy and history."<sup>52</sup>

Scholars debate whether Bacon systematically incorporated his philosophy of science and politics.<sup>53</sup> The defining feature of his philosophy, the reason Seward called him the first modern, was his commitment to worldly progress. The ultimate aim of his philosophy was not knowledge but its fruit, the mastery of mind over nature and "the relief of man's estate." And the intellectual shift from Platonic philosophy to scientific empiricism had its counterpart in the shift from classical republicanism to liberalism. The aim of Platonic philosophy, Lord Macaulay wrote, "was to exalt man into a god. The aim of the Baconian philosophy was to provide man with what he requires while he continued to be a man. The aim of Platonic philosophy was to raise us far above our vulgar wants. The aim of Baconian philosophy was to supply our vulgar wants."<sup>54</sup>

In his political writings, however, Bacon remained steeped in the vocabulary of classical republicanism. And the ambiguity between the two mindsets has an instructive parallel in the

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<sup>51</sup> Seward, *Works*, 1:75. "I am delighted with the works of Bacon," Seward wrote to a friend in 1837, "so profound, yet so brilliant, so universal in their learning, yet so accurate." Bancroft, *Life of William Henry Seward* (New York, 1900), 1:185. Seward's speeches over the years contain more references to Bacon than any past philosopher, except perhaps Machiavelli – who is, not coincidentally, the other contender for the distinction of being the "first modern." My judgment of Hammond comes from Drew Gilpen Faust, *James Henry Hammond and the Old South* (Baton Rouge, 1982), esp. 257-283. Faust doesn't assess Bacon's relative influence on Hammond but he looms larger in her intellectual portrait than any other past philosopher.

<sup>52</sup> Cited in, Markku Pelton, "Politics and Science: Francis Bacon and the True Greatness of States" *The Historical Journal* (June, 1992), 285.

<sup>53</sup> *Ibid.*

<sup>54</sup> Lord Macaulay, "Lord Bacon" *Critical and Historical Essays* three vols. (New York, 1901), 465.

relative influence of liberalism and republicanism in antebellum American thought.

Republicanism is a philosophy of rebellion, of escape from worldly imperfections and the inescapable corrosion of secular time. Liberalism embraces the limitations of the present as the channel of man's march forward through history and into universal time, like a river that swells gradually, inexorably, into the great sea. In Bacon, Seward found a mind like his own, steeped in the furies of factional politics, unillusioned about the grim realities of power, yet confident in a future beyond the reach of politics, in which all the struggles of ambition were "mere eddies in the mighty stream, that rolls to its appointed end."<sup>55</sup>

#### *IV: "The True Greatness of our Country"*

"The establishment of the republic of the United States of America is the most important secular event in the history of the human race," Seward declared in his eulogy of John Quincy Adams. Its creation, however, was an unfolding drama, not a singular event. Unlike Lincoln, who thought that the field of glory had been claimed by the Founders, leaving to their heirs only the modest work of preservation, Seward believed the most "immense and sublime" work remained undone, and his ambitions were as vast as the continental scale of his vision. "I know that heaven cannot grant, nor man desire, a more favorable occasion to acquire fame, than he enjoys who is engaged in laying the foundations of a great empire; and I know, also, that while mankind have often deified their benefactors, no nation has ever yet bestowed honors on the memories of slavery."<sup>56</sup> Seward was not referring to the memories of the founders here, but to the prospective memory of William Henry Seward. George Forgie has astutely interpreted "the

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<sup>55</sup> Those lines are from William Cullen Bryan, "The Crowded Street" (1864).

<sup>56</sup> William Henry Seward, *Works*, George Baker, ed. five vols. (New York, 1861), 4:603.

peculiarly deferential mentality that was characteristic of most American political leaders” in the antebellum period. They were acutely conscious of themselves as living in a ‘post-heroic’ age, the age after the Revolution. As a result, all political disputes inevitably devolved into controversies about the intentions of the Founders in general and the Constitution in particular, which all sides accepted as definitive. Seward’s tactful but unmistakable departure from this consensus is what most justified the impression of him as a radical.

Ironically, the two lines that made Seward odious to conservatives and Southerners – a “higher law” than the Constitution and an “irrepressible conflict” – were both misunderstood by contemporaries. Seward knew better than to proclaim heresies in flashy phrases, and he regretted both lines even though he never intended the meanings imputed to them. In context, his point about a higher law is entirely uncontroversial. Seward never meant to suggest, as his critics claimed, that citizens were absolved from obedience to the Constitution whenever their conscience bound them to a “higher law.” And civil war was the farthest thing from Seward’s mind when he described an “irrepressible conflict” between North and South. But the smears stuck for a reason. Seward was guilty of a belief almost as heretical. He essentially dismissed the relevance of the Constitution in the sectional controversy over slavery – and for most Americans in the 1850s that was like dismissing relevance of the Bible in the Reformation.

The Founding Fathers, Seward said in his “higher law” speech in 1850, for all their brilliance, were barely able “to secure the reluctant adoption of the Constitution that is now the object of all our affections and of the hopes of mankind.” And the conflicts of that era impressed upon the Founders “a profound distrust of [the Constitution’s] perpetuity,” Seward continued. The nation they established began as a tentative experiment held together by nothing more than the anxious regard of those who wanted it to succeed. Americans in 1850 had inherited the

“almost desponding solemnity” of Washington’s farewell address, and enshrined it “with pious reverence” as the soul of patriotism.

“But it is time to prevent the abuses of that sentiment,” Seward continued. “It is time to shake off that fear, for fear is always weakness.” A government once made becomes the “strongest of human institutions,” however “capriciously and oppressively” it has been administered. The Union, established with the greatest difficulty by the Founders, had become “the creature of necessities, physical, moral, social and political...The Union, then, is, not because merely that men choose that it shall be, but because some government must exist here, and no other government than this can. If it could be dashed to atoms by the whirlwind, the lightning, or the earthquake, today, it would rise again in all its just and magnificent proportions tomorrow.”<sup>57</sup>

The task of the present generation, therefore, was not to preserve the work of the founders but to build upon it. “We in our turn have succeeded to the same responsibilities, and we cannot approach the duty before us wisely or justly, except we raise ourselves to the great consideration of how we can most certainly ‘sow greatness to our posterity and successors.’”

To Donn Piatt, then a young man visiting Washington, Seward gave a blunt version of his attitude toward the sacred text of the American Union. “A written Constitution is a superstition that presupposes certain impossibilities. The first is that it can express all the wisdom of the past, and anticipate all the wants of the future. It supposes that its creators were both saints and sages,” Seward said. “The Constitution is to us at the North a great danger. While we are devoting ourselves to it as the sacred ark of the covenant we lose sight of the fact that the Southerners are using it as a shield to cover their wicked designs. They are laying the foundation for a Southern empire...they will stretch that Constitution to its furthest limit for the extension of slave territory.

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<sup>57</sup> Seward, Speech on the Compromise of 1850. *Congressional Globe*, 31<sup>st</sup> Congress, 1<sup>st</sup> Session, appendix.

When these things are done, it will be good-by Union.” But Seward also acknowledged, to his incredulous young listener, that these were not opinions to let loose on the world unfiltered, “for nothing makes a devotee so mad as to pull the stuffing out of his god, and we never can succeed by making people mad.”<sup>58</sup>

Seward’s speeches included many sly jabs at the rigid constitutionalism of his colleagues without quite exposing himself as a heretic. “...But you answer that the Constitution recognizes property in slaves,” he said at one point in his Higher Law speech. “It would be sufficient, then, to reply, that this constitutional recognition must be void, because it is repugnant to the law of nature and of nations.” Having elicited a few gasps, he then immediately added, “But I deny that the Constitution recognizes property in man.”<sup>59</sup> These sly flirtations with heresy justified the misrepresentation of what Seward meant when he invoked a “higher law” than the constitution in an entirely uncontroversial sense.

Seward’s view of the Constitution did not, of course, align him with the likes of William Lloyd Garrison. His devotion to the Union, then and always, was absolute. “The first principle of our duty as American citizens is to preserve the integrity of the Union. Without the Union, there would be not only a want of harmony of action, but collisions and conflicts ending in anarchy or probably in despotism. This Union must be a voluntary one, and not compulsory. A Union, upheld by force would be a despotism.”<sup>60</sup> Seward was also absolutely sincere in affirming that the Federal government had no authority over slavery within individual states. His belief in proper limitations on national power over local institutions was not an expression of pious faith in the ultimate wisdom of the Framers but rather a fundamental aspect of his own elaborate political philosophy. He had no sympathy for the demands “absurd, indeed, but yet unceasing –

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<sup>58</sup> Donn Piatt, *Memories of the Men who Saved the Union* (New York, 1887), 137-138.

<sup>59</sup> Seward, *Works*, 1:71.

<sup>60</sup> Seward, *Works*, 3:293. *Speech at Cleveland*, October 26, 1848.

for an immediate and unconditional abolition of slavery – as if any power, except the people of the slave states, could abolish it and as if they could be moved to abolish it by merely sounding the trumpet loudly...”<sup>61</sup>

There is a close parallel between Seward’s attitude toward the Constitution and his attitude toward the Bible. “Some of our citizens study the letter rather than spirit of our constitution and laws,” Seward observed in 1844. “What they find the constitution and laws tolerate, they regard as immutable; like those theologians who pronounce even human slavery a divine institution, because an apostle commanded servants to be obedient to their masters.” His approach to authoritative texts, secular and sacred, distinguished Seward from conservatives and many radicals alike. Some of the most influential political antislavery leaders, such as Salmon Chase, Joshua Giddings, and Charles Sumner, devoted considerable intellectual energy to proving that the Constitution made absolutely no concessions to slavery. These efforts were as historically absurd as they were psychologically necessary. Americans determined to make no compromise could not believe that the fundamental law of their country was itself a compromise. Before the fall from grace there had been the pristine perfection of the Fathers’ creation. Seward’s interpretation of the Constitution was charmingly simple. It came down to one simple rule, he said.

That by no word, no act, no combination into which I might enter, should any one human being of the generation to which I belong, much less any class of human beings, of any nation, race, or kindred, be repressed and kept down in the least degree in their efforts to rise to a higher state of liberty and happiness. Amid all the glosses, of the times, amid all the essays and discussions to which the constitution of the United States has been subjected, this has been the simple, plain, broad light in which I have read every article and every section of that great instrument. Whenever it requires of me that this hand shall keep down the humblest of the human race, then I will lay down power, place, position, fame, everything rather adopt such a construction or a rule.<sup>62</sup>

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<sup>61</sup> Ibid. 1:86.

<sup>62</sup> Seward, *Works*, 4:329.

Seward did not rest this interpretation on the Constitution's literal meaning or even the historical intentions of its framers. He recognized that "the United States governments, although more perfect than any other...are founded on compromises of some abstract truths and of some natural rights."<sup>63</sup> The Revolutionary era was not, for Seward, a period outside secular time. "The basis of the constitution was laid broader by far than the superstructure which the conflicting interests and prejudices of the day suffered to be erected," Seward wrote in 1844, anticipating the language of Karl Marx.<sup>64</sup> The past was a guide, not a master. Though he did his own thinking, Seward's writings and speeches are not notable for introducing new ideas. His originality consisted in the boldness and clarity with which he assimilated prevailing values and principles of American political thought into a consistent vision of empire, one that promised to resolve the central contradiction in the nation's constitutional framework without sacrificing either of its animating principles – Liberty and Union.

Though Seward took his vision of a great continental empire primarily from John Quincy Adams, he differed from his mentor in one key respect. Seward was far more sanguine than Adams about the capacity of the Union to assimilate diverse peoples. The difference is not a surprising one between a New Englander and a New Yorker. And Seward's Welsh and Irish ancestry may have accentuated it. "We never were, we are not now, and for a long time to come we can not be, a unique and homogenous people," Seward observed in 1848. "The disasters and privations of the Old World cause this flood of immigration to continue with daily-increasing volume, and our settlements on the Pacific will soon become the gate for a similar flow from the worn-out civilization of Asia. Our twenty millions are expanding to two hundred millions – our

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<sup>63</sup> Seward, *Works*, 4:177.

<sup>64</sup> Seward, *Works*, 3:495.

originally narrow domain into a great empire. Its destiny is to renovate the condition of mankind.”

Unlike many Whigs, who were opposed to expansion, Seward believed as fervently as anyone in America’s “manifest destiny” as a continental empire. But that destiny was not for the white race only. “Exclusion of foreigners and hostility to foreign states always were elements of barbarism. The intermingling of races always was, and always will be, the chief element of civilization.”<sup>65</sup> America was “to furnish a political alembic which, receiving the exhausted civilization of Asia and the ripening civilization of western Europe, and commingling them together after their long separation, would disclose the secret of the ultimate regeneration and reunion of human society throughout the world.”<sup>66</sup> Though Seward was not so imprudent a politician to develop the theory at length, his ideas about race occasionally seem to anticipate Jose Vasconcelos’s essay *La Raza Cosmica* (The Cosmic Race).<sup>67</sup> He explicitly distinguished between the superiority of American institutions and the superiority of Anglo-Saxons. Freedom, not blood, made the English colonies more powerful than all the others. “Sociologists talk of Anglo-Saxon blood. No nobler blood than the Iberian ever coursed through human veins. But the Spaniard planted only slave states. The Anglo-Saxon free ones.”<sup>68</sup> Seward’s was perfectly willing to deploy evasions in discussing the future of black Americans. But he surely did not miss the ultimate logic of his own position in 1) affirming that the principle of democratic

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<sup>65</sup> Seward, *Works*, 2:498-499.

<sup>66</sup> Seward, *Works*, 3:13. There is, in Seward’s thought, considerable recognition of the argument recently advanced by Eric Rauchway, to wit, that America is not only a driver of globalization but a child of it. Rauchway, *Blessed Among Nations: How the World Made America* (New York, 2006).

<sup>67</sup> Jose Vasconcelos, *The Cosmic Race* trans by Dildier T. Jaen (Baltimore, 2007).

<sup>68</sup> Seward, *Works*, 4:252.

equality entitled all men to the vote and 2) opposing colonization, staunchly and publicly, as a step backward rather than forward.<sup>69</sup>

Seward's faith in the capacity of the American system of government to swell into a continental empire, absorbing and attracting millions of diverse peoples, depended on three vital preconditions: First, technological and intellectual progress; second, educational institutions to disseminate that progress throughout the body politic. The third, and most crucial, bulwark of liberty was the concept of sovereignty devised by the founders. History contained countless examples of small, homogenous democracies, where the people governed themselves, and of large empires, in which many diverse people combined in a common allegiance to their monarch. But only Americans had solved the riddle of history and combined the freedom of self-governing republics with the greatness of empire. "We have thoroughly tried our novel system of Democratic Federal Government, with its complex, yet harmonious and effective combination of distinct local elective agencies, for the conduct of domestic affairs, and its common central elective agencies, for the regulation of internal interests and of intercourse with foreign nations; and we know that it is a system equally cohesive in its parts, and capable of all desirable expansion."<sup>70</sup> Seward was absolutely sincere in upholding the Constitutional divisions between federal and state authority, not because the exact balance struck by the Convention at Philadelphia was necessarily perfect but because political liberty depended on the principle of local self-government. Unlike the Founders, Seward was an unequivocal democrat. And to be an unequivocal democrat in the nineteenth century was to resist centralization wherever it was not absolutely necessary.

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<sup>69</sup> "I cannot agree with the honorable senator from Massachusetts in proposing to devote eighty millions of dollars to remove the free colored population of the slave states and thus, as it appears to me, fortify slavery..." Seward, *Works*, 1:87. Speech of March 11, 1850.

<sup>70</sup> Seward, *Works*, 1:58.

## 5

### *The Collapse of the Establishment*

#### *I: "Our Very Manhood Was Daily Called Into Question"*

Despite his long service in the Senate, William McKindree Gwin later recalled that the long Congressional session of 1858 “laid the foundation [of the] irrepressible conflict.”<sup>1</sup> The designation may seem arbitrary, even contradictory if the conflict was, indeed, “irrepressible.” But it marked the first time that Gwin’s brand of politics failed to hold the Democratic party together. At one and the same time, he was the chief enforcer of President Buchanan’s position on the Lecompton Constitution in the Senate and one of the most important figures maintaining cordial relations between the leaders of different sections. He orchestrated his friend Stephen Douglas’s removal from the Committee on Territories as punishment for refusing to support the President’s Lecompton policy – a maneuver that even a proslavery fire-eater, Robert Toombs, considered outrageous – and he introduced Seward into Southern proslavery social circles, where the “black Republican” had never been welcomed before.<sup>2</sup>

Gwin and Seward had worked closely together on appropriation bills through their time together in the Senate, and the California Senator appreciated the New Yorker’s help in an area where his normal proslavery allies were less than useful. Though their Senate careers began at essentially the same time, it was only in the session of 1858 that Seward pressured Gwin to

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<sup>1</sup> William Gwin, “Memoirs” *California Historical Society Quarterly* (Sept. 1940), 270.

<sup>2</sup> For a fascinating recent essay on Gwin’s career, see Rachel St. John, “The Unpredictable America of William Gwin: Expansion, Secession, and the Unpredictable Borders of Nineteenth Century North America” *Journal of the Civil War Era* (March, 2016), 56-84.

introduce him socially to their proslavery colleagues. In an unconscious but accurate comment on Gwin's political courage, his friend and first biographer wrote that he "did few braver things in his life than, in the then state of feeling in Washington society, to risk his own prestige by this generous effort – which proved so successful – to overcome Mr. Seward's ostracism by the Southern social element."<sup>3</sup> The success of these efforts was due largely to Mary Gwin's prestige as a hostess. She accompanied him into the first dinner among Southern Senators and introduced him to the ladies present, many of whom, unlike their husbands, had never spoken to the "black Republican." And once his presence was accepted, Seward charmed them all – or almost all of them.

It is not difficult to infer Seward's motives for ingratiating himself with Southern leaders who continued to insist that they would see the whole country engulfed in blood before acquiescing in his election to the Presidency. The schism of the Democratic party over Lecompton signaled the end of the South's predominance over the national government, and Seward saw that the challenge of overthrowing the slavepower had become the challenge of convincing Southern leaders to acquiesce peacefully in the lawful transfer of power to the Republicans. "The Southern and Democratic opposition in social circles has given way, and society of all classes is profuse in its courtesies," Seward wrote home on January 25, 1858, in requesting that his daughter come to Capital to help him entertain his new friends. "It is a business as difficult as laborious and as continuous as my own, and nearly as responsible," he wrote of a hostess's role.<sup>4</sup> Seward was not, as Gwin supposed, eager to enter the "charmed circle of Southern Social Life" merely for the pleasure of the company.

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<sup>3</sup> Evan J. Coleman, "Gwin and Seward – A Secret Chapter in Antebellum History" *Overland Monthly and Out West Magazine* (November, 1891).

<sup>4</sup> Frederick Seward, *Seward at Washington as Senator and Secretary of State* two vols. (New York, 1891), 2:334.

Another powerful influence helping Seward overcome Southern social ostracism was his friendship with Lord Napier, the British Minister to the United States. Napier was so fond of Seward that he was accused of having been “Yankee Bitten” back home in London. Since Southern planters liked to think of themselves as the American equivalent of the British Aristocracy, they found Napier irresistible, especially as he shared their social philosophy. “No English minister and his wife that I have known were so beloved as were Lord and Lady Napier,” Varina Davis recalled.<sup>5</sup> It was Seward who introduced Napier to James Henry Hammond soon after his famous “mudsill” speech. As Hammond described it, the three men had a pleasant conversation, in which Napier concluded that “Seward was right in his conviction that the union was a fixed fact, otherwise I was, and he did not see what the South had to lose [in remaining in the Union].”<sup>6</sup>

Ironically, the circumstances that impelled Seward to ingratiate himself with Southern leaders were the same circumstances that, after a brief delay, made him more viscerally loathed than ever. His speeches in Congress that session were identical in substance to the point he expressed in his “Irrepressible Conflict” speech six months later. But the earlier speeches coincided with Seward being socially welcomed for the first time among the same Southerners who seized upon the latter speech to denounce him more bitterly than ever before. Although Seward had told them again and again that they had doomed themselves politically by advancing beyond the cover of popular sovereignty into an outright demand for protection of slavery, Southerners were remarkably slow in grasping this alarming truth. “Do you know we have 10 aspirants for the Presidency among [Southern] Senators?” James Henry Hammond wrote privately in March 1858. And that didn’t even include Hammond himself, who would have to

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<sup>5</sup> Varina Davis, *Memoir of Jefferson Davis* two vols. (New York, 1890), 1:579.

<sup>6</sup> James Henry Hammond to Major -- , March 9, 1858. James Henry Hammond Papers, Library of Congress.

figure in any accurate reckoning. The midterm elections, in which Republicans gained six seats in the Senate and a majority in the House for the first time, therefore came as a bitter shock. Southerners who had no trouble treating Seward courteously when they expected to ride him, and the “abolitionism” he represented, to the White House found it much more difficult once they realized that he had a much better chance of getting there than they. Seward himself continued to solicit Southern friendships; he returned their snarls with smiles, shrugged off their increasingly nasty insults, and continued his relentless assault on their system.

In her memoirs, Varina Davis penned a telling anecdote of her and her husband’s brief but genuinely intimate friendship with Seward. When Jefferson Davis became seriously ill during the winter of 1858, Seward visited daily, inquiring about every symptom with a sweet tenderness that melted Varina Davis’s heart. Having become deeply fond of him, Varina could not resist crashing over the barrier on the subject of slavery, which she herself considered a mark of good breeding. Surely, she asked him, you don’t really believe those awful things you say about slavery.

He looked at me quizzically, and smilingly answered, ‘I do not, but these appeals, as you call them, are potent to affect the rank and file of the North.’ Mr. Davis said, very much shocked at Seward’s answer, ‘But,’ Mr. Seward, do you never speak from conviction?’ ‘Nev-er,’ answered he. Mr. Davis raised up his blindfolded head, and with much heat whispered, ‘As God is my judge, I never spoke from any other motive.’ Mr. Seward put his arm about him and gently laid down his head, saying, with great tenderness, ‘I know you do not – I am always sure of it.’<sup>7</sup>

We can immediately dismiss the possibility that Seward, having shown one version of himself to his family and friends for decades, suddenly revealed his true self to Varina and Jefferson Davis. But it is also unlikely that she simply made the story up. Indeed, the obvious affection she felt for Seward strongly suggests that an exchange like the one she recalled must

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<sup>7</sup> Davis, *Memoirs*, 1:581.

have taken place. In coming to accept Seward as a true friend, Varina would naturally wish to separate him from the political figure who threatened to destroy her whole world. Seeing this, as he smiled quizzically at her, Seward may have wondered at the same mystery: How could this delightful, intelligent human being embrace evil as righteousness? But Seward accepted the moral gulf that separated them as a fixed fact, and so he humored her. “He whose conscience acquits him will naturally be slow to accuse others whose cooperation he needs,” Seward later said in the Senate, perfectly summarizing the essence of his political philosophy. “History alone can adjust the balance.”<sup>8</sup>

Varina Davis seemed to have suspected that her friend was simply humoring her. “After this inscrutable human moral, or immoral, paradox left us, we sat long discussing him with sincere regret, and the hope that he had been making a feigned confidence to amuse us.”<sup>9</sup> In doing just that, however, Seward did the one thing a gentleman cannot do; he deliberately allowed his friends to pity him as one who, for all his gifts and virtues, lacked the courage to stand always on his convictions. It would have been a useful impression to give his Southern antagonists if his Republican allies had not noticed.

Many Senators, often far more conservative than Seward politically, began to despise the cheerful affability with which he ignored Southern insults. In no way a modest man, Seward was nevertheless free of those petty vanities to which most leaders are prone. He was conceited in the best sense, excessively confident in himself without a trace of snobbery toward others. He strove ceaselessly for historical glory and hardly noticed the petty indignities and insults that peppered him along the way. Despite their significant temperamental differences, this was the rare quality that made Seward and Lincoln kindred spirits. It was also this quality that caused both men to

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<sup>8</sup> Seward, *Works*, 4:652. Speech of January 12, 1861.

<sup>9</sup> Davis, *Memoirs*, 1:581.

make a paradoxical impression on people. To friends, Seward seemed at once as artless as a child and as cunning as a fox, and he gave both impressions so naturally that no one considered them incompatible. But to critics this same impression made him seem as though he lacked the dignity of an honorable man. Real men lose their tempers, the thinking went, and it is in those moments of outraged passion that one discovers of what stuff they are made. The absence of petty resentments paradoxically made Seward seem small.

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When Congress convened in the winter of 1859, the proslavery wing of the Democratic party remained heedlessly committed to positions that ensured its demise in the North even among voters who cared nothing for slavery. But Buchanan still had one card left to play: The acquisition of Cuba, by purchase or conquest. “For three years,” Seward wrote privately in January 1859, “I have regarded this Cuba demonstration as the most dangerous one to us that the Democracy could get up...” The two wings of the Democratic party could easily hold together under the banner of planting the American flag on that huge island, and the issue would force Republicans, who were cultivating a multifaceted appeal, to stand on antislavery grounds alone.<sup>10</sup>

And so the Democrats attempted to make the most of it. On February 25, as debate over Cuba dragged well into the night, Senator James Doolittle of Wisconsin moved to lay aside the Cuba question and take up a bill providing free homesteads in the West. The motion was refused, whereupon Seward rose to deliver an inspired contrast. “The Senate of the United States may as well meet face to face the issue which is before them. It is an issue presented by the competition

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<sup>10</sup> Due to space requirements, I have focused closely on revealing moments in analyzing elite political culture and conflict in this era while alluding only briefly to specific policy disputes over, among other issues, slavery expansion. The historiography on the politics of the late 1850s is almost endless. The best single overview is David Potter, *The Impending Crisis, 1848-1861* (New York, 1976).

between these two questions. One, the homestead bill, is a question of homes, of lands for the landless freemen of the United States. The Cuba bill is the question of slaves for the slaveholders of the United States.”<sup>11</sup>

At this clever maneuver, Senator Robert Toombs of Georgia went wild. “Always impassioned and furious,” a reporter for the New York *Tribune* observed, “he was now extraordinarily vehement in tone, violent in gesticulation and abusive in language.” Toombs correctly insisted that the two issues were completely unrelated and that conflating them was an unmanly, partisan dodge, but the mad rage in which he made his point suggests he grasped the larger truth in Seward’s remark. “There is one class of people whom I despise as American Senators, and that is demagogues,” Toombs railed, throwing his fist down on Seward’s desk and waving his hands in his face. “These...lacklanders shrink and tremble, and, to avoid the responsibility of voting upon this great foreign policy, they will stop and give ‘land to the landless’...what are you afraid of?”<sup>12</sup>

Throughout Toombs’s harangue, Seward looked pale but maintained a calm and steady gaze. Senator Benjamin Wade of Ohio, however, had a temper to match the Georgian’s. “Skulk, ah! Shiver do we!” he yelled upon taking the floor, crashing his fist against Toombs’ desk after swinging it within an inch of his nose. “It does not become a gentleman of the Senate to tremble over any measure...god knows, I never tremble before anybody,” Wade said as he leapt nearly off the floor to punctuate each sentence. He then repeated Seward’s contrast in his own inimitable fashion. “The question will be,” he declared, “shall we give niggers to the niggerless or land to the landless? [Applause in the galleries]” The sole purpose of the Democratic party is

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<sup>11</sup> *Congressional Globe*, 35<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1352-1353.

<sup>12</sup> New York *Tribune*, February 26, 1859. The most thorough modern biography of Toombs is William Thompson, *Robert Toombs of Georgia* (Baton Rouge, 1966). William C. Davis has written a fine study of Toombs’s friendship with Alexander Stephens. Davis, *The Union That Shaped the Confederacy* (Lawrence, 2001).

“that we should go through the whole earth hunting for niggers,” Wade declared. “When you come to niggers for the niggerless all other questions sink into perfect insignificance.”<sup>13</sup>

Now here was a demagoguery to put Seward’s polished style to shame. But did it infuriate Toombs even more? No, because Wade was a *man*, or at any rate a renowned marksman. “I do not very much fear anybody or anything,” Wade said in concluding his remarks. “It would be a very uncomfortable state of mind, I should think.” Such bravado excused a thousand antislavery heresies. Wade, Toombs had declared in an earlier debate, “is always honest and outspoken and straightforward, and I wish to God the rest of you would imitate him. He speaks out like a man.” For his part, Wade found these observations highly perceptive, and sent a clipping of them home to his sons so that the proslavery Georgian could instruct them about character.<sup>14</sup>

Next on the floor was Senator William Pitt Fessenden of Maine. “Persistently calm and provokingly cool,” in the *Tribune* reporter’s judgment, Fessenden did not adopt the volcanic style of his colleagues. But he accepted the premise that courage was the main issue. “Now, sir, I want to say, in all soberness, that I am not afraid to meet the Cuba question,” he declared.<sup>15</sup>

It was left to Seward, responding to Toombs’ attack, to suggest that perhaps manliness and courage were not especially relevant to legislation on Homesteads and Cuban annexation. “I think that there are some other qualities besides courage that are essential to legislators and Senators, and amongst these are moral courage, fidelity to the interests of the constituency who send us here; and if all the world should accuse me of having a lack of manliness, of succumbing to influences averse to the interests of my people, I should still think it the part of wisdom and of

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<sup>13</sup> *Congressional Globe*, 35<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1353.

<sup>14</sup> *Congressional Globe*, 35<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1354; H.L. Trefousse, *Benjamin Franklin Wade, Radical Republican from Ohio* (New York, 1963), 338, n. 52.

<sup>15</sup> *Congressional Globe*, 35<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1354.

duty to maintain those interests.” Seward concluded his speech by saying that he was always on the side of freedom and free labor, and always opposed to slavery and slave labor. “If there is cowardice in that, I am willing to submit to the imputation.”<sup>16</sup>

With that, Seward drew out his cigar case and strode abruptly for the cloakroom. Toombs again took the floor, even angrier than before. He once again implied Seward was a coward, challenged him to a duel, and denounced him for uttering “in the Senate what he cannot maintain as a gentleman.” Seward, leaning against the cloakroom door and smoking his cigar, true to his word, submitted to these imputations with a look of perfect indifference.<sup>17</sup>

More than two decades later, Wade, Simon Cameron of Pennsylvania and Zachariah Chandler recalled this incident as one of the most egregious examples of the abuse Southern Senators and representatives had begun to heap upon their Northern colleagues in the final years before the Civil War. “Mr. William H. Seward was the especial object of these insults, and he being the admitted leader of the Republicans in the senate, all men were insulted through him,” they recalled in a memorandum. Wade was clearly the primary author of the document, which was his only deliberate attempt to influence posterity’s judgment of the historical record. “Whether from philosophic serenity of temper or from a positive lack of physical courage,” Wade and his coauthors continued, Seward “took these premeditated insults with a calmness which set many of his followers frantic with rage and shame...Our very manhood was daily called into question.”<sup>18</sup>

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<sup>16</sup> Ibid., 1355.

<sup>17</sup> New York *Tribune*, February 26, 1859.

<sup>18</sup> Cited in Albert Riddle, *The Life of Benjamin F. Wade* (New York, 1888), 250-251. The memorandum was dated May 26, 1874.

Seward was not a physical coward. His cool indifference to insults and abuse was genuine, not a mere mask for timidity.<sup>19</sup> But his professional composure, along with his sophisticated approach to politics, combining philosophical purpose with cunning opportunism, seemed to betray an absence of sincerity to many of his colleagues.

As Seward's influence in the Senate faded, and especially after he resigned to join Lincoln's cabinet, William Pitt Fessenden emerged as the acknowledged leader of the Republicans in the upper chamber. Charles Sumner said the Senate was Fessenden's "empire and his undisputed throne," although for Sumner, who disdained the role of inside powerbroker for that of national conscience, this was a backhanded compliment. "He seldom speaks," a reporter noted from the galleries, but his physical presence alone commanded attention. "He is a cold, hard-faced man... inflexible as the laws of the universe; cool as a mountain top; and brave as a lion."<sup>20</sup> A godson and political protégé of Daniel Webster, Fessenden was in many ways a throwback to an earlier, less boisterous era. He considered himself, to use his own metaphor, a "breaker" to the democratic tide, restraining a movement he knew he could not reverse. "The public," he later wrote, "when roused and excited by passion and prejudice, is little better than a wild beast."<sup>21</sup> Such sentiments earned him little love from the public, but within the Senate chamber his power became unrivaled. "There was a sort of majesty in the figure and brow of Fessenden when addressing the Senate, and his sarcasm was as keen as it was inimitable," George Julian recalled.<sup>22</sup> Stephen Douglas, the greatest Democratic parliamentarian of the antebellum era, ranked Fessenden among the immortals of the Upper Chamber. "Henry Clay was

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<sup>19</sup> With the possible exception of Lincoln, no major politician in this era exhibited less personal vindictiveness. His correspondence shows that he was amused, not threatened, by Southern bluster. Even the brutal assassination attempt at the close of the war did not upend Seward's equanimity.

<sup>20</sup> *Harper's Weekly*, March 16, 1861.

<sup>21</sup> Fessenden to William, May 13, 1868. Fessenden papers.

<sup>22</sup> George Julian, *Political Recollections, 1840-1872* (Chicago, 1884), 356

the most fascinating,” Douglas said. “Daniel Webster the most powerful orator, John Calhoun the logician of the Senate, William Pitt Fessenden the readiest and ablest debater.”<sup>23</sup>

In his study of Reconstruction, Eric McKittrick identified Fessenden as a type almost always to be found in the Senate. “Such men, usually of unexceptionable standing in the public confidence and often waspishly sensitive to the cares and prerogatives of senators, may not always move in the direction of ultimate wisdom, but they seldom move in haste. Few major decisions are made without their leadership – or, at the very least, their concurrence – and their veto in the last analysis can kill almost anything. “During the secession crisis, Fessenden fought Seward’s conciliatory approach tooth and claw.”<sup>24</sup>

Unlike Seward, Fessenden did not consider disunion the worst of all possible calamities. The worst fate was submission. “So long as I stand upon American Soil,” Fessenden declared on the floor of the Senate in a combative speech in early 1858, “a freeman with equal rights with others, and power to enforce them according to my ability, unrestricted, unrestrained, and unterrified, too, this Union is valuable to me; but when the hour comes when that privilege no longer exists, when I hold my rights by tenure of yielding to weak fears, I am willing to see any consequences follow.”<sup>25</sup>

Fessenden could hardly have been surprised when his talk of possible disunion provoked a rebuke from Seward. But Fessenden was surely taken aback to find the future President of the Confederacy hurling similar abuse in his direction. In sharp, bitter language, Jefferson Davis denounced “the puny efforts now made to disturb that which lies at the very foundation of the

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<sup>23</sup> Allan Bogue, in the most thorough study of the Civil War Senate to date, argues for Fessenden’s *de facto* leadership of the Republican Senators. Bogue, *The Earnest Men: Republicans in the Civil War Senate* (Ithaca, 1981), 78-85. Most contemporaries agreed; William Salter, “William Pitt Fessenden,” *Annals of Iowa*, (April, 1908), 323; Erick McKittrick, *Andrew Johnson and Reconstruction* (Chicago, 1960), 269-270;

<sup>24</sup> Erick McKittrick, *Andrew Johnson and Reconstruction* (Chicago, 1960), 269-270.

<sup>25</sup> *Congressional Globe*, 35th Congress, 1st Session, 618; Don Fehrenbacher, *Prelude to Greatness* (Palo Alto, 1962), 93.

Government under which we live.” After referencing his military career, Davis sarcastically declined to “compare services” with those who were bent on destroying the Union (Fessenden had not served in the military). And then Davis ended with a thinly veiled threat of a duel.

At this, Fessenden leapt to his feet. “Sir, when the day comes when I shall shrink from stating in this Senate and before the country, every sentiment, that I entertain, every feeling of my heart, with reference to these matters which so much agitate this country...I will not stay in this body a single hour...I do not pretend that my life has been so illustrated by distinguished services to the country as the Senator from Mississippi seems to suppose his has been. I accord to him all the glory and merit which he may claim for himself...but sir...on this spot we are peers...and I will exert those rights wherever I choose, within the rules of order, let the consequences be what they may in regard to me.”<sup>26</sup>

Commenting on the frequent skirmishes between the senators from Maine and Mississippi, Fessenden’s son observed that the men were actually quite alike, both in physical appearance and in personality. “They both had slender figures and intellectual faces, were high-strung in spirit and prompt to resent attack.”<sup>27</sup> Though Fessenden rejected the Southerners’ dueling code on principle, he was unable to do so in spirit. He was incapable of meeting such threats with the cool contempt that Seward showed. They stung.

But Fessenden’s irascibility was also the key to what made him such a commanding figure in the Senate. When he rose to respond to a challenge or insult, he somehow managed to remain outwardly composed – his voice steady, his manner and language mild – while at the same conveying the full depth of his fury, glowing with a ferocity that made his self-control seem all the more impressive. His reputation rested on such moments, for in them he neatly

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<sup>26</sup> *Congressional Globe*, 35th Congress, 1<sup>st</sup> Session, 620.

<sup>27</sup> Francis Fessenden, *The Life and Public Service of William Pitt Fessenden* 2 vols. (Boston, 1907) 1:114.

combined the contrasting ideals of nineteenth century manliness. To be a slave of violent passions was bad; to be devoid of them was worse. James Parton, perhaps the most insightful student of public men in the nineteenth century, captured the ideal well. “The ideal of education is to tame men without lessening their vivacity...to unite in them the freedom, dignity, the prowess of a Tecumseh, with the serviceable qualities of the civilized man.” To command respect in a body that brought together the ruling elites among New England manufacturers and frontier adventurers, it was necessary to combine the qualities of “the forest chief with [those of the] trained man of business.”<sup>28</sup>

Fessenden’s combativeness should not be confused with antislavery radicalism. His attitude toward any efforts to undermine slavery where it already existed was invariably conservative. Describing his version of the Republican party’s doctrine in the Senate, he denounced those who claimed that “under the Constitution there is a power to abolish slavery in the States, and who avow a willingness to exercise that power.” He frequently asserted that the Constitutional prohibition against meddling with slavery directly conferred a moral obligation not to attack it indirectly. And where most antislavery Republicans appealed to the rights of humanity, Fessenden emphasized the rights of freeborn citizens in the North. His party’s opposition to the extension of slavery, he declared, was “not on the ground of humanity, not on the question of whether slavery is right or wrong in itself – with that, here, I do not choose to deal – but on the question of political power.”<sup>29</sup>

It is impossible to suppose that Fessenden’s rhetorical approach was dictated by political calculations (which is not to say he never made one). No constituent willing to hear outright talk

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<sup>28</sup> James Parton, “Life of Henry Clay,” *North American Review* January, 1866.

<sup>29</sup> For a very different interpretation of William Pitt Fessenden’s antebellum career, see Michael T. Landis, “‘A Champion Had Come’: William Pitt Fessenden and the Republican Party, 1854-1860.” *American Nineteenth Century History* (Vol. 9, No. 3), 269-285. *Congressional Globe*, 37th Cong. Special Sess. 1464; *Congressional Globe*, 36<sup>th</sup> Congress, 1s Session, 556; Also, *Congressional Globe*, 34<sup>th</sup> Congress, 3<sup>rd</sup> Session, 30-35.

of disunion over proslavery outrages would object to hearing bondage denounced morally. And on those occasions when Fessenden condemned the morality of slavery, he seemed to go out of his way to alienate those voters, notoriously numerous, who weren't sure if it was bondage or blacks they despised. "I abhor slavery in every form on the face of the earth; and it makes no difference whether it is white or black slavery, so far as the principle is concerned," Fessenden declared. One might doubt that race made no difference in Fessenden's opinion of slavery, but the claim is significant even if one finds it implausible.<sup>30</sup>

Speaking on the admission of Oregon as a state, Fessenden gave a reason for opposing it that drew fire from some of his fellow Republicans. "By the laws of Maine and under the constitution of the State of Maine, free negroes are citizens – just as much citizens of the State of Maine as white men:

They are voters, and recognized as citizens under the terms of the constitution, which allows any citizen to vote. There is a clause in the constitution now presented from Oregon which prohibits free negroes from coming into the State and residing there; and it therefore prohibits a portion of the citizens of the State of Maine from going to Oregon. I cannot vote for the admission of any State with a constitution which prohibits any portion of my fellow citizens of my own State from the enjoyment of the privileges which other citizens of the State have, and which the citizens of every other State have.<sup>31</sup>

Fessenden said nothing about the rights of all blacks under the Federal government, only the rights of Maine citizens. "I do not believe in the doctrine of self-government to the extent which allows one portion of the citizens of the United States to interfere with the rights of another portion of the citizens of the United States," Fessenden said upon beginning his remarks on Oregon. But he did accept the doctrine of self-government to an extent that allowed a State to abuse the most fundamental rights of its own inhabitants. Southern barbarism was none of his concern until it impinged on the rights of the citizens he represented. In response, Stephen

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<sup>30</sup> *Congressional Globe*, 36th Congress, 1st session, 556.

<sup>31</sup> *Congressional Globe*, 35th Congress, 1st Session, 1964.

Douglas pointed out that Illinois law also prohibited Maine's black citizens from moving to his state; did the Senator intend to expel his people from the Union? Fessenden answered that he couldn't; the constitutionality of such laws in existing states ought to be settled by the Supreme Court, presumably once Roger Taney had obligingly dropped dead and the Republicans had organized the court on sound principles.

Here emerged an "irrepressible conflict" in Fessenden's doctrine of self-government. He was sincere in saying that the Constitution's protection of slavery conferred a moral restriction against attacking it indirectly. This was simply the old idea that one must obey the spirit as well as the letter of the law. So he would oppose any measure whose purpose was to hasten the decline of slavery. But when Northern interests conflicted with the interests of slaveholders, as they often and inevitably did, Fessenden's duty was clear. On another occasion in the Senate, Fessenden explained how, if not on moral grounds, the extension of slavery elsewhere affected the citizens of Maine.

If it be a fact that free and slave labor cannot exist together, if the two systems be in a degree antagonistical, if their interests be in a measure opposite, everything which has a tendency to increase the political power of the slave interests in this country is a direct encroachment on the political power of the free people of the free States. It may be constitutional – it may be legal, but it is none the less an encroachment. What tends to increase the one tends also to diminish the other.<sup>32</sup>

Here, as in all else, it was an acute sense of personal, civic and sectional honor that aligned Fessenden with antebellum radicals. His view of an irrepressible conflict was identical to Seward's – with one crucial difference: For Seward, the conflict occurred entirely within a nationalist context. It was morally, politically, and economically essential for the North to

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<sup>32</sup> *Congressional Globe*, 34th Congress, 3rd Session, 30-35. Fessenden seems not to have realized that this justification would also sanction all other legal means of curbing the influence of slavery. If slavery was always antagonistic to the interests of the free States, the North had a right to effect its demise through any legal means. Had he been pressed on this point, Fessenden probably would have distinguished between measures that attacked bondage and those that merely prevented its growth.

transform the South into a free labor society, but this was for the good of the country as a whole. Disunion meant ruin for all, North and South, and so it was insane to reject as submission a policy that might prevent that outcome. The contrast between the two Senators illustrates the paradoxical way in which nationalist sentiment both invigorated and restrained antislavery principles. Seward's devotion to a great continental empire of liberty made him far more eager to destroy slavery in the South than Fessenden, who was content to let slaveholders wallow in their feudal world so long as they left the North alone. But in the secession crisis the outlook that earlier made Fessenden seem relatively conservative turned him into a radical of a different sort. "I want to occupy practical and efficient, instead of absurd and useless ground," Seward wrote privately during the secession crisis. Whether or not he was thinking of Fessenden, the Maine Senator plainly stood elsewhere.<sup>33</sup>

More importantly, without Seward's nationalism, Fessenden's sectional outlook exactly mirrored John Calhoun's. If the interests of the two sections were antagonistic – "what tends to increase the one tends to diminish the other" – then surely Southerners had a right to separate from the Union as Northern political power increased steadily at their expense. Not so fast.

"If I could yield to [secession] for one instant, I should be worthy to have heavier bonds placed on me than ever were placed on an African and the word 'slave' branded on my forehead; and so would every man everywhere, in my judgment, who would submit to be influenced for an instant by any such consideration as that," Fessenden declared in the final Senate session before Lincoln's election made the threat a reality. Fessenden ordinarily did not go beyond his refusal to acknowledge the threat, but this time he went further in a way quite characteristic. He invoked none of the Northern shibboleths of a glorious, eternal Union, nor did he call secession treason or anarchy. Instead he said that if the men of the North "will submit to see [the Constitution] broken

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<sup>33</sup> Cited in Green, *Freedom, Union Power*, 77.

and themselves deprived of their constitutional rights...I may mistake entirely the nature of the people I represent; but I shall require absolute conviction before entertaining for one instant a belief so derogatory to their character as men and freemen.”<sup>34</sup>

A year earlier, however, Fessenden had privately contemplated the very outrage he swore would be avenged by the blood of unyielding free men. “What do you say to becoming a subject of Queen Victoria,” he wrote to his father in 1859. “The British provinces, with the Northern and Eastern States, would not make a very weak Confederation, but I am not ready for the change quite yet.”<sup>35</sup>

## *II: “A Fearsome Responsibility”*

And yet, for all the threats and counter threats, for all the mutual hostility felt by both sides, the secession crisis caught the leaders of the Republican party totally by surprised. No rebellion in history was ever more widely advertised in advance than that of the South in 1860, and for that very reason its arrival was met with naive indifference.<sup>36</sup> Secession, Republican leaders had confidently and routinely declared, was a scam. Senator Fessenden called it “a mere electioneering trick.”<sup>37</sup> Senator Henry Wilson of Massachusetts claimed that “you cannot kick out of the Union the men who utter these impotent threats.”<sup>38</sup> “With a feeble and muttering voice,” William Henry Seward told a campaign audience at St. Paul, Minnesota, proslavery

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<sup>34</sup> Congressional Globe, 36 Congress, 1st Sess. 556.

<sup>35</sup> William Pitt Fessenden to Samuel Fessenden, Sr. January 30, 1859. Fessenden Family Collection. Bowdoin College.

<sup>36</sup> This was especially true of Republicans, who were almost criminally negligent of the threat until after it fully materialized. But even many conservative Unionists in the Deep South were shocked to discover that their neighbors’ threats were earnest. “I have been in many a hard fought political battle but all the rest were nowhere compared with this,” a Georgia Unionist wrote to Stephen Douglas in late November. “Like changeable March, it came in as a lamb, goes out like a Tiger.” John Winston to Stephen Douglas. November 21, 1860. Stephen A. Douglas Papers, Special Collections Research Center, University of Chicago Library.

<sup>37</sup> *Congressional Globe*, 36th Congress, 1st Session, 556.

<sup>38</sup> Cited in David Potter, *Lincoln and His Party in the Secession Crisis* (New Haven, 1942). 9.

Southerners “cry out that they will tear the Union to pieces...Who’s afraid? [crowd: Nobody!] Nobody’s afraid.”<sup>39</sup> Such dismissals served obvious political purposes - Southerners were not the only people capable of an “electioneering trick.” But even the most astute Republican politicians really believed there was no danger. “I have no fear of secession,” Senator Lyman Trumbull of Illinois wrote just after the election. “No just cause will be given for such a cause.”<sup>40</sup> A week after the election, Benjamin Wade of Ohio predicted that “Southern secessionists and traitors...will howl and rave like so many devils tormented before their time, but it is all humbug and means nothing and can have no result...”<sup>41</sup> Senator Zachariah Chandler of Michigan was worried the South would calm down before the Republicans got a chance to hang anyone.<sup>42</sup> And, in perhaps the most astonishingly naive statement of all, on November 20 Lincoln expressed himself “rather glad of this military preparation in the South. It will enable the people the more easily to suppress any uprisings there...”<sup>43</sup>

It is difficult to exaggerate how terrible the secession crisis seemed as Republicans suddenly awoke to its full dimensions. In rural Republican strongholds, one might easily continue believing the whole drama was a farce whipped up by a few vicious malcontents, but as leaders trickled into the Capital that winter, the gravity of their situation became unmistakable. Fiery secessionists’ speeches in the House and Senate were met with wild applause from the galleries, while Unionist orators often concluded to a deflating silence. Walking through the city

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<sup>39</sup> George E. Baker ed. ed. *The Collected Works of William Henry Seward* 5 vols. (Boston, 1889), 4:844.

<sup>40</sup> Lyman Trumbull to Benjamin Wade, November 9, 1860. Benjamin Wade Papers, Library of Congress. Cited in Michael Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill, 1997), 251.

<sup>41</sup> H.L. Trefousse, *Benjamin Franklin Wade: Radical Republican from Ohio* (New York, 1963), 131-132.

<sup>42</sup> Zachariah Chandler to Lyman Trumbull, November 13, 1860. Trumbull Family Papers. Abraham Lincoln Presidential Library. Springfield IL.

<sup>43</sup> Roy P. Basler, *The Collected Works of Abraham Lincoln* 8 vols. (New Brunswick, N.J., 1953-1955), 4:142.

one day, Seward noticed that the ordinarily ubiquitous Stars and Stripes had vanished from the nation's own capital.<sup>44</sup>

Republicans had learned not to expect much from President Buchanan, but even his most jaded critics were shocked by his message to Congress on December 3, 1860. Buchanan's Constitutional reasoning, however, was much stronger than most Republicans cared to admit. As President, he had the power to enforce federal laws, and defend federal property. "This Government," Buchanan declared, is a great and powerful government, invested with all the attributes of sovereignty over the special subjects to which its authority extends. Its framers never intended to implant in its bosom the seeds of its own destruction, nor were they at its creation guilty of the absurdity of providing for its own dissolution." The general government could never absolve any State of its solemn Constitutional obligations, but it also could not compel any State to fulfil those obligations by force.<sup>45</sup>

Only Southerners who insisted that the States had a Constitutional right to secede sincerely disputed Buchanan on this point. In his Inaugural Address, President Lincoln took the same Constitutional position as his predecessor. Both claimed the power to use the military to enforce federal laws, but disavowed the intent to do so in States where it would inflame public sentiment. Both declared their resolve to continue collecting federal revenue from all ports. And finally, Buchanan outlined the exact policy Lincoln adopted in re-provisioning Fort Sumter. In the event of any attempt to seize the property of the United States, Buchanan observed, "the officer in command of the forts has received orders to act strictly on the defensive. In such a

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<sup>44</sup> Frederick Seward, *Seward at Washington as Senator and Secretary of State* (New York, 1891), 491. "Before I spoke," Seward wrote to Thurlow Weed, "not one utterance made for the Union elicited a response in either House, while every assault brought down full galleries." A review of the *Congressional Globe* shows Seward was not exaggerating by much. *Seward at Washington*, 497.

<sup>45</sup> Message of the President to Congress, *Congressional Globe*, 36 Cong. 2 Sess. app. 1-7. This part of Buchanan's message was written by his Attorney General, Jeremiah Black.

contingency the responsibility for consequences would rightfully rest upon the heads of the assailants.”<sup>46</sup>

The Constitutional reasoning of Buchanan’s message was unassailable, but the emphasis of the message as a whole made the Republicans frantic with rage. He began his message by blaming the crisis entirely on Northern antislavery agitation. Though he acknowledged that secession was illegal he offered no rebuke to those who threatened it as a means of extorting concessions from their partisan adversaries. By his own logic, individuals conspiring to overthrow the government were guilty of treason, and could therefore be arrested, tried and hung. But Buchanan nowhere deigned to make that threat explicit. All Northerners agreed that “the power to make war against a State is at variance with the whole spirit and intent of the Constitution,” and that the doctrine of secession was “wholly inconsistent with the history as well as the character of the Federal Constitution.” When Buchanan delivered his message to Congress, no State had yet seceded from the Union. Unlike Lincoln four months later, he was in position to prevent the very dilemma he foresaw. “Suppose such a war should result in the conquest of a State, how are we to govern it afterwards?” Buchanan asked rhetorically. “Shall we hold it as a province and govern it by despotic power?” But there was no reason to assume it had yet come to that. The constitutional difficulties involved in forcing a State to remain in the Union were very real, and not even the Republicans had a coherent view of how it could be done. But no State had yet seceded, no Confederacy yet existed, and no one denied that the Government could arrest and punish *individuals* plotting to destroy the government. A firm insistence on the President’s duty to “enforce the laws” was not yet an obvious euphemism for war. But instead of

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<sup>46</sup> Ibid.

boldly confronting those advocating secession, he called on the Republicans to abandon their inflammatory and unjust platform.<sup>47</sup>

What happened next, aside from effusions of rage and loathing among Republicans, is a revealing demonstration of the relationship between public opinion and political power. Buchanan's policy of inaction shifted the issue before the public from secession, which united the North and divided the South, to compromise, which united the (white) South and bitterly divided the North.<sup>48</sup> The three major candidates opposed to Lincoln (and thus to his Party's antislavery platform) received half a million more votes than the President-elect in the states that remained loyal to the Union before the war broke out. Even excluding the states that ultimately joined the Confederacy, Lincoln fell about 100,000 votes short of a majority.<sup>49</sup> So the clear inference from the election is that a majority in the states loyal to the Union supported substantial compromise efforts and blamed the secession crisis, at least in part, on Republican antislavery "fanaticism." A minority party to begin with, Republican popularity declined precipitously after the election. No scientific polling data exists, obviously, but the evidence is overwhelming that a substantial number of Republicans quickly repented their vote. In several local Massachusetts elections held a month after Lincoln's election, for example, Republican majorities were either drastically reversed or heavily reduced. Lincoln himself later acknowledged the fear that, as soon as he called for troops, half of the Northern people might rise up against *him*.<sup>50</sup>

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<sup>47</sup> Message of the President to Congress, *Congressional Globe*, 36 Cong. 2 Sess. app. 1-7.

<sup>48</sup> Salmon Chase perceived this better than most: "You remember that *before Congress met* the Southern Union men stood on this ground, 'Mr. Lincoln's election is not in itself a cause of disunion - let us wait for an overt act of aggression...' Now they say 'Wait for the action of Congress - wait for the Report of the Committees - if these are not satisfactory we will go with you.'" John Niven, ed. *The Salmon Chase Papers* 5 vols. (Kent, OH. 1993-98), 3:50-51.

<sup>49</sup> Potter, *Secession Crisis*, 189.

<sup>50</sup> David Potter, *Lincoln and His Party During the Secession Crisis* (New Haven, 1942), 189; Lincoln's first message to Congress, December, 1861. Lincoln, *Collected Works*, 5:49.

A sharp business depression caused by the political crisis instantly convinced many wealthy Republican voters, especially in major cities, that justice and patriotism required that the party abandon its platform and endorse a compromise. On December 20, South Carolina officially seceded. By January, everyone in Washington capable of taking a clear-eyed view of the situation knew that all the cotton states were sure to follow. In these circumstances, the most famous politician in America delivered a highly anticipated speech on the crisis. Stephen Douglas, Lincoln had remarked in 1858, “[is] a man of vast influence, so great that it is enough for many men to profess to believe anything when they once find out Judge Douglas professes to believe it.”<sup>51</sup> During the campaign of 1860, Douglas had broken all precedent as the first presidential candidate in history to appeal to the people directly. He travelled throughout the country with one simple, impassioned message. A Republican victory would lead to the greatest possible calamity – disunion and civil war. Lincoln, adhering to precedent, had not campaigned, but his surrogates in the Republican party had denigrated that same threat at every stop. Douglas’s personal popularity earned him 30% of the vote, despite the bitter opposition of the most powerful elements within his own party. Now the calamity Douglas had tirelessly warned against had come to pass. So when he rose to speak on January 3, 1861, he had the Republicans’ anxious attention.

Douglas’s speech contained none of the evasive, legalistic reasoning that disgusted every Northern reader of Buchanan’s message.<sup>52</sup> He denied that an election alone could possibly justify rebellion, and described the Southern rush to secede as lawless madness. He denounced the legality of secession as fiercely as any Republican, and brilliantly mocked Buchanan’s non-coercion doctrine. A few lines after asserting that the Federal Government had no right to coerce

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<sup>51</sup> Cited in Foner, *Free Soil*, 7.

<sup>52</sup> Stampp, *And the War Came*, 53-57.

a state back into the Union, Douglas pointed out, Buchanan's message had recommended purchasing Cuba from Spain. "What a brilliant achievement it would be to pay \$300,000,000 for Cuba and immediately admit the island into the union as a State, and let her secede and reannex herself to Spain the next day, when the Spanish Queen would be ready to sell the island again for half price, or double the price, according to the gullibility of the purchaser!" Douglas then demolished the notion that coercion is incompatible with a government founded upon the people's consent. "Sir, the word government means coercion," he said. And he subtly implied that Buchanan was guilty of treason by failing to act "while the rebellion was in its incipient stages, and when confined to a few individuals..."

But that opportunity had passed. "We are told that secession is wrong, and that South Carolina had no right to secede. I agree that it is wrong, unlawful and Unconstitutional...*but she has done it.*" All the other cotton states were about to do the same, he continued. Talk of enforcing the laws was a disingenuous evasion. Enforcing the laws against treason means executing traitors, and there were about to be ten million of them. Is that what the Republicans intended? Acknowledging the *de facto* separation of the South did not require the North to acknowledge its legal independence. The North maintained every right to make war on the South, but that, and that alone, was the issue - not coercion, not enforcing the laws, but war. "Are we prepared for war?...Are we prepared IN OUR HEARTS for war with our own brethren and kindred? I confess I am not...I will not meditate war, nor tolerate the idea, until every effort at peaceful adjustment shall have been exhausted...In my opinion war is disunion, certain, inevitable, irrevocable. I am for peace to save the Union."<sup>53</sup>

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<sup>53</sup> Douglas and Buchanan shared an identical purpose in the late 1850s. They meant to prevent a sectional party from dividing the country over slavery. But Douglas had the courage to see all his enemies at once. Buchanan did not. He willfully ignored what was happening in the South, and when men he pathetically assumed were his friends

These were nationalist sentiments, honest and unanswerable by any Republican. But then Douglas twisted the partisan knife. Leaders from the slave states, including Jefferson Davis, had expressed a willingness to accept the Crittenden Compromise as a settlement of the sectional conflict, but the Republicans had rejected it (this was true). “Hence, the sole responsibility of our disagreement, and the only difficulty in the way of amicable adjustment, is with the Republican party.” The only concession the Republicans had shown any real willingness to consider was a Constitutional amendment protecting slavery in the states from any direct act by Congress. But this was not a concession at all, since it merely expressed what virtually everyone acknowledged was already the case under the Constitution. The radical Republicans’ strategy for attacking slavery was no secret. They could abolish the inter-state slave trade, slavery in the capital, and undertake other indirect means of weakening the institution legally. And yet the Republicans offered no guarantees against these methods. “The fact that you propose to give the assurance on the one point and peremptorily refuse to give it on the others seems to authorize the presumption that you do intend to use the powers of the Federal Government” to destroy slavery indirectly, Douglas said. It would have been much better if the Republicans had offered nothing at all.<sup>54</sup>

Finally, Douglas concluded, given the momentous alternatives at stake, the Republicans had a duty to submit a realistic compromise proposal to the people, which is all that was asked of them, for any Constitutional compromise would have to be ratified by the states. “The political party which shall refuse to allow the people to determine for themselves at the ballot box the

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demand he consent to the destruction of the Union, he was shocked and stricken and helpless. See Stamp, *And the War Came*, 46-62.

<sup>54</sup> This is a point many historians, staggered by the original 13th Amendment, tend to miss. Edward Ayers, for example, writes that the Republicans “were willing to bargain on nearly everything regarding slavery.” Ayers, *In the Presence of Mind Enemies* (New York, 2003), 109. In fact, the Republicans offered none of the guarantees that might have appeased the border States. They were not nearly as flexible on slavery in the secession crisis as they have come to seem. For an important corrective, see James Oakes, *Freedom National* (New York, 2013).

issue between revolution and war on the one-side, and obstinate adherence to a party platform on the other, will assume a fearful responsibility.”<sup>55</sup>

Broken in health and only months away from death, Douglas’s final strut upon the national stage was the most dramatic of his astonishing career. His plan throughout the secession crisis amounted to a tremendous bluff. Without the support of prominent Northern Democrats, the Republican party could not possibly hope to wage a successful civil war against the South.<sup>56</sup> This put Douglas, in particular, in a unique position. He could not force the Republicans to accept a compromise, but he could do more than any single individual to ensure their utter ruin in the event of a war. And he therefore threatened to do just that in order to intimidate them into retreating from their platform. When war came, he instantly threw all his influence toward making it quick and successful. But Douglas’s desperate wish to avert war was sincere, and no Republican could have called his bluff without a terrible sense of dread.

Unless united, the Northern cause was hopeless, and before the shooting started the North was bitterly divided. The unanimity that followed the attack on Fort Sumter would shock and exhilarate every loyal Unionist. But only a prophet could have taken comfort from this prospect in the desperate winter of 1861. When Lincoln sent William Seward a first draft of his inaugural address and asked for comments, the most astute Republican politician in the North replied that the speech (which was hardly bellicose): “will give such advantage to the disunionists that Virginia and Maryland will secede; and we shall within ninety, perhaps within sixty days, be obliged to fight the South for this capital, with a divided North for our reliance; and we shall not

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<sup>55</sup> *Congressional Globe*, 36 Cong. Appendix, 35-42.

<sup>56</sup> Lincoln described this dread in his first message to Congress, in December 1861. “What was painfully uncertain then, is much better defined and more distinct now...the insurgents confidently claimed a strong support North of Mason and Dixon’s line; and the friends of the Union were not free from apprehension on the point.” Lincoln, *Works*, 5:49. On April 14, Douglas met with Lincoln and the President showed him the proclamation he would issue the follow day calling for 75,000 troops. Douglas advised he make it 200,000, and they discussed strategy together for two hours. In his most desperate hour, Lincoln found the bitter rival of a lifetime among his most earnest and important allies. Johannsen, *Douglas*, 859.

have one loyal magistrate or ministerial officer south of the Potomac. In that case the dismemberment of the Republic would date from the inauguration of a Republican administration.”<sup>57</sup>

Cautious, temperamentally conservative men had always controlled the United States Senate, where the guardians of the Republic resolved their differences, disdained the passions of violent partisans and flattered one another on the high-minded virtue with which they defended national harmony against the violent pull of sectional demagoguery. Such men still existed in 1861, and yet many of them were surprisingly reticent, suddenly afraid of being scorned for what they haughtily assumed was the noble duty of placing country ahead of section or party. “I find almost invariably that every Republican begins with a bold declaration of his intention ‘not to back down’ & to ‘concede nothing,’” Hamilton Fish wrote to Fessenden during the secession crisis. “If there be several present, he is apt to persist, but if it be a conversation between two, or if, being more than two, there be established some assurance of confidence, a suggestion of willingness, to see if there cannot be some arrangement made, *invariably* brings out a readiness and even a hope not only for conciliation but for concession...men are restrained a good deal by their pride of consistency and courage...they want someone to *begin* to talk of conciliation.”<sup>58</sup>

Were these men “restrained” by noble considerations or merely afraid of being misjudged by narrow partisans? More importantly, was Fish among them? He was conspicuously unclear about that. His letter actually performed the dynamic it described. There was already plenty of talk of conciliation in some circles, of course, but Fish hoped Fessenden would be the one to make it respectable among the right sort of Republican. He considered Fessenden the ablest man

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<sup>57</sup> Cited in Frederick Bancroft, *The Life of William Henry Seward*. two vols. (New York, 1900), 2:24. Seward probably wrote this with a second motive in mind as well, namely, to scare the hell out of the green incoming President he hoped to dominate from behind the throne. But distorting the situation would not have helped him. Seward was a master at harmonizing his many purposes.

<sup>58</sup> Hamilton Fish to William Pitt Fessenden, Dec. 11, 1860. Fish Papers. LOC.

in the Senate, and Fessenden, for his part, had hoped to make Fish the Republican nominee for President. Despite their mutual admiration, however, Fish was surprisingly reluctant to divulge his own opinion while soliciting his friend's. In oddly neutral terms, for example, he described an attempt to consolidate moderate Republicans with Douglas and Bell men "in favor of some conciliatory demonstration, with the view of drawing a line so as to throw the responsibility of any disastrous result, either to the Union or the business affairs, upon the more Extreme Republicans, and upon those who may resist. I have some information upon this subject from a friend, who has been consulted upon it (whom I am not at liberty to name) and am astonished at the names of some Republicans who are said to be in the movement. I *know* that a very extensive correspondence is being carried on by these men, and with the object of bringing together such as I have indicated."<sup>59</sup>

Fessenden was more forthright, and his stern response goes a long way toward explaining Fish's reticence. "I am for seeing the worst of it *now*. I will yield nothing to rebellion, nor will I consent to forfeit my own self-respect by even an implied admission that we have been struggling for place and power, and not, as we have proclaimed, to establish sound principles of government," he replied. Though Fessenden thought it wise to adopt a conciliatory tone, he refused to concede anything "as an inferior under menace," and he denounced as "servile" those who wished to arrest the rebellion by placating its leaders. "How can the free States hope to secure the respect of the South when our own people show themselves so utterly devoid of manliness? If this is a sample of what we are to expect from our Constituents I am prepared to see the Republican party overthrown in a single year and the whole country again under

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<sup>59</sup> Ibid.

democratic rule, with no hope of future redemption. And so it ought to be, if we cannot remain true to ourselves for one short month.”<sup>60</sup>

“Forfeit my own self-respect” “an inferior under menace” “servile” “so utterly devoid of manliness” “if we run, like cowards, at the first fire” – such snarling contempt from a man like Fessenden, whom no one would confuse for a radical, was more than enough to hold many more pliable Republicans in line. On January 16, and again on March 4, 1861, Republicans in the Senate unanimously rejected the Crittenden Compromise (Northern Democrats voted unanimously in favor of it), and offered no serious compromise proposal of their own.<sup>61</sup> Senator John Crittenden of Kentucky, the acknowledged heir to Henry Clay, was a living link to a Union past revered by virtually everyone. He first entered the Senate in 1817, a moment fondly referred to as the Era of Good Feelings. Born ten years after the Declaration of Independence, he was older than the Constitution he proposed to amend. His proposed compromise involved six constitutional amendments to forever settle the slavery controversy. Most of these offered “unamendable” Constitutional guarantees against Federal meddling with slavery. Only one proposal, which allowed states to compensate slaveholders for fugitive slaves rather than returning them to bondage, was intended as a sop to the North. And only one proposal directly violated the Republican platform. Crittenden’s compromise would reinstate the Missouri Compromise line of 36 30, expressly protecting slavery South of the line in all territory “now held or hereafter to be acquired.”<sup>62</sup>

The Republican vote on January 16 was an especially striking display of resolve. On that day, Republicans buried the Crittenden resolutions by voting for a substitute which condemned

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<sup>60</sup> Fessenden to Fish. Fish Papers. Dec, 15, 1860.

<sup>61</sup> Albert D. Kirwan, *John J. Crittenden: The Struggle for the Union* (Lexington, 1962).

<sup>62</sup> Kirwan, *Crittenden*, 375

the very idea of compromise.<sup>63</sup> This was more than bold; it was reckless. At the time, three states had officially seceded, and every other slave state was debating whether to do so. Unionists, hoping the secession fever would cool, were playing for time, and the possibility of compromise helped them immensely. Immediate secessionists insisted that no compromise was possible, and the Senate presently lent that claim invaluable support. But the gift was not the Republicans' alone. A minority party, their resolution could not have passed without help, and it came from the six most ardent secessionists in the Senate, who got the best of both worlds by simply withholding their votes. So the Republicans not only assumed responsibility for rejecting a compromise they knew enjoyed "overwhelming" public support, they did so in a way that absolved their equally intransigent antagonists of the same burden.<sup>64</sup>

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Fessenden's view of the secession crisis was strikingly similar to Seward's, though their outlooks led them to opposite conclusions. The leaders of secession, Fessenden confidently believed, "would gladly retreat from their position. Ruin is staring them in the face. Whatever may happen to the people of the free States, there is nothing before the South but destruction. The movement at the South is now in the hands of the rabble." In other letters he indicated that he was merely repeating what Southern leaders had told him. But then Fessenden looked ahead, and his view darkened considerably. "I am not sure but that the trouble brought upon the country may paralyze us," he wrote in the early stages of the secession crisis. "[B]ut we shall stand by our platform, disunion or no disunion, to the bitter end. The secession of South Carolina, if it

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<sup>63</sup> *Congressional Globe*, 36 Cong. 2nd Sess. 404.

<sup>64</sup> "Overwhelming" cited in Horace Greeley, *Recollections of a Busy Life* (New York, 1868), 397. "And the danger was imminent that, if a popular vote could be had (as was proposed) on the Crittenden Compromise, it would have prevailed by an overwhelming majority." To be fair, as a minority party, the Republicans were at a disadvantage. They tried to avoid the vote but their opponents forced it on them. Still, they could have withheld their votes, and rejecting the Crittenden Compromise certainly did not require them to declare their opposition to all compromise by a formal vote!

goes not further, is simply ridiculous. If Mississippi, Georgia, Alabama, Florida and Louisiana join her, still the effort will be a puny one, but if all the slave States are dragged into the vortex, the result will be a separation.” This was precisely Seward’s view. But, Fessenden continued, “I will not yield an iota of principles to avoid this catastrophe, for it is a question for all time. New England by herself has all the elements of happiness and power, and I would rather be the subject of a small and free state than be subject to an oligarchy so overbearing and tyrannical as the slave power.”<sup>65</sup>

When Fessenden wrote that disunion would be inevitable if all the slave States were bent on it, however, he did not mean the separation would be peaceful. “As for peaceful secession, there is no such thing,” he wrote in the same letter. And he repeated the conviction often. So war was inevitable but it may well be a war the North would inevitably lose. Still, he put all his influence against offering “anything, whatever, so long as it is made a condition of loyalty to the government.” If the South renounced treason and pledged their loyalty, then he might consider certain guarantees. But to concede anything in order to bring the Southern states back into the Union peacefully would be a pathetic submission, a condition not to be confused with honorable defeat. Fessenden inevitably assumed that Republicans who abandoned the platform were driven by cowardice. “I do hope the Republicans of Portland will not allow themselves to be debauched and divided by fear. Let them stand firm like men and not tremble and shake before rebellion.” he wrote home to his son.<sup>66</sup>

On January 12, Seward delivered a highly anticipated speech on the crisis. More than 2000 people crammed themselves into the galleries of the Senate to hear him. In tone and

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<sup>65</sup> Letter printed in Francis Fessenden, *Life and Public Services of William Pitt Fessenden* 2 vols (Boston, 1907), 116-117.

<sup>66</sup> William Pitt Fessenden to Samuel Fessenden Sr. January 29, 1861. Fessenden Family Collection; W.P. Fessenden to Francis Fessenden, February 10, 1861.

substance, his speech was wholly conciliatory. He made it clear that he regarded permanent disunion as worse than war, and war worse than anything else. But, inevitably, he offered very little in terms of concrete compromise proposals. And so he was denounced on all sides, but he managed to make a long speech on the absolute necessity of the Union without fatally alienating his own party or further provoking the Border States. This was an accomplishment. Naturally, Fessenden didn't quite see it that way. He contemptuously noted that Seward's speech pleased only the ladies in the galleries (actually, Seward had no fiercer critic than his own wife, who warned that he was "in danger of taking the path which led Daniel Webster to an unhonored grave ten years ago.") Fessenden, however, was sickened by more than the speech. Seward, he wrote privately, is "a poor creature - utterly selfish, false and mean. I am getting fairly to detest him."<sup>67</sup>

On January 31, Seward made another speech upon presenting a petition to the Senate from most of New York's affluent class, "a fair representation," as he put it, "of the citizens who direct and wield the commerce of our country." The petition encouraged the Senate to compromise. Though characteristically indirect and cautious, Seward now spoke out unmistakably in favor of abandoning the Republican platform's opposition to the extension of slavery. At this, Fessenden jumped up to take the floor, spitting mad. Senator James Mason of Virginia, however, beat him to it, outraged for reasons exactly the opposite of what sent Fessenden into a red rage. And so before Fessenden could denounce Seward as a coward, Mason bitterly assailed him as a bloodthirsty warmonger. In the meantime Fessenden's temper cooled, and he decided to remain silent. Writing home afterward, he expressed himself grateful for Mason's accidental intervention, "for I was very angry." His next sentence is revealing. "I fear

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<sup>67</sup> Glyndon G. Van Deusen, *William Henry Seward* (New York, 1967), 244; 45; Cited in Robert J. Cook, *Civil War Senator: William Pitt Fessenden and the Fight to Save the American Republic*, 127.

he [Seward] and some of his followers would disgrace themselves if anything could be gained by it.”<sup>68</sup> Seward might have accepted this intended criticism as praise.<sup>69</sup>

For all his seething bellicosity, however, Fessenden remained almost entirely silent during the secession crisis. Every revealing remark he made in the period he made privately. He knew that fiery speeches did immense harm to the pro-Union efforts in the Border States, and so he remained silent. To describe his position from Seward’s point of view, his principles made him absolutely unwilling to do anything to improve the situation, but they did not compel him to make matters worse. Lincoln famously described Fessenden as a “Radical without the petulant and vicious fretfulness of many Radicals.” Here Lincoln’s keen insight partially misled him. In private, Fessenden was a veritable fountain of “petulant and vicious fretfulness,” as we’ve seen. And he only grew more bitter during the war. Except when he felt personally insulted, however, he never vented his outrage publicly unless he thought it would do some good - and he almost never did. He knew that arm twisting and quiet growls were usually more effective than loud harangues.<sup>70</sup>

Benjamin Wade was a very different animal. Wade was among those whom Henry Adams had in mind when he referred to Republicans in the secession crisis “who swore by everything in the Heavens above and the Earth beneath that they would turn the rebel States into a wilderness.” Wade rose to speak on December 17, a time just before any state had officially seceded but when all the cotton states were known to be in a hot rush to do so. Most leaders understood that a bellicose speech by the Republicans would be gratefully received by the most

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<sup>68</sup> Fessenden, *Life and Public Service*, 122.

<sup>69</sup> For example, in writing that if he were absent “only three days” the capital “would fall into consternation and despair.” Seward, *Seward at Washington*, 497. On the other hand, Henry Adams, hardly one to take a doe-eyed view of politics, wrote that Seward’s leadership “might go down to history as one of the wonders of statesmanship.” Adams, *The Great Secession Winter*, 23; Seward, *Works*, 671-678.

<sup>70</sup> Cited in Cook, *Civil War Senator*, 172.

rabid disunionists, and even Wade restrained the impulse to oblige them. His speech, by his own standards, was tame. He said that any compromise, given the long history of Southern treachery, was “absolutely ridiculous.” He denied that the North would ever coerce a state back into the Union, and he said that if it were merely a matter of his own feelings, he might be inclined to let the secessionists go their own way. But he had sworn an oath to uphold the Constitution, and there was the rub. The President was honor-bound to enforce the laws, and the Senate was honor bound to aid him in doing so.<sup>71</sup>

“There are many rights that the Federal Government exercises for the peculiar benefit of the people [in the South], which, if they did not want, they could dispense with,” Wade immediately went on to say. As he continued, it became clear that the government might indefinitely suspend enforcement of every law on the books except one: The North was bound by their Constitutional oaths to continue collecting revenue at Southern ports (this is essentially the policy Lincoln laid out in his inaugural address). Inevitably, if the South seceded, they would find this situation intolerable, and the result would be war, initiated by traitors against the United States. Wade then acknowledged that the South might actually win its war of rebellion. “Well sir, you may. We know you are brave....If we are overthrown, we but share the fate of thousands of other Governments that have been subverted.” But the prospect of defeat was not a reason to avoid war. Legally, there was just no way around it. “I see no power in the Constitution to release a Senator from this position.”

In concluding, Wade presented a strange vision of disunion for someone determined to resist it with civil war. Suppose, he allowed, the South successfully bought her independence with the blood of both sections. “I still see a glorious future for those who stand by the old flag

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<sup>71</sup> Adams, *Secession Winter*, 4.

of the nation,” he said. Once free from the odious institution of the South, Canada and Mexico would eagerly join the Union:

we will make inducements for every free black among us to find his home in a more congenial climate in Central America or in Lower Mexico, and we will be divested of every one of them. And then, endowed with the splendid domain that we shall get...we will invite the poor and destitute, industrious white man from every clime under heaven to come in there and make his fortune. So, sir, we will build up a nation renovated by this process, of white laboring men. You may build yours up on compulsory servile labor, and the two will flourish side by side; and we shall very soon see whether your principles, or that state of society, or ours, is the most prosperous or vigorous.

For most Republicans, this was surely a beguiling vision. And were it not for those troublesome Constitutional oaths, it might be had without a drop of blood. “But, sir, I am for maintaining the Union of the States,” Wade concluded. “[A]though it may be assailed by traitors on every side, by the grace of God, under its shadow I will die.”<sup>72</sup>

Fessenden had no interest in colonization or annexing Mexico. But Wade’s overarching argument matched his sentiments exactly, and he expressed himself well-pleased with the speech. The South might block every activity of the Federal Government that only affected the South. But the North would never submit to the disruption of the government in ways that impinged on the rights of the nation as a whole. So the revenue would be collected in Southern ports. If that meant war, so be it. Whether the two sections might be better off separated, whether the North could actually defeat the South, and whether the Union could survive the conquest of one section by another – all these questions practically amounted to nothing. The North would not peacefully submit to an unlawful violation of its rights and it certainly would not bargain against the threat of such a violation.<sup>73</sup>

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<sup>72</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 2nd Session, 99-104. “Beguiling,” of course, to Northern whites. Given the Republicans’ view of the South, and their ambivalence, at best, toward blacks, it’s hardly surprising to find many of them, often without realizing it, suggesting that the North would be much better off without that barbarous region.

<sup>73</sup> Cook, *Civil War Senator*, 126. *Congressional Globe*, 35<sup>th</sup> Congress, Appendix. February 2, 1858.

There were many in the North who considered the secession crisis in similar terms. The question was whether the North would ever stand up for itself against Southern abuse, and most who thought this way were spoiling for a fight. “I do want a little shooting or hanging done before this matter is ended if we have a decent excuse for it,” Zachariah Chandler wrote to Lyman Trumbull in early November, worried that the South would calm down too quickly.<sup>74</sup>

Fessenden showed none of the reckless bluster common among the radicals. Though some Senators found him unattractively stern, somehow both icily reserved and hot-tempered, he was a passionately devoted father to his four sons. He wrote his sons constantly, and his letters are full of affection and sentimentality. Theirs to him were all lovingly preserved. All of his sons were of military age, and he knew full well what the coming fury might mean for them. In the middle of the secession crisis, his son Frank became ill, possibly with pneumonia. “If anything happens to the boy, it will kill me, for I shall never forgive myself for not watching him more carefully,” Fessenden wrote. Frank was severely wounded at Shiloh, recovered, and then lost a leg in the Red River Campaign two years later. Fessenden’s youngest son, Sam, was a bright, happy and restless boy. But his exceptional promise was always colliding with the immature vices of an indulgent, affluent youth. Fessenden regarded him with the manic anxiety familiar to most fathers, certain his son was destined for greatness except when he was equally certain of his impending ruin. Sam fell mortally wounded at the Second Battle of Bull Run, bringing the constant suspense of his father to an abrupt, heartbreaking end. He was 21.

“My heart aches, sometimes, when I think of all the horrors that are coming,” Fessenden wrote in the spring of 1861, well before the personal horrors that nearly tore his heart to pieces. But in the next four years of unimaginable national suffering, he never questioned what

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<sup>74</sup> Zachariah Chandler to Lyman Trumbull, November 13, 1860. Trumbull Family Papers. Abraham Lincoln Presidential Library. Springfield IL.

compelled him to reject all alternatives to war. Fessenden is a conspicuous example of a sectional mindset almost exclusively associated with the South. He did not favor war to free the slave, though he immediately accepted the military necessity of doing so. He did not favor war to save the Union; even well into the contest he suggested that the North might be better off without the blighted and backward South. He showed no concern for the commercial consequences of disunion. He was not motivated by a blind, wrathful hatred of the South, however much he disliked and resented the slave power. And he was not a man to march mindlessly at the rumble of a drum. When all the North united in a martial rage after the attack on Fort Sumter, Fessenden, having fiercely opposed all wavering and compromise, became melancholy at the thought of the ugly struggle ahead. So what was the struggle for? Neither concrete material interests, abstract ideals or mean passions explain him. It was the primordial idea of his and his people's honor. In his study of the antebellum South, Eugene Genovese wrote, "The Chinese have a proverb: 'A hero may risk his whole world but will never surrender his concubine or his horse.' The slaveholders were heroes." There were heroes in the North, too; wrathful Achilles, fallen Hector and sad old Priam, the same story since the world began.<sup>75</sup>

### *III: Into the Abyss*

"The die is cast," a New England editor assured his readers shortly after the bombardment on Fort Sumter.<sup>76</sup> The origins of the expression were appropriate for the occasion. Nearly 2,000 years earlier, Julius Caesar immortalized the sentence before crossing the Rubicon, which marked the boundary between Gaul and Northern Italy, inaugurating the civil war that

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<sup>75</sup> Cited in Cook, *Civil War Senator*, 130; Eugene Genovese *Roll, Jordan, Roll: The World the Slaves Made* (New York, 1972), 96-97.

<sup>76</sup> *Portsmouth Journal of Literature and Politics*, April 20, 1861.

revolutionized the most famous of all Republics. But the English phrase is based on a misleading translation. Wavering upon the banks of Rubicon, tormented by the choice his enemies thrust upon him, Caesar's words can also be translated as, "*Let the die be cast.*"<sup>77</sup> A mere difference in tense changes the meaning completely. In the one formulation he is impelled down a course of his enemies' making. In the other he has willfully chosen the gamble that will determine his and his country's fate.

The Republicans were not forced to accept civil war in 1861. As in almost any dire emergency, leaders who understood their options, and felt the responsibility of power in considering them, confronted only impossible or unspeakable alternatives in the winter of 1861. But to most Northern voters, including many of that section's wealthiest and most influential citizens, civil war seemed the most disastrous, impossible option of all. Though Republicans did not initiate war, they knew full well where their course would end, and, despite enormous pressure, they did not abandon it. The gates of revolution flung open, they could have abandoned their platform. They could have taken steps to secure a peaceful and – they could claim – temporary separation. Instead they marched, reluctantly but deliberately, eyes open and unflinching into the abyss.

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<sup>77</sup> The phrase comes from Plutarch, who based his biography on an account by Caesar's lieutenant Asinius Pollio. The most influential English Translation is John Dryden. Plutarch *Lives* (New York, 2001), John Dryden Trans. 221. See, for instance, John William Spaeth, Jr. "Caesar's Poetic Interests" *The Classical Journal* (May 1941), 598-604. Suetonius, writing in Latin (Plutarch wrote in Greek) and basing his account on the same source, has Caesar say "the die is cast," but Dryden's translation of Plutarch's history is far more influential. For the argument that Caesar did not want to go to war, see Ronald Syme, *The Roman Revolution* (Oxford, 1939), 47-51.

## Part Two

# Reluctant Revolutionaries

### 6

#### *Desperate Improvisations...and Ideological Evasions*

##### *I: The Constitution as Fetish and Ideal*

Observing the outbreak of the Civil War from London, Walter Bagehot, the editor of *The Economist*, confessed his mystification at the rigid constitutionalism that distinguished the ablest and most influential political writing in America. With the fate of their country hanging in the balance, America's foremost intellectuals and leaders argued like pedantic lawyers, not statesmen. "They appear only to prove that a certain written document, called the Constitution of the United States, expressly forbids the conduct which the Southern States are consistently pursuing, and that therefore such conduct is culpable as well as illegal." Most Englishmen, according to Bagehot, agreed that Southern conduct was outrageous and wrong, but they were bemused by Americans' desperate need to prove that the South's position had been specifically anticipated and prohibited at a convention held nearly a century earlier. "The complexity of politics is thoroughly comprehended by every Englishmen, – the complexity of our history has engraved it on our mind; the complexity of our polity is a daily memento of it, – and no one in England will be much impressed by any arguments which tacitly assume that the limited clauses of an old State-paper can provide for all coming cases, and for ever regulate the future."<sup>1</sup>

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<sup>1</sup> Walter Bagehot, "The American Constitution at the Present Crisis," in *National Review* (October, 1861), 465-466.

Bagehot's bewilderment at the pathos with which statesmen and intellectuals appealed to the Constitution during the secession crisis rested on the assumption that it was a written declaration of the fundamental law of the state, like the English Bill of Rights and the other ancient charters that combined to inspire reverence for the English constitution. As Bagehot later wrote, the English constitution could be divided into two parts. "[F]irst, those which excite and preserve the reverence of the population, – the dignified parts, if I may so call them; and next, the efficient parts, – those by which it, in fact, works and rules."<sup>2</sup> The strength of the English constitution consisted in the felicity with which these two parts were combined. "Its essence is strong with modern simplicity; its exterior is august with the Gothic grandeur of a more imposing age."<sup>3</sup> The machinery of government adapted itself to ever-changing circumstances without tripping over, or shedding, the ancient garb in which it was clothed.

Americans' mystical reverence for their Constitution, Bagehot argued during the secession crisis, channeled public energy into deliberation and debate when what was needed was vigorous action. And this is precisely how American intellectuals began to think of their Constitution once the shooting started. The written Constitution, and the "sovereignty of the people" were the mystical elements of the organic constitution – the counterparts to the ancient rights of Englishmen. "The condition of the country has greatly changed since the war of independence," as one American Constitutional theorist wrote in 1861 or early 1862. "From three millions we have grown to be thirty-four millions of people, and from thirteen to be thirty-four States."<sup>4</sup> Vast differences in manners, customs, economic interests, social classes and

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<sup>2</sup> Bagehot, *The English Constitution*, 7.

<sup>3</sup> *Ibid.*, 11.

<sup>4</sup> George Sidney Fisher, *Trial of the Constitution* (Philadelphia, 1862), 31. "The Constitution of the United States is twofold, written and unwritten," Orestes Brownson wrote in 1865. "The written constitution is simply a law ordained by the nation or people instituting and organizing the government; the unwritten constitution is the real or actual constitution of the people as a state or sovereign community, and constituting them such or such a state." Orestes Brownson, *The American Republic* (New York, 1865), 141.

demographics had emerged between sections of the Union. No Constitution could anticipate the endless series of controversies that accompanied such furious growth. And the accumulating pressure of these controversies had inevitably ruptured a system of laws that resolutely denied ultimate authority to any of its constituent parts. When the supreme power of the state is left ambiguous, it will be established, sooner or later, in blood. Such had been the unanimous experience of Europe. And the Civil War taught Americans the same bitter truth.

But until April, 1861, it was a truth Americans were still desperate to disprove. They had yet to cross the threshold that turned their sacred covenant into the living organism of the state – evolved, unwritten, and red in tooth and claw.

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One of the most brilliant efforts to interpret the Constitutional order in light of the rebellion, written under the immediate pressure of events, was published by a relative outsider – Sidney George Fisher, a Philadelphia intellectual and scholar. What began, at the outbreak of the war, as an essay on the constitutional provision for suspending the Writ of Habeas Corpus, quickly expanded with the scale of the war itself. Hastily published late in 1862, just as the revolutionary dimensions of the war had come fully into view, Fisher's *The Trial of the Constitution* was very much a product of its moment. At once passionate and disinterested, the book is neither an attack on the Republican's war policy nor a defense of it – and therein lies its value. One can observe his argument adjusting to the onward rush of events, as Fisher grappled, honestly and philosophically, with the way the war had fatally compromised the nation's Constitutional system – and with how to restore the Republic on a more durable foundation.<sup>5</sup>

The defining insight of his monograph, which Fisher regarded as the essential lesson of the war, was that there is no real safety in a written Constitution. If a government does not have

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<sup>5</sup> George Sidney Fisher, *The Trial of the Constitution* (Philadelphia, 1862).

the authority to assume whatever power is necessary to meet an unforeseen crisis, then it will fail, sooner or later. And if it does have that authority, then written limitations are worse than illusory. They create a beguiling by which a free people might succumb helplessly to despotism. “Already under the constitution and because of a civil war,” Fisher wrote, “a President of the United States finds himself invested with the command of a million of armed men and with absolute, discretionary and irresponsible power over the personal liberty of every citizen, members of Congress included. It is vain to deny it. However right, however necessary this result may be, it *is* a result, it is an accomplished fact, and one too of no small significance.”<sup>6</sup> And there was no way to dismiss the ultimate threat this unwelcome fact posed: That a military despotism, summoned under urgent necessity and with the honest purpose of putting down a treasonous rebellion, would calcify and harden into a permanent regime. “Has it, then, indeed, come to this?” Fisher asked rhetorically. “Has Democracy so soon done its work and erected a military despotism on the ruins of our model republic?”<sup>7</sup>

“Not yet,” Fisher tentatively answered in response to his own question.<sup>8</sup> But political liberty could only be restored from either chaos or despotism at the price of a cherished delusion – the belief that government could be limited to expressly enumerated powers, that sovereignty resided with the people and not with their government, that the Constitutional order erected by the Founders, and the American experiment as a whole, was somehow uniquely immune to the laws of history and the ravages of time. “So entirely is a constitution the outgrowth of the character of a nation, as influenced by circumstances, that no man or set of men, convened for the purpose, can provide fully for the wants of the future,” Fisher wrote. “These must be met by the men of the future; and they will either abolish a plan of government that does not suit them,

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<sup>6</sup> Fisher, *Trial of the Constitution*, 381.

<sup>7</sup> *Ibid.*, 381.

<sup>8</sup> *Ibid.* 381.

or alter it until it does: for a government is for the people, – not the people for a government, – which must be, not a fetter, but a dress, – giving protection, but permitting free and easy motion.”<sup>9</sup>

The framers of the Constitution were very much aware of this limitation – even if subsequent generations had forgotten it – and expressly provided for a process of Amendment. But the fifth article of the Constitution was not a viable instrument of change, Fisher argued. Indeed, the experience of the American people under the Constitution had proven that its practical function was precisely the opposite of its intended purpose. Instead of allowing the people to alter their Constitution gradually, allowing it to grow with the growing experience of the nation, the fifth article had proven “an iron fetter, that must be broke, before free action can be attained.”<sup>10</sup>

Superficially, the problem with the amendment process was that it was impractical. It requires a majority of two thirds of the states or Congress even to *propose* an amendment to the Constitution, which must then be ratified by four-fifths of the states, ensuring that a tiny minority could veto any measure deemed necessary in a great crisis. But beyond this practical objection Fisher advanced a far more significant argument that struck at the roots of the political theory enshrined in the Constitution. The fundamental problem with the amendment process was not simply that it was impractical, but that it assigned ultimate political authority where it did not belong – with the people rather than with their government.

“The conservatism that would bind the present in the fetters of the past, is as unwise, as the rash spirit of innovation that perils attained good on the wild sea of experiment,” Fisher

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<sup>9</sup> Ibid., 19.

<sup>10</sup> Ibid., 19.

wrote.<sup>11</sup> The life of the community, like all organic life, is a process of persistence through constant change. In individuals, as in nations, the process may often prove deeply distressing, but it can be arrested only by death. The idea of a Constitutional Convention as a special embodiment of the people was a creative fiction, disorganized government disguised as a protection from government. It did not free the people; it shackled them to the imperfect wisdom of their ancestors. “What is the difference,” Fisher asked, “between the power of the people delegated to Congress and the power of the same people reserved to themselves, except that the former is always ready to act when an emergency makes it necessary and the latter cannot act without hindrance and delay.”<sup>12</sup> Beyond the sovereign power of government is only the right of revolution. “The sovereignty of the people” is either a snare or a delusion, an invitation to anarchy that a free government can only honor by acquiescing in its own destruction.

Fisher attacked with equal vigor the belief that the Supreme Court could act as a final arbiter of the Constitutional limits on the legislative power of the government. This delusion depended – as all Constitutional norms depended – on a good faith cooperation between the legislative and judicial branches. Those norms were fine, until they blinded citizens to the reality of where ultimate power resided in their government. In declaring an Act passed by Congress unconstitutional, the Court simply presumed that Congress had made a mistake that it would be eager to correct. But if the Court ever attempted to block the legislative will of the government, it would instantly fall into contempt unless it usurped the legislative power to itself. Like the idea of the “sovereign people” organized in conventions, the Constitution’s delicate “checks and

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<sup>11</sup> *Ibid.*, 239.

<sup>12</sup> Fisher, *Trial*, 34.

balances” had become a pious delusion that led to paralysis and confusion. Ultimately, the legislative power is the supreme power of the state.<sup>13</sup>

What began, for Fisher, as a narrow question of constitutional law had thus become a philosophical critique rejecting the very nature of constitutional law as Americans understood it. And to reject this was to reject the defining feature of the American Republic – the idea of a government of limited powers delegated by the sovereign people. Fisher realized and explained, more presciently than anyone else at the time, that the political experiment begun by the Founders had failed, and that the failure was irrevocable. The framers of the Constitution had designed their system, consciously and willfully, in defiance of the political history of Europe. Everywhere in Europe, the Aristotelian ideal of a balanced Constitution had collapsed and given way to absolute sovereignty. The different elements of government authority – judicial, executive and legislative – might be blended so as to disguise where ultimate power resides, but it must reside somewhere.

The American Revolution had been a philosophical rejection of that proposition, and the heirs to the Revolution defined their world-historical significance by the success with which they maintained a more expansive conception of political freedom. “The two great theories of government stood face to face during three quarters of a century,” Henry Adams observed in 1870. “Europe still maintained that supreme power must be trusted to every government, democratic or not, and America still maintained that such a principle was inconsistent with freedom.”<sup>14</sup> By late 1862, Fisher had declared this distinctly American conception of government a failure. The power to make law inheres in the government, not the people, and thus the

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<sup>13</sup> Ibid., 78-82.

<sup>14</sup> Henry Adams, “The Session,” *North American Review* (July, 1870).

constitution is written organically by its actions. Americans had successfully separated themselves from Great Britain but they had not repealed the iron laws of political development.

Fisher grasped the logic of events and did not blink at the implications. The war compelled the Republicans to reject some of their most cherished assumptions about the nature of their government or accept its complete destruction. It was not merely a question of setting aside or finessing certain constitutional provisions; instead they were moving, reluctantly but inexorably, away from the conception of the Constitution as a covenant that united them in the collective enterprise of self-government and toward the organic law of the sovereign nation-state. But no Republican was willing to accept this transformation in 1862, though many came close in the years to come. The intellectual history of Republican leadership in this era is the history of different strategies for arresting this logic – to preserve inherited ideals without reversing hard-won victories and without betraying newly sacred commitments.

## *II: The Sign and Seal of the Consummation*

The worst of the war was still ahead when Francis Carpenter arrived at the White House, in February 1864, to begin work on his famous portrait of President Lincoln's cabinet. But he arrived already convinced of the scene he wished to immortalize as the President's defining moment – the meeting at which Lincoln first read his Emancipation Proclamation. Soon after presenting a chalk outline of his portrait, however, William Henry Seward approached Carpenter at a reception and said, "you [are] painting your picture upon a false presumption." The destruction of slavery, Seward insisted, was not the crucial object of the war but an inevitable consequence of the struggle to preserve democratic freedom. Many foolish citizens, both abolitionists and copperheads, were so preoccupied with slavery they forgot that the liberty of *all*

Americans was at stake in the present conflict. Autocratic governments the world over had abolished slavery. Judged purely on emancipation, Lincoln's administration was clumsier and far less significant than that of Czar Alexander II, whose 1861 Emancipation Manifesto instantly liberated nearly 23 million Russians without firing a shot. The great question yet to be decided by the war was not whether slavery would end, but whether political freedom would endure.

A crowd began to gather as Seward excitedly lectured Carpenter on the war's historical significance. What then, Carpenter asked, was the pivotal moment of the Administration? Go back to the beginning, Seward promptly answered, to the desperate uncertainty that followed the attack on Fort Sumter. In that tremendous emergency, with the capital itself menaced on all sides, the Administration was forced to set the Constitution aside, assert unprecedented powers and plunge headlong into an unknown course that might end, as they all well knew, with the whole cabinet brought to the scaffold as treasonous usurpers. *That* was the decisive hour, when the Administration might have shrunk from assuming the awesome responsibility of conducting a civil war, but instead chose to accept it. Every subsequent step resulted from the necessities entailed by that first choice. At the outset, no one in the government could know to what lengths the nation would have to go before crossing to safety, but they knew that utter catastrophe would be chasing them each step of the way. The first leap into this terrifying unknown, Seward insisted, was the defining one.

Recording this exchange in his diary, Gideon Welles, the Secretary of Navy, found himself in the unaccustomed position of agreeing wholeheartedly with Seward, whom he generally mistrusted. "Few, comparatively, can know or can appreciate the actual condition of things and state of feeling in those days," Welles wrote. "Congress had adjourned without making any provision for the storm, though aware it was at hand and soon to burst upon the

country. A new Administration, scarcely acquainted with each other, and differing essentially in the past, was compelled to act, promptly and decisively.”<sup>15</sup>

Carpenter, of course, did not abandon his original plan for his portrait. To Seward’s argument, he replied that until Lincoln issued his Emancipation Proclamation, the government had conspicuously refused to commit itself unequivocally against the criminal institution that fueled the rebellion. Only with the Proclamation, Carpenter insisted, had the government endorsed the sublime principles that elevated the Northern war effort into a worthy and righteous cause. Whether or not these had always been latent in the struggle, the Proclamation “was necessary, as the sign and seal of the consummation.”

“Well,” Seward concluded, “you think so, and this generation may agree with you. But posterity will hold a different opinion.”<sup>16</sup>

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The difference between Carpenter and Seward illustrates a fundamental distinction in government – between the outward symbolism and inner mechanics of state authority. Those who bear the responsibility of governing feel a helplessness that is scarcely comprehensible to those outside the halls of power. “The public mind seizes quickly upon theoretical schemes for relief,” Seward wrote his wife, Francis, who identified herself more fully with the abolitionist sentiment in the country, “but is slow in the adoption of the practical means necessary to give them effect.”<sup>17</sup> Conservatives who chanted “the Union as it was; the Constitution as it is,” like those who demanded immediate emancipation, were both emboldened by the moral shortcut of

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<sup>15</sup> Gideon Welles, *Diary*, Howard Beale ed. Three vols. (New York, 1960), 1:548-549. Francis Carpenter also wrote an account of the episode in his memoir, *Six Months in the White House* (New York, 1866), 72-75.

<sup>16</sup> Carpenter, *Six Months*, 74.

<sup>17</sup> Doris Kerns Goodwin, *Team of Rivals: The Political Genius of Abraham Lincoln* (New York, 2005), 468.

insisting upon a desirable object without bothering with the intractable problems that bewildered those responsible for attaining it.

Significantly, Seward was responsible for inserting the word that gave the Emancipation Proclamation real teeth. “It was Seward’s persistence which resulted in the insertion of the word ‘maintain,’” Lincoln recalled, “which I feared under the circumstances was promising more than it was quite probable we could carry out.”<sup>18</sup> And that single word gave the Proclamation something more than a symbolic character, promising not only that the government would “recognize” the slaves as free but would “maintain” their freedom – a verb that implied an indefinite commitment.<sup>19</sup>

In all other respects the Proclamation was a dramatic announcement of existing policies. Federal armies were already “confiscating” slaves and setting them free. Federal policy toward slaves in other cases was essentially passive – a promise that the Federal government would not restrain a slave emancipating himself and would recognize his freedom if he succeeded. Indeed, in language and in substance the Emancipation Proclamation merely echoed the policy conservative Republicans had already pressed on the President as an alternative to the more aggressive confiscation measures favored by the radicals.<sup>20</sup> But the promise to use the Army and Navy to “maintain” that freedom in the defeated South – that amounted to a massive, unprecedented commitment.

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<sup>18</sup> Carpenter, *Six Months*, 84.

<sup>19</sup> The relevant passage, which appears twice in the Proclamation, after declaring persons held as slaves in areas under rebellion “forever free,” goes on to say, “and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom.”

<sup>20</sup> See Jacob Collamer’s speech on Confiscation of April 24, 1862, which provided that “the President is authorized, if in his opinion it is necessary to the successful suppression of said insurrection, by proclamation to fix and appoint a day when all persons holden to service or labor in any such State, or part thereof as he shall declare, whose service or labor is by the law or custom of said State due to person or persons who after the day so fixed by said proclamation shall levy war or participate in insurrection against the United States, or give aid to the same, shall be free and discharged from all such claim to labor or service; and thereupon said person shall be forever free and discharged from said labor and service, any law or custom of said State to the contrary notwithstanding.”

Was Lincoln correct to worry that he might be promising more than he and the government could deliver? This question is almost always considered in terms of what Northern public opinion would support. But that was only one variable in a calculation that contained even more dreadful uncertainties. Viewed as a grand moral gesture, the Proclamation is deficient only in what it fails to promise. But that is an almost childishly naïve view of a military Proclamation in wartime. In the summer of 1862, the formidable fury of the Southern rebellion had overmatched the efforts of Northern armies. Prophecies that the Confederacy would speedily collapse had long since been quietly abandoned, at least by most sober observers, as the slave regime proved itself more frightfully resilient than anyone could have imagined. Lincoln's Proclamation was an attempt to weaken that regime by enlisting the support of the captive labor force that sustained it. How would the slave regime respond? Leaders who ignored this fundamental question blithely overlooked the brutal power of the militarized society they were fighting against. It was not moral clarity, but simple stupidity, that allowed some Republican leaders to confuse the symbolic gesture of emancipation with the tremendous gamble the Proclamation actually represented – a gamble involving other men's lives.

Ethan Allen Hitchcock, a brilliant professional soldier and amateur philosopher, became a military advisor to Lincoln in early 1862, and his private ruminations on the subject of emancipation offer an interesting glance into the dangers apprehended by Lincoln. Unlike the President, Hitchcock did not have to guard his every thought, and he had "been much disposed to look at the question with what I suppose to have been the President's eye, whose position has forced upon his view some practical points that have hitherto retarded his action," Hitchcock wrote privately in October 1862.<sup>21</sup> By then the President had issued his Proclamation and was determined to stand by it. And, predictably, Hitchcock wrote, the decision had "struck terror in

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<sup>21</sup> Ethan Allen Hitchcock to Mary Tyler Peabody Mann, October 5, 1862. Hitchcock Papers, Library of Congress.

the South, as we may see by the debates in the Rebel congress, and it remains to be seen what 'retaliatory' measures will be adopted."<sup>22</sup>

Only a moral idiot could fail to take this ghastly question seriously and tremble at its implications. One of Seward's most astute informants in the first two years of the war was Sam Ward, a well-connected Washington lobbyist who had travelled widely in the South. "Should New England philanthropy succeed in enticing more Proclamations like Gen. Hunter's," Ward warned Seward in the summer of 1862, "which they [the rebel leaders] regard as neither more nor less than a scheme to excite insurrection, *they will butcher theirs slaves as they have burned their cotton* and lay their blood at the doors of Philips, Greeley, etc."<sup>23</sup> Ward, who was the brother of the poet Julia Ward Howe, might have included his own sister in that morbid list, though it is worth noting that he did not actually endorse such an egregious reassignment of moral guilt. Ward had been sending Seward intelligence about the South since the secession crisis, and much of it had already proven prescient.<sup>24</sup>

Ward's warning about the possible consequences of an Emancipation Proclamation is significant because it was precisely the reservation that Seward expressed to Lincoln when the President first announced his plans to the cabinet. The only certain result of an Emancipation Proclamation was that it would intensify the terrible fury of Southern whites. Salmon Chase, the cabinet leader most associated with the antislavery movement, also argued against issuing a

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<sup>22</sup> Ibid.

<sup>23</sup> "These men" Ward had written to Seward just a month before the Union's first major defeat at Bull Run, "with their yells and Bowie knives and bloodthirsty manners, will take by surprise the bravest men who are unused to such riot...Nothing but the mob of Paris in the Reign of Terror can equal the savage ferocity and sanguinary bitterness of the Southern troops. Your men will get their blood up by and by and prove the more unrelenting of the two, but it will take lots of blood to bring them to such a diapason." Sam Ward to Seward, June 18, 1862. Seward Papers, Library of Congress.

<sup>24</sup> Cited in Kathryn Allamong Jacob, *King of the Lobby: The Life and Times of Sam Ward, Man About Washington in the Gilded Age* (Baltimore, 2010), 55.

proclamation that might incite horrific massacres, when the policy could be advanced more effectively and safely by the armies themselves.<sup>25</sup>

The other threatened retaliation, as Hitchcock noted, was that Southern armies would treat all Northern troops as criminal insurrectionists –i.e. raise the black flag. In that case the North would likely respond in kind, and the war would degenerate into the indiscriminate slaughter that has always marked the most horrible of wars. “If such a course be initiated we may make up our minds to see the fairest portions of the South desolated,” Hitchcock wrote. “The innocent and the guilty will be likely to be involved in one common ruin and then we may ponder the lines of Pope – if storms and earthquakes break not heaven’s design – etc.”<sup>26</sup>

No responsible Northern political leader could fail to ask himself whether he was prepared to fight such a war if the South insisted upon it. William Pitt Fessenden, the leader of the moderate Republicans in the Senate, had always approved of using black troops, but soon after the Emancipation Proclamation he implored his son not to take command of a black regiment until the President had taken steps to ensure that such a command would not be a certain death sentence in the event of capture. Fessenden then outlined the policy he had in mind. Prominent Rebel citizens should be arrested wherever Federal armies could reach them, and the President should announce by another proclamation that these citizens would be summarily murdered if the Confederate armies carried out their threats with regard to black troops. “[I]f it is to be a *savage* war on both sides, so be it,” Fessenden wrote. “I will not consent to a one sided

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<sup>25</sup> Salmon Chase, *Journals*, John Nevin ed. (Kent, OH, 1993), 351. Chase also had selfish reasons for advising against the Proclamation, as it blocked his most likely path to the Presidency as a purer antislavery alternative to Lincoln.

<sup>26</sup> Hitchcock to Mary Tyler Peabody Mann, Oct. 5, 1862. Hitchcock Papers, Library of Congress. Hitchcock was quoting Pope’s *Essay on Man*. “But errs not Nature from this gracious end/From burning suns when livid deaths descend,/When earthquakes swallow or when tempests sweep/Towns to one grave, whole nations to the deep?...If plagues or earthquakes break not Heaven’s design,/Why then a Borgia or a Cataline?...From pride, from pride, our very reas’ning springs;/ Account for moral, as for nat’ral things:/ Why charge we Heav’n in those, in these acquit?/ *In both, to reason right is to submit.* [my emphasis].

affair, however, nor should our people.”<sup>27</sup> This is a ghastly proposition, obviously, but using black troops without being prepared to take such extreme steps to prevent them from being murdered was hardly better. And there was no other way to protect them if Southerners persisted in carrying out their threats.

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A narrow focus on slavery distorts Lincoln’s relationship with the “Jacobins.” Lincoln obviously shared the antislavery sentiment that inspired abolitionists. And he keenly appreciated any and all efforts that increased public hostility toward slavery. As a political influence, abolitionism was far more helpful than hurtful, especially in providing him with opportunities to distinguish himself from that movement early in the war. No matter how damning it seemed to abolitionists, the charge that Lincoln was indifferent to the fate of blacks in bondage was as politically damaging as a snowball. He had no reason to resent it.

A far more potent charge, however, was that Lincoln was treating the rebellion with kid gloves – that Northern boys were dying out of a weak-willed charity for treason. *That* criticism he felt like a bayonet jabbed in his back. And here Lincoln’s position between two extremes was pure torture. On one side were those who insisted that the South could be reasoned out of the rebellion, and therefore vigorous military action was downright counter-productive in bringing Southerners to their senses. On the other side were those who were too blind to see, or too reckless to heed, the fathomless depths of violence and hatred into which the whole nation was plunging. Lofty idealism and brutish hatreds were hardly inseparable with individuals, but in the North they marched together, arm and arm. Military emancipation could never be accomplished in a short, limited war, and could not be avoided in a long, grinding war. Lincoln understood this and unequivocally hoped for the former.

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<sup>27</sup> Fessenden to James Deering Fessenden, January 18, 1863. Fessenden Papers. Bowdoin College.

The only certainty involved in the process of violent emancipation was violence. Whether this process would lead to universal freedom or outright genocide depended on events no one could hope to control, and the most likely outcome was always something in between, half horrible and half sublime. No sane President would make such a gamble with other men's lives. But the choice was not up to him. The dilemma that agonized Lincoln during the first year and a half of the war was when to accept the magnitude of what the conflict had become without wantonly foreclosing a less bloody path to peace.

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The intellectual leadership of the Republican party during the Civil War era was most embodied by the Senate. Once the shooting started, the Supreme Court, having already discredited itself with the Dred Scott decision, faded into irrelevance. President Lincoln simply ignored the Chief Justice's Constitutional objections, but he could not ignore Congress. The enormous institutional power of the President, as leader of the Republican party and Commander-in-Chief, sharply limited his freedom in wielding it. Senators were the acknowledged leaders of the political organizations controlling the State governments. Political patronage that kept those party organizations in power was distributed by them.

Unlike the executive branch, leadership in the Senate was informal. Senators cannot give commands and are therefore free from the inhibiting responsibilities that such power entails. Whatever the President said amounted to an action, and Lincoln never uttered a syllable without keeping that in mind. By siding too aggressively with one faction or another, Lincoln would have ruptured the party, creating chaos at a time when it would have been absolutely fatal. No such risk inhibited Senators, whose words were mere opinions until embodied in law. They could

speak freely, and their debates reveal the process by which Republican political thought hardened into policy, and then evolved into revolution.

Lincoln's thought process, by contrast, was shrouded by his careful discretion at every stage of the war. His decision to provision Fort Sumter is perhaps the most conspicuous example. Arguments swirled around him, but Lincoln carefully concealed his own mind. From the day of Lincoln's inauguration, it was clear that the fate of his administration, and the country, hung on his decision to provision or abandon Fort Sumter. Seward desperately urged evacuation and used all his influence, both direct and underhanded, to convince the President to do so. Winfield Scott, Commanding General of the army, also advised evacuation. Initially every cabinet member except Montgomery Blair concurred with Scott's judgment, either equivocally or emphatically. Even Salmon Chase, mortified by the financial position of the government, preferred not to risk an immediate outbreak of war. Outside the cabinet, however, in increasingly angry tones, Republicans grumbled and chafed at the President's reluctance to meet the secessionists head-on.

At the end of March, Senator Lyman Trumbull, whom Lincoln had known his entire adult life, introduced a resolution expressing these discontents along with a delicate but unmistakable threat of impeachment. "*Resolved...that it is the duty of the President to use all the means in his power to hold and protect the public property of the United States, and enforce the laws thereof...*"<sup>28</sup>

Though it is unclear exactly when, Lincoln eventually saw the stark alternatives of his position. Giving up Fort Sumter would rupture his party, discrediting his administration, but it would only delay, not avert, a war that was coming to seem more inevitable with each passing day. To infuriate his own political allies without placating the bitter hostility of his enemies was not a genuine alternative to war, whether Lincoln wanted one or not. He had no choice.

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<sup>28</sup> *Congressional Globe*, 37 Cong. Special Sess., 1519.

The only recorded occasion in which Lincoln unambiguously stated that he had hoped to evacuate Fort Sumter was itself significant. October 22, 1861, “has been a heavy day,” Lincoln’s private secretary, John Hay, noted in his diary. The previous night, Lincoln had learned that Senator Edward Baker had been killed while leading an Army regiment at the Battle of Ball’s Bluff. Lincoln had no dearer friend in Washington. They had been Illinois Whigs together in the 1840s and early 1850s, and Lincoln had even named one of his sons after Baker. He wept openly upon hearing of his friend’s death in a battle that was also a terrible defeat for the Union Army. At the end of this bleak day, Lincoln went to Seward’s house, where they “talked about secession, compromise, and other such,” as Hay recorded in his diary. Lincoln recalled “a committee of Southern pseudo-Unionists coming to him before Inauguration for guarantees &c. He promised to evacuate Sumter if they would break up their convention, without any row or nonsense. They demurred. Subsequently he renewed the proposition to Summers, but without any result. The President was most anxious to prevent bloodshed.”<sup>29</sup>

As evidence of Lincoln’s mindset during the secession crisis, this conversation is hardly conclusive. It is far more significant as a record of his memory on the bleak day in which he mourned the death of his friend and the defeat of his army. He did not want the responsibility circumstances had compelled him to accept.

In the very next entry of Hay’s diary, Lincoln is once again beset by the “wild howl” for battle from “the Jacobin club, represented by Trumbull, Chandler and Wade.”<sup>30</sup>

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<sup>29</sup> Tyler Dennett, ed., *Lincoln and the Civil War Diaries and Letters of John Hay* (New York, 1939), 30. “The higher a man’s place on the social scale,” Leo Tolstoy wrote in *War and Peace*, “the more connections he has with others, and the more power he has over them, the more conspicuous is the inevitability of every act he commits. ‘The hearts of kings are in the hand of God.’ The king is the slave of history.” Tolstoy, *War and Peace*, Constance Garnett trans. (New York, 2002), 690. Though not a king, Lincoln learned this cruel lesson well.

<sup>30</sup> *Ibid.*, 31.

The same political process marked the Administration's policy of emancipation. Once Congress convened for its first full session during the Civil War, in December of 1862, the debate over emancipation occurred primarily in debates over what became the Second Confiscation Act, which provided for the seizure of all rebel property, including slaves. When Congress convened, the Republican party was still divided between those favoring a limited and those favoring a total war. Their dilemma was the recurring one between those who insisted that a rebellion must be crushed ruthlessly and those who insisted that iron fisted tactics would only fuel Southern discontents and empower the enemy. On one side were Republicans who were dismayed at the reluctance to strike down treason. On the other side were those who hoped that Union sentiment in the South, though dismayingly latent thus far, would finally assert itself and bring a quick end to the Rebellion. By the end of the session, that hope had died among most Republicans, along with any desire to separate the rebellion from the society and institutions that sustained it.

The long, furious debate over the confiscation bill, which erupted intermittently throughout the entire Congress, thus divided Republicans along familiar lines of radicals, moderates and conservatives. But it is utterly misleading to construe these divisions as a conflict over slavery. Indeed, scholars who interpret the Second Confiscation Act as proxy for Republicans' willingness to strike at slavery, and who have read the debates carefully, are forced to conclude that there was astonishingly little difference between them. "[N]o Republican" James Oakes has written of these debates, "denied that emancipation was legally sound, militarily necessarily [sic] or morally just." This is a slight exaggeration, for the rub was in the details.<sup>31</sup> Republicans disagreed vehemently on the correct circumstances of emancipation – On

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<sup>31</sup> Oakes, *Freedom National*, 232. Oakes's study tends to exaggerate the deliberate strategy behind the Republicans attack on slavery, which would have required them to be clairvoyant about the twists and turns of the war, especially

what scale? Under what authority? In what circumstances? – but they all endorsed it to one degree or another. No Republican wanted the army to return slaves to rebel masters, and no Republican expected slavery to survive a long grinding war.

Far more bitter and significant – at least to the Republican leaders involved – was the conflict over the Constitutional limits on Congress’s power in conducting the war. The two Republicans most opposed to confiscation, Lyman Trumbull complained, after denouncing confiscation “under an act of Congress, as something monstrous and horrible, before concluding their speeches, both avow themselves in certain contingencies not only in favor of confiscation or destruction of the property of rebels, but of arming their negroes to fight against them. Their trouble seems to be, lest confiscation should be regulated by law, and not left, as they insist it ought to be, to the arbitrary discretion of the Executive.”<sup>32</sup>

At bottom, the Republicans were wrestling over how to resolve the central dilemma involved in the war – how to preserve the Union from being overthrown by the rebellion without resorting to powers that obliterated its essence. “The great question before the world to be now settled by us,” Senator Jacob Collamer declared in his remarks on the Second Confiscation Act, “is, can we sustain the integrity of our Government, and perpetuate our institutions, and do it according to the limitations and provisions of the Constitution?” Collamer was a “conservative,” but Trumbull wholeheartedly agreed with him on this point. And that is what made the disputes

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in its earlier phases. And his discussion of the Second Confiscation Act is a subtle but significant example. “For more than a generation,” he writes, “antislavery lawyers had carefully worked out the distinction between slaves and other forms of property, arguing that ‘property in man’ was not constitutionally protected. Here, in the careful construction of the Second Confiscation Act – more than anywhere else during the long process of slavery’s destruction – the seeds sown by the antislavery movement were bearing fruit. Thanks to abolitionist lawyers and politicians, it was easier for Republicans to free a slave than to confiscate a house.” This was, after all, a bill to *confiscate* – significant word, that – rebel property. The relevant distinction was between the real estate of a traitor, which the Constitution protected, and all other forms of property. When the army confiscated a house, the seizure was temporary without a judicial proceeding. But if the army confiscated a horse, the owner would have to prove his loyalty to get it back. The same was true of a slave.

<sup>32</sup> *Congressional Globe*, 37<sup>th</sup> Cong. 2<sup>nd</sup> Sess., 1557.

between them so bitter. Constitutional quibbles that would seem absurdly pedantic to a later generation acquired a visceral significance from the awful paradox of a war to preserve a political system that had failed. The moment it becomes necessary to go beyond the restraints of the Constitution, Collamer insisted, “we acknowledge before the world that our institutions are insufficiently founded, and that we are after all, compelled in the moment of trial, to resort to the force which, they say, is necessary to the existence of a nation, and our experiment is a failure.”<sup>33</sup>

And yet Collamer also insisted that the government could and must do absolutely everything to put down the rebellion. The key question, however illusory the distinction may seem in retrospect, was how to isolate this tremendous assertion of military power from the ideal of Constitutional self-government. Collamer’s solution was to distinguish between the power to legislate and the power to subdue the rebellion by force. “We can no more be legislated out of a war than we can be legislated out of the millennium,” he said. But the power of the executive “is almost without limit as against the enemy.” The difference in the Constitutional powers of the two branches was inscribed in their oaths. “We swear to support the Constitution; the President swears that he will protect and defend it,” Collamer observed. “Can it be said,” Collamer asked to illustrate the difference, “that because the President has power in an emergency or in a necessity to destroy a city, therefore Congress can make a law directing the President to set fire to the four quarters of the city of New Orleans to-day?”<sup>34</sup>

Benjamin Wade was ready to answer this hypothetical unequivocally. “I suppose we could have made a law last week that unless New Orleans surrendered it should be burnt, as well as there is power to kill the inhabitants if they do not surrender,” he responded. Collamer then acknowledged that he held a fundamentally different opinion. “Whether it is necessary to burn a

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<sup>33</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1808.

<sup>34</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1920.

city, whether it is necessary to desolate a country, whether it is necessary to kill people who are not in arms, are not legislative questions,” he insisted.<sup>35</sup> Collamer emphatically agreed, however, that the war was leading inexorably to the destruction of slavery. Far from wishing to arrest that process, he heartily welcomed it. His own proposed confiscation bill authorized the President to issue an Emancipation Proclamation, as an inducement to end the rebellion, five months before Lincoln actually did so. He even predicted that, should the South prove exceptionally stubborn in persisting in their wicked rebellion, the white population would eventually be scattered and replaced by Northern soldiers. “It may be a military necessity to do that; but to undertake to sit here and make laws directing the Executive and the generals as to what they may, and what they may not, consider, as military necessities, is utterly idle, because they are constantly changing with the changing circumstances.”<sup>36</sup>

Trumbull, Wade, and other “Jacobins” took the exact opposite view. And neither side was shy about accusing the other of hurling the country into despotism. Wade, in his usual intemperate style, denounced the “miserable, slavish doctrine” that “the President of the United States was by some mysterious power invested with the despotic authority to trample upon the rights of the people and the rights of Congress, and that there was no barrier betwixt him and utter despotism the moment you declare war.”<sup>37</sup>

The bitter rhetoric and confused logic of both sides stemmed from a mutual refusal to admit that the scope of the war was transforming the Union they were fighting to save. Ostensibly extreme possibilities, such as that the entire Southern population would be displaced by conquering Northern armies, were in reality quite comforting, since it removed the problem of how to govern the defeated section. As a hostile power waging war against the United States, the

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<sup>35</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1921.

<sup>36</sup> *Ibid.* 1810.

<sup>37</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 2929.

Confederacy represented a problem as simple and stark as victory or defeat. It was the society beneath the Confederacy, the communities that were under the lawful jurisdiction of the United States, that posed the truly vexing problems. The unlimited power that might be asserted to defeat the Confederacy was easily isolated from the strict limits Americans had been so proud of imposing on their government. But the moment that unlimited power reached the society beneath the Confederacy, it began to blur into the power that governed all Americans. And that power, however necessary, threatened to break the bulwark of the Republic, transforming the Union, and the fluid, overlapping ideals that had made it sacred, into an empire like any other.

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Military reverses in early July of 1862 ended all hopes for an immediate end to the war and sent Congress into a red-hot rage. “[T]his mode of kid-glove warfare will not do,” Fessenden, the acknowledged balance wheel in the Senate declared on July 9<sup>th</sup>. “The war must be conducted on different principles from those upon which it has been conducted hitherto.”<sup>38</sup> Trumbull considered the military debacle well worth the resolve it imparted on his colleagues. “The repulse before Richmond has had a good effect on Congress,” he wrote his wife. “We shall now get a pretty fair confiscation bill.”<sup>39</sup>

The confiscation bill passed the Senate on July 12, with all but two Republicans voting in favor of it. The very next day, Lincoln, for the first time ever, discussed issuing an Emancipation Proclamation with select members of his cabinet. “It was a new departure for the President,” Gideon Welles observed.<sup>40</sup> But Lincoln did not express this “new departure” to anyone in Congress. Instead, he threatened to veto the Confiscation Act that all but two Republican Senators had voted for.

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<sup>38</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 3201-3202.

<sup>39</sup> Trumbull to Julia Trumbull, July 12, 1862. Trumbull family papers. Springfield.

<sup>40</sup> Welles, *Diary*, 1:71.

Lincoln had known the two Senators from Illinois, Trumbull and Orville Hickman Browning, his entire adult life, and each applied exactly the opposite pressure on him during this seemingly interminable Congressional session. Trumbull had insisted all along on a much more sweeping confiscation bill and was bitterly unsatisfied with the measure, which he regarded as toothless, that Congress actually passed. Browning was one of the two Republicans who considered even the “toothless” version an instrument of despotism and revolution. Trumbull refused to believe the President would even consider such a veto. “It would ruin him and I fear the country were he to refuse,” Trumbull wrote to his wife.<sup>41</sup> Browning implored Lincoln to veto the bill. “I told him,” Browning recorded in his diary, “That the tide in his affairs had come and he ought to take it at its flood.”<sup>42</sup> Lincoln no doubt recognized this reference to the lines Shakespeare gave to Brutus in *Julius Caesar*. But he knew the tide was moving in the opposite direction.

Still, Lincoln expressed his Constitutional objections to the bill in a carefully written veto message. Fessenden was tasked with conferring with the President to find some way of avoiding what amounted to a party rupture. Lincoln’s first objection was that the bill “declares forfeiture extending beyond the lives of the guilty parties.” He also objected to *in rem* proceedings against rebel property holders as a violation of due process.

In a hasty compromise effort, the Senate passed an “explanatory” resolution limiting all forfeiture to the natural life of the offender. Ben Wade denounced this “total surrender of the dignity of this body; it is an unconstitutional submission...I am astonished that men should come in here, creeping in at the back door, with vetoes.”<sup>43</sup> Trumbull also denounced the resolution as

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<sup>41</sup> Trumbull to Julia, July 15, 1862.

<sup>42</sup> Browning, Diary, 1:558.

<sup>43</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 3375.

an unconstitutional collaboration between the two branches of the Government.<sup>44</sup> Fessenden denied any impropriety in soliciting the President's Constitutional views on a piece of legislation. He then appealed to basic common sense. A Presidential veto would likely prevent the passage of any confiscation measure, and set the party at each other's throats. The resolution averted that catastrophe at minimal cost to the bill, and without touching its emancipation provisions.

"Tried to see Mr. Lincoln yesterday but could not get admission," Trumbull wrote to his wife on the day he opposed the explanatory resolution.<sup>45</sup> That Fessenden had visited the President on the same day he had been prevented from doing so doubtlessly contributed to Trumbull's prickly defense of the Senate's autonomy. But his grievance amounted to more than a personal snubbing. Personally, the President could confer with whomever he chose. But if he wished to influence legislation, he should do it publicly, through official channels. Trumbull was justified in thinking the situation put him in an unfair position. The President was forcing him to make an unwelcome choice, not directly or publicly, but through one of his colleagues. Trumbull had been the driving force behind confiscation from the beginning, and yet here he was, in the final days of the session, compelled to act on an ultimatum from a President he was not allowed to see.

On the same day that Trumbull was turned away from the White House, his Senate colleague from Illinois, Orville Browning had visited with the President. And Browning's record of the visit suggests why he did not meet with Trumbull, despite the obvious political reasons for doing so. "He [Lincoln] looked very careworn and troubled....I remarked that I felt concerned about him – regretted that troubles were crowded so heavily upon him, and feared his health was

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<sup>44</sup> Ibid., 3380.

<sup>45</sup> Trumbull to Julia, July 16, 1862. Trumbull Family Papers, Springfield.

suffering. He held me by the hand, pressed it, and said in a very tender and touching tone – ‘Browning I must die sometime.’...He looked very sad, and there was a cadence of deep sadness in his voice. We parted I believe both of us with tears in our eyes.’<sup>46</sup>

Lincoln saw what the war had become, and he resolved to keep pace with events. But he preferred the company of a friend who flinched at the ordeal ahead to one who jabbed the bayonet in his back, hastening him toward the step he already knew he must take. Lincoln’s attitude toward emancipation itself was almost irrelevant. The central point was that the full fury of the storm had finally manifested itself, and the only two certainties it revealed were that many more young men were going to die, and that the country they were fighting to save would never be the same.

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The two men who most exemplified the Senate’s leadership in the Civil War were Lyman Trumbull and William Pitt Fessenden. Both were elected to the Senate during the controversy surrounding the repeal of the Missouri Compromise in 1854, the formative event of the Republican party itself. But until 1861, their experience in the Senate had consisted entirely in belonging a minority party, despised by the majority and institutionally powerless. But for secession, they would have remained a minority party indefinitely in the Senate. As the government fell to pieces, the Republicans in Congress found themselves holding real power for the first time. Trumbull and Fessenden were each appointed to chair the two most important committees – Judiciary and Finance, respectively.

Through his work on the Judiciary Committee, Trumbull was the driving force behind almost all the important legal legislation passed during the Civil War era, including the Confiscation Acts, the 13<sup>th</sup> Amendment abolishing slavery, and the Civil Rights Act of 1866.

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<sup>46</sup> Browning, Diary, (July 16, 1862), 559-560.

The Finance Committee, under Fessenden, was the most powerful committee in the Senate. It oversaw both taxation and discretionary spending, an immense task during the Civil War. And after Fessenden stepped down from the committee in 1867, its duties were divided into two separate committees. His position as Chair made Fessenden the *de facto* powerbroker between warring factions in Congress and the President. In addition to these immense responsibilities, Fessenden chaired the Joint Committee on Reconstruction, the most powerful ever created by Congress, where he presided over the negotiations that produced the 14<sup>th</sup> Amendment and wrote the most significant committee report in American history, establishing the party's official position on Reconstruction in open opposition to that of the President.

Fessenden's and Trumbull's leadership within the party culminated with the Impeachment trial, in which they were the decisive influences behind Johnson's dramatic acquittal. Eight years in power had fundamentally transformed the Republican coalition into an organized machine, disciplined and purged of its original idealism. More than any other two figures, Trumbull and Fessenden led the party through its searing transition. They emerged as leaders of a party united in nothing except an opposition to the slave regime that had dominated the government from its inception. And a new generation of leaders displaced them as the Republican coalition entrenched itself as the new regime during the Gilded Age. To trace their leadership during this era is to see how the political culture of the Civil War Era defeated one regime by consolidating the rise of another.

Trumbull and Fessenden rose to national prominence as the best debaters in parliamentary combat with proslavery Senators. Their claims to leadership rested on a rigid insistence on their rights as men, as Senators, and as representatives of distinct political communities belonging to the Union. This was no mean test of ability. For all their egregious

shortcomings, Southern Senators were formidable opponents, combining the overbearing, angry arrogance of a bully with the facile intellectual self-confidence of a seasoned expert. Charles Sumner, for example, was more than the equal of any man in the Senate intellectually, but he was easily flummoxed in debate, and that was true even before he was beaten within an inch of his life on the Senate floor. Though he could memorize a three-hour speech teeming with extended quotations in multiple languages, he was hopeless at arguing a point in an impromptu exchange. And the latter quality diminished him in the eyes of his colleagues as much as the former earned him the admiration of the public. Other Senators, like Ben Wade, were very good at getting mad and exchanging insults and threats, but they could not contend with Southern leaders on finer points of law or history.

Fessenden and Trumbull combined the two qualities that the antebellum Republican party needed most – they were intensely combative and immensely capable. “As a debater, engaged in the current business of legislation, the Senate has not had his equal in my time,” Trumbull later recalled of Fessenden. And he himself was Fessenden’s closest rival for that distinction.

*Lyman Trumbull: Constitutional Jacobin*

*I: "The Tyrant's Plea"*

Lyman Trumbull is perhaps the most significant American political figure whose name most educated Americans would not recognize. He began his career as a Jacksonian Democrat and anti-bank radical in Illinois. After breaking with his party over slavery, he was elected to the Senate in 1854 as a Republican. As Chairman of the Judiciary Committee during the Civil War and Reconstruction, he wrote more of the significant legislation of that era than anyone else, including the 13<sup>th</sup> Amendment and the Civil Rights Act of 1866. Trumbull successfully marshalled thirteen Reconstruction-related measures through the Senate – a feat no other leader managed more than twice.<sup>1</sup> During Grant's Administration, however, he broke with the Republican party over Reconstruction and lost his seat in the Senate as a result. After 1873, he never again held public office. But in the final phase of his political life he added another layer of significance to his leadership during the Civil War. In the 1890s, though an old man, Trumbull became a fiery populist. He represented Eugene Debs before the Supreme Court, denouncing the use of federal injunctions to crush labor unions. And he wrote the populist platform of 1894.<sup>2</sup>

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<sup>1</sup> Michael Les Benedict, *A Compromise of Principle: Congressional Republicans and Reconstruction, 1863-1869* (New York, 1974), 39. Benedict nevertheless characterizes Trumbull as a "consistent conservative." This chapter will show just how misleading such labels can be.

<sup>2</sup> There are three biographies of Trumbull, the most recent of which was published almost 40 years ago. Ralph Roske, *His Own Counsel: The Life and Times of Lyman Trumbull* (Reno, 1979); Mark M. Krug, *Lyman Trumbull: Conservative Radical* (New York, 1965), and Horace White, *The Life of Lyman Trumbull* (New York, 1913). The best of these biographies is White's, who knew Trumbull and quotes him at length. The two modern scholarly biographies are thin academic monographs. Both provide factually accurate narratives while offering very little in

To see the Civil War and Reconstruction through Trumbull's eyes is to see its achievements and limitations in an entirely new light. Arbitrary power was the shape-shifting enemy he always imagined himself to be fighting in one form or another. Whenever he identified this enemy, he considered it a threat to the foundations of the Republic. And once he got the idea of such a menace in his head, it hardened into pure wrath unencumbered by a concern for the consequences. Questions of expediency he furiously dismissed during the secession crisis, snarling contempt at anyone who hesitated or trembled at the precipice. And he combined this zeal with a reverence for the Constitution and a fastidious respect for the law. If he could not sincerely convince himself that the lawful power for a particular action existed, he would oppose it, no matter how desirable the act might be in and of itself. This disposition, reckless yet scrupulous, is virtually certain to fail in politics, but beginning in 1861 it was precisely this disposition that revolutionized the Republic.

Born in Connecticut in 1813, Trumbull was the seventh son of Benjamin and Elizabeth Trumbull. He belonged to the most distinguished family in the State, including three governors and the famous painter. Trumbull's grandfather was a prominent clergyman and historian. And on his mother's side, Trumbull was descended from the brilliant Mather family. No silver spoons came with all this blue blood, however, and Trumbull, for all his ability, could not afford to follow his father and grandfather into Yale. As soon as he graduated from grammar school, Trumbull started teaching it. While teaching in Portland, Connecticut, Trumbull fell in love with Louisa Guildersleeve, whose wealthy father quickly squelched her courtship with the school-teacher.<sup>3</sup> The combination of aristocratic family pride and humble circumstances imprinted itself

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the way of analysis or interpretation. Roske's biography contains some facts unavailable elsewhere as he had access to an unpublished biography of Trumbull written by his eldest son. I have been unable to track this down.

<sup>3</sup> Roske, *His Own Counsel*, 4.

firmly on Trumbull's character. For the rest of his life, he detested the snobbery conferred by money as the meanest snobbery of all.

Avenues for advancement were clogged in New England, where there were more poor young men seeking a professional career than there were professions. So in 1833, Trumbull moved to Georgia, where he continued to teach school and began practicing law. After arriving on a steamship in Charleston, South Carolina, and then riding the first railroad he had ever seen to Augusta, he walked 75 miles to Pike County, where he expected to find a job. Disappointed, he kept walking and found a job as the principal teacher at Greenville Academy. The job paid a base salary of \$200 a year in addition to the tuition paid by pupils, and it left Trumbull plenty of time to study law under Hiram Warner, another native Yankee who became a Congressman and justice of the Georgia Supreme Court. In just three years, Trumbull managed to save more than \$1,000. "For a young man of twenty four years without a family," Horace White, his friend and biographer later wrote, "this was affluence in those days."<sup>4</sup> And yet he left Georgia for the Northwest as soon as he had accumulated enough savings for a fresh start. Political ambition was the obvious motive, as the social, economic and ideological aspects of plantation society all foreclosed the possibility of a successful public career for Trumbull in Georgia. He bought a horse and, with his life savings in his pocket, rode to Illinois, accompanied by a friend for the first half of the journey and alone for the second half.

Many other Yankee settlers were beginning to pour into the Prairie State directly from New England, including a brilliant Vermont mechanic named John Deere. It was already obvious that Chicago, then a mere village, was poised to become the commercial hub between the Great Lakes and the Northwest. As is usually the case when great future developments first become manifest, speculators wildly overestimated Chicago's immediate prospects without the slightest

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<sup>4</sup> White, *Life of Trumbull*, 5.

presentiment, or even the capacity to comprehend, what the city would become over the next few decades. Real estate prices soared then cratered, and the city steadily grew. Trumbull, however, did not settle in the Yankee-dominated Northern part of the State. Instead he settled in Belleville, a town along the Mississippi River just south of St. Louis. When Charles Dickens visited Trumbull's new home in 1842, he found it "a small collection of wooden houses huddled together in the very heart of the bush and swamp."<sup>5</sup> Despite his prominent New England name and "puritanical" demeanor, Trumbull's best contacts in the State came from his friends in Georgia, not Connecticut. For a talented lawyer with little aptitude for business, this was hardly regrettable. Though Northeastern capital was beginning to drive the economic development of Illinois, it was still governed by Southerners.

The full story of Trumbull's early political career is, of course, beyond the scope of this project. But his formative experience in the State's politics is worth noting, as it established an enduring pattern.

Soon after deciding to settle in Belleville, Trumbull rode his horse back across the country to visit his family in Connecticut, only to make the arduous return trip a few months later. "If ever a family of children grew up loving each other most tenderly surely ours was one," Trumbull later wrote. Though his mother died when he was 15, his relationships with his father and seven siblings were loving and intimate throughout his life. "Not a shadow passed between them," Horace White observed.<sup>6</sup> No technological or infrastructure improvement that diminished the distance separating him from his family was ever unwelcome by Trumbull. And almost everyone else who lived in Illinois in the 1840s – virtually none of whom had been born there – felt the same way.

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<sup>5</sup> Cited in Horace White, *The Life of Lyman Trumbull* (New York, 1913), 14.

<sup>6</sup> White, *Life of Trumbull*, 16.

Sentimental attachments, however, were not the only motive for promoting the development of the West. And here the two national parties differed according the powerful eastern interests that controlled them. The Whigs, influenced by Northeastern financial and manufacturing interests, were eager to promote the transportation and financial infrastructure to develop the West. But they opposed generous policies for the rapid settlement of public lands, which would drain eastern States of labor and diminish the value of a crucial resource for public finance. The Democrats offered the opposite: Generous public land policies to promote the rapid settlement of small farms and leaving the States alone to develop themselves, preferably with as few bankers and bondholders as possible.

Within Illinois, these political differences dissolved into mere factional contests as Whigs and Democrats promised voters all of the above. In 1837, the same year Trumbull arrived in Illinois, the state legislature, with the support of Whigs and Democrats, passed an act to create a 1,300 mile railroad network, “by the people, of the people, and for the people,” as one of the young Whig legislators responsible might have described it. To avoid privileging one section of the State over all the others, construction began everywhere at once. All this breathtaking ambition soon distinguished the project as one of the nineteenth century’s best object lessons on the folly of state capitalism. The easy credit that had allowed the state to begin the project quickly ran dry after the Panic of 1837 inaugurated a nationwide depression. Within a few years, Illinois had defaulted on its debts and abandoned all construction with an incomplete canal and just 24 miles of functioning railroad to show for the millions of dollars spent. Trumbull arrived just in time to see the State’s ambitious leaders rush headlong into a ditch.<sup>7</sup>

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<sup>7</sup> The most lucid account of this ill-fated internal improvements project is Theodore Calvin Pease, *The Frontier State, 1818 – 1848* (Springfield, 1918).

“Unfortunately, at an unguarded moment” Governor Thomas Carlin wrote in message to the Legislature in 1840, Illinois “was allured from the path of wisdom and economy by the seductive sprit of speculation, and...induced to embark in an extensive system of internal improvements at a period when the country was literally deluged with an inflated circulating medium, which gave the semblance of success to the most visionary and chimerical enterprises.”<sup>8</sup> The State owed \$13.5 million, or 43.44% of its gross state product, largely to foreign creditors. In 1842, Illinois defaulted on its interest payments, which alone were costing the state \$830,000 a year.

The Democratic party’s appeal was more popular at the polls but unworkable in practice, promoting the internal improvements farmers wanted with hostility toward the bankers and brokers they distrusted (and, alas, needed). With the State’s finances in shambles, ideology reasserted itself, pitting practical Democrats against those who took their anti-bank, anti-monopoly message seriously. Trumbull’s course was at once principled and dismaying to responsible leaders.

Trumbull rose quickly in the Democratic party. He was elected to the legislature in 1840 and joined the anti-bank radicals. The State Bank of Illinois was an easy target in the aftermath of the depression. Compelled to suspend specie payments, the bank seemed responsible both for the artificial prosperity of the boom and the crippling severity of the bust. “[T]he late and repeated expansions, suspensions, and contractions of the banks generally furnish ample proof that the paper system is fundamentally wrong in principle, destructive in practice, and at war with the best interest of the country, and the genius and spirit of our republican institutions,” the

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<sup>8</sup> Governor’s Message. *Journal of the Senate of the State of Illinois* (Springfield, 1840), 9-20.

Governor wrote.<sup>9</sup> Worse, investigations by the State legislature revealed that the bank's directors had behaved more like gamblers than disinterested stewards of a public enterprise.

Trumbull advocated repealing the bank's charter altogether and appointing public commissioners to resolve the banks affairs and sell its assets. Inevitably, discussion of these vexed financial questions turned into dire warnings about the fate of the Republic. The banks, Governor Carlin wrote in his message, have "fortified themselves behind an almost invulnerable rampart, erected by encroachment and justified by the tyrant's plea, 'necessity.'" That last phrase reverberated in Trumbull's mind and supplied the central idea of his political philosophy. "Usurpation of whatever character are usually preceded with the persuasion that they are essential to the advancement of the people in the scale of prosperity and happiness, and in this way they are stripped of their rights, and bound in the chains of political slavery before they are aware of the danger... the various and diversified charters granted to monopolizing companies, are sapping the foundations of the Republic, destroying the equality of citizens, and creating distinctions in society"<sup>10</sup>

In 1841, Carlin appointed Trumbull Secretary of State, and he helped push the governor toward a radical anti-bank position. Most Democrats, and virtually all Whigs, however, were not willing to go so far. The State's finances were confused enough already, and repealing the bank charter was commonly associated with repudiation of the State debts. Indeed, Trumbull himself had introduced a measure in the legislature repudiating all debts issued "without the authority of law." How much hastily issued debt Trumbull expected this measure to clear from the books is unclear. When Stephen Douglas, among others, denounced Trumbull for favoring repudiation, he denied it. And although the moral distinction Trumbull saw was real, for all practical purposes it

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<sup>9</sup> Ibid.

<sup>10</sup> Governor's Message. *Journal of the Senate of the State of Illinois* (Springfield, 1840), 9-20.

was moot. Any attempt by the government to disavow debts it had formerly acknowledged would have made it much more difficult to borrow money in the near future, and the State desperately needed capital. Taxation, the only other way to raise funds, was unfeasible both politically and as a matter of policy. The whole point was to develop an economy that did not yet exist. In the meantime, the only asset to tax was land, and the unsettled frontier State could not tax land heavily without repelling prospective settlers and driving away existing landholders. If the government could borrow on favorable terms, however, the State's future growth would clearly make even the most staggering present debts seem trivial.

Thomas Ford, who became Governor in 1842, attempted a compromise between the anti-bank rhetoric of his own party and what his predecessor described as “the tyrant’s plea, ‘necessity.’” Instead of repealing the bank charters and placing its assets under the control of public commissioners, the State would slowly dissolve its relationship with the banks, exchanging bonds held by the bank for stock held by the State, dollar for dollar. Politically, as Thomas Ford described it, it was “a question whether [the banks] should be slowly strangled to death by slow degrees, or delivered over to be scalped and tomahawked with barbarian ferocity.”<sup>11</sup> Stephen Douglas, and most other Democrats, heartily supported Ford. The State was then trying to organize a new public corporation to build a canal connecting Lake Michigan to the Illinois River (and thus to the Mississippi). If the State decided to tomahawk creditors of its last venture it might have a hard time attracting new ones to finance its latest project.

But a good tomahawking, Trumbull believed, was just what those privileged monopolists deserved. They had consistently violated the terms of their charter; they had circulated notes throughout the State which they could not redeem on demand, and the Government had proven unable or unwilling to hold them accountable. A principle was a stake. It was a perversion of law

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<sup>11</sup> Thomas Ford, *History of Illinois* (Chicago, 1854), 297.

to protect public charters as private contracts. When the legislature conferred corporate privileges for public purposes, the act was in no way analogous to a contract between private parties. If the State created “an odious and unjust distinction, in favor of a corporation, and against the people,” as Trumbull had written in a signed protest, the people’s representatives had not only the right but the duty to repeal it.<sup>12</sup>

Trumbull, however, retained his post as Secretary of State under Governor Ford. With an annual salary of \$1,500 plus allowances, this was not a job he was eager to lose. He was also able to hire his brother as a clerk at an annual salary of \$400. But Trumbull openly opposed Ford’s policy and worked to defeat it. “From this moment,” Ford recalled, “I determined to remove Trumbull from the office of Secretary of State.”<sup>13</sup> Though Trumbull did not resign, he forthrightly acknowledged the Governor’s right to remove him. This the governor promptly did.

Trumbull’s fight against the moderate policy of own party was hopeless. Not only the Whigs, but the formidable skills of Stephen Douglas and his Democratic followers in the legislature were against him. Ford’s banking act passed with overwhelming majorities, and Trumbull returned to Belleville in defeat. Just 29 years old, his political career was in shambles, though no one could doubt his immense talent as a lawyer. He did not hold political office again until, a little more than a decade later, Douglas’s own Kansas Nebraska Act launched Trumbull into the United States Senate.

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In this stumbling prelude, Trumbull exhibited all the defining qualities that defined his leadership in the Republican party. Indeed, were his career invented by a novelist, the “foreshadowing” in this earlier episode would seem artificially heavy-handed. In 1868, Trumbull

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<sup>12</sup> *Journal of the House of Representatives of the State of Illinois, 1840-1841*, 539.

<sup>13</sup> Ford, *History of Illinois*, 308-309.

acquitted President Johnson for doing precisely what Governor Ford had done to him. In both cases, this principled stand had cost him his standing in his party. And in both cases he was denounced for corruption despite acting against his own overwhelming financial and political interests.

Even more significant, however, is the early display of Trumbull's political temperament and philosophy, which remained consistent even as the political context changed dramatically. In his history of Illinois, Governor Thomas Ford provided a classic description of the qualities that made for a successful politician in that era. There were, he wrote, two classes of politicians. Some succeed by being "affable, pleasant, facetious, and agreeable." They make it a point never, under any circumstances, to think for themselves – "never to contradict, to advocate no opinion, to give no offense, to make no enemies and to be amiable and agreeable to all."<sup>14</sup> These men often acquired offices in a particular party but were never its leaders.

"The other sort of professed politicians are the men of energy and action," Ford continued. "They are the foremost in the fight with the common enemy. They are orators for the people; the writers for the newspapers; the organizers and disciplinarians of party; the denouncers of treachery and defection; and work night and day for victory in the party contest." Party leadership required real ability, as there were no mundane experts for charismatic politicians to rely upon. Politicians in this era had to master the technical aspects of their profession – crafting legislation, manipulating parliamentary rules, and balancing budgets. That meant a lot of amateurism, obviously, but it also gave brains a tremendous advantage. Politicians gained influence, Ford observed, by encouraging others of less ability to rely upon them.<sup>15</sup>

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<sup>14</sup> Ford, *History of Illinois*, 288-291.

<sup>15</sup> *Ibid.*

But this class of leader, Ford continued, tended to destroy themselves by the zeal with which they advocated their cause. They had an unfortunate habit of taking their ideas too seriously, and of striking too hard on their behalf. “He is hated among the best men of his opponents,” and this hatred, though motivated by party conflict, destroys his popularity. “He cannot get all the votes of his own party, and not one from amongst his opponents. He is no longer considered to be an available candidate, and has to give place, in all doubtful contests, to his inoffensive ‘milk and water’ compatriot.” Not incidentally, Ford penned this description just before describing his removal of Trumbull. Ford then described the successful political leader. And here his model was clearly Stephen Douglas, who was the same age as Trumbull, every bit as bold and, at least when Ford wrote his history, infinitely more successful.

“A politician, however, of the decided, sanguine kind, if he is a man of sense and tact, if he knows how far to go in the advocacy of his own party, and when to stop; if he knows how to abuse the opposite party, without giving personal offense; is in the surest road to advancement.” Sense and tact, however, were not to be confused with the mindless affability of a born follower. “He aims to be a leader; and to be one he thinks he must be ahead in everything. In the democratic party he is an ultraist; he can hardly find measures sufficiently democratic to suit him.” This was Douglas.<sup>16</sup> He was a brilliant tactician, a master at clothing practical purposes in the language of grand principles, without letting that language blind him from seizing a professional advantage. And as the ideological fervor of the 1830s cooled, with one last eruption following the depression of 1837, Douglas rose quickly to become the most famous Democrat in the country.

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<sup>16</sup> Douglas’s best biographer also suggests that Ford had him in mind in this description. Robert W. Johannsen, *Stephen A. Douglas* (Oxford, 1973), 116.

In 1854, however, Trumbull's chief political liability once again became an asset. The same ideological intensity, the rigid but unmistakable moral seriousness with which he engaged in politics commended him as the North awakened to a sense of crisis. When he identified a threat to the very foundations of the Republic, there was no false note of party pandering in his earnest philippics. He meant it. "We shall have war to the knife," Trumbull privately wrote of the conflict between Nebraska and Anti-Nebraska Democrats. "I believe in all my heart we are right and deserve to prevail."<sup>17</sup>

His era had arrived.

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The political and moral assumptions implicit in the Republican party's opposition to slavery were so deeply embedded in antebellum culture that hardly anyone ever bothered to make them explicit. And so, what came to seem like a glaring contradiction after the war was simply taken for granted, requiring neither explanation nor analysis – namely, that the Republican party, despite its intense moral objection to slavery, had no intention of interfering with it in individual states. Disavowing this intention was routine in Republican speeches, and yet leaders rarely ever felt compelled to explain *why* the logic of their position did not impel them to seek national emancipation as a political goal. Quibbles aside, the essential Constitutional limits on the powers of the general government were too widely accepted, and cherished, to require an elaborate explanation.<sup>18</sup>

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<sup>17</sup> Lyman Trumbull to John Mitchell Palmer, November 23, 1854 and February 24, 1855. Cited in, "A Collection of Letters from Lyman Trumbull to John M. Palmer, 1854-1858," *Journal of the Illinois State Historical Society* (April-July, 1923), 20-41.

<sup>18</sup> The first resolution of the Republican Platform of 1856, for example, stated, "That the maintenance of the principles promulgated in the Declaration of Independence, and embodied in the Federal Constitution are essential to the preservation of our Republican institutions, and that the Federal Constitution, the rights of the States, and the union of the States, must and shall be preserved."

Proslavery arguments presented a mirror image of this assumption. If white men had a natural and constitutional right to hold black men as property, as proslavery partisans claimed, then clearly Northern States were wrong to deny that right. Indeed they were, proslavery leaders acknowledged, just as antislavery leaders acknowledged the contrary proposition. But neither side claimed that the general government had the power to compel a State to protect his right within its jurisdiction.

Two events, the Dred Scott Decision and then John Brown's raid on Harper's Ferry, dramatically changed the terms of the debate. The ensuing controversies, each in its own way, compelled proslavery and antislavery leaders to answer an accusation they had once been able to dismiss as a partisan smear. If, as the Dred Scott decision held, laws prohibiting slavery in the national territories violated a Constitutionally-protected right, then weren't all state laws prohibiting slavery also unconstitutional? And if Republicans sincerely believed slavery was a monstrous evil, how could they pretend to disapprove of John Brown's infamous raid on Harper's Ferry?

Proslavery leaders distinguished between a Constitutional right and the power to confer and protect that right. In all jurisdictions subordinate to federal law, the general government had the power and thus the obligation to protect slave property. But the States were not subordinate jurisdictions; they were sovereign in all matters pertaining to themselves, and the federal government had no power to regulate or protect property relations within them. Both proslavery Democrats and antislavery Republicans sincerely adhered to this Constitutional logic while accusing their adversaries of a bad-faith effort to overturn it, nationalizing either slavery or freedom.

There was, however, one crucial difference between the two sides, aside from the obvious moral one. The Southern Democrats, as a party, insisted upon the Constitutional right established by the Dred Scott decision even though it meant their ruin as a national party. Republicans, by contrast, avoided staking out a position on another controversial aspect of the Dred Scott decision – whether black men could be citizens of the United States. If free blacks were citizens, then the general government had the power and thus the obligation to protect their rights in the national territory. This was hardly a hypothetical point – the Kansas Constitution that the Republicans endorsed expressly denied precisely that right. But logical consistency would have been fatal to any national antislavery coalition, since support for black civil rights was non-existent in all but a few New England States, and weak even there.

But this obvious explanation overshadows a more significant point, namely, that this practical consideration reinforced Republicans' ideological commitment to "maintaining the inviolate rights of the States," as the Republican Platform of 1860 put it. Both Republicans and Southern Democrats believed that the survival of slavery depended on the vigorous support of the general government. By implication, they also believed that the mere absence of this power would redound automatically in the interest of freedom. If the national government had the power to establish a uniform standard of civil rights, the immediate, unmistakable consequence would be that black Americans would lose them in the few States where they actually possessed any rights. One can go further. If the national government had originally been vested with authority over emancipation throughout the entire Union, Northern states would not have been able to unilaterally abolish it. Instead of becoming predominant within the Union, the Free States would have remained a minority. And New England would have had to secede in order to rid themselves of a general government capable of smothering abolitionism everywhere.

The history of civil rights law at the local and federal level, from the Civil War up to the present, is so overwhelming that it seems tendentious to suggest that anyone could have seriously believed the rights of black Americans were more surely entrusted to state governments. This later history, especially after the Civil Rights Era, has so thoroughly imprinted itself on American thought that even talented historians have projected it backward on an era influenced by a very different history. Political assumptions are formed by historical experience. And prior to 1861, the historical experience guiding American political thought imparted assumptions almost exactly the opposite of those that emerged in the searing ordeal just ahead. The most enlightened political communities advanced the cause of human freedom and progress, slowly but surely, by their example. To tether these communities to the level of moral enlightenment sustained by a majority of the entire nation would only smother their capacity for leadership. For good reason, citizens in Massachusetts did not want to entrust more power to a government they shared with South Carolina and Texas.

The question John Brown's raid imposed on the Republican party, however, was slightly different. It was not, obviously, a question involving the Constitutional limits of federal power. Instead, the question was why the Republicans' belief that slavery was a monstrous evil did not impel them to support an insurrection to overthrow it. Trumbull led the Republican response to this attack in the Senate. His argument contained two parts, the second of which included a revealing statement of the logic of communal self-government – of leaving each State in the Union to the level of justice and enlightenment that it was capable of reaching.

“No man who is not prepared to subvert the Constitution, destroy the Government, and resolve society into its original elements, can justify such an act,” Trumbull said, referring to Brown's raid. “All governments, the best of which have been devised, encroach necessarily more

or less on the individual rights of man and to that extent may be regarded as evils. Shall we, therefore, destroy Government, dissolve society, destroy regulated and constitutional liberty, and inaugurate in its stead anarchy - a condition of things in which every man shall be permitted to follow the instincts of his own passions, or prejudices, or feelings, and where there will be no protection to the physically weak against the encroachments of the strong?"<sup>19</sup> So far, Trumbull's answer was a fairly straight-forward restatement of the right of revolution defined by John Locke and invoked by Jefferson in the Declaration of Independence. Between the Constitutional order and total revolution, in Trumbull's mind, there were no middle alternatives. Only the gravest abuses of power justified dissolving the social compact and reverting to the state of nature. The alternative to obedience to the laws, even unjust laws, was total anarchy, with all the doleful consequences it implied. (Slaves, it is worth adding, were already in a state of war. But that was not true of the people Trumbull represented.)

Trumbull was speaking as a citizen of Illinois and of the United States, and in these capacities he denied any affiliation with slavery. The question was not whether the slaves had a right of revolution but whether Northern citizens had a right to interfere with the lawful institutions of a distinct political community. Under the Constitution, the citizens of a free state had no power or responsibility over slavery in a different state. To assert that power by lawless invasion amounted to a war of aggression.

Senator Clement Clay of Alabama interrupted Trumbull to ask how he could regard slavery as both immoral and lawful in the States where it existed. Surely a Christian could not maintain that the existence of a great crime depended on statutory enactments. "Would not the taking of a human being's life without justifiable or excusable cause be a crime, independent of all statutory provision or legal enactment; and if so by parity of reason, is not polygamy a crime;

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<sup>19</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 1<sup>st</sup> Session, 5.

and if so, by the force of your own platform which condemns slavery equally with polygamy, is that not a crime independent of all human legislation?" Senator Clay asked. For an impromptu exchange, Trumbull's answer was quite brilliant: "The taking of a human life in the instance the Senator puts it, unjustifiably, would undoubtedly be a great wrong and a crime in any civilized country. I do not know how it would be regarded among savages. In some instances, where we would not regard the killing as by any means justified, they perhaps would." And so the Southern slaveholders were not criminals, merely unenlightened savages incapable of upholding a law recognized by all civilized peoples. Accused of being a moral relativist, Trumbull denied it and expressed himself ready to inform the Senator of his moral judgments if he so desired (he, evidently, did not).<sup>20</sup>

Unjust and barbaric institutions are no less unjust and barbaric when sanctioned by the laws of a political community. But outsiders, who have no lawful power to abolish or change those institutions, have no moral right to do so by force. Invading Virginia to free its slaves was no different from invading Cuba for the same purpose. The analogy is obviously imperfect, but it will only seem absurd to historians who cannot understand that they do not live under the same system of government as Trumbull, even though it has the same name.

"I have always insisted that the people of the northern States were in no manner responsible for slavery in the southern States," Trumbull declared on the floor of the Senate in March of 1861. "[W]hy? Because they have no power in regard to it. The men who made the Government conferred upon it certain powers; but not the power to interfere with the domestic institutions of any State; and *we, in the State of Illinois, have no more to do with slavery in Kentucky, than we have to do with slavery in Turkey.* We are not responsible for it. We have no

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<sup>20</sup> Congressional Globe, 36 Congress, 1st Session. 57. Lincoln congratulated Trumbull for his "capital" speech. He was especially impressed with his impromptu exchanges. Lincoln to Trumbull, January 29, 1859. Cited in White, *Trumbull*, 92.

power, under the Government under which we live, to interfere with it. Each State has a right to manage its own domestic affairs.”<sup>21</sup>

The occasion of these remarks adds even more significance as a measure of the impending revolution. Trumbull, future author of the 13<sup>th</sup> Amendment abolishing slavery throughout the United States, was speaking in opposition to a proposed Amendment guaranteeing that the Constitution would never be amended to abolish slavery. But he opposed the Amendment precisely because he denied having any connection to slavery. The sovereign people had the right to alter their fundamental law – that was the defining innovation of the American Republic – and he would never vote for an Amendment that placed slavery, and only slavery, above the sovereign right of the people to vest their government with new powers. But he insisted, again and again, that this refusal did not imply any inclination to create such a power. “I have said on any and all proper occasions, and am willing to say at any time, to our brethren of the South, we have no disposition, and never had any, and have no power, if we had the disposition, to interfere with your domestic institutions.”<sup>22</sup>

Never say never, as they say. Trumbull discovered the disposition soon enough.

## *II: “War Means Death; It Means Desolation; It Means Destruction”*

On the first day of the first full Congressional session during the Civil War, before the clerk had even read the President’s message, Trumbull gave notice of his intention “to introduce a bill for the confiscation of the property of rebels and giving freedom to the persons they hold in

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<sup>21</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1382. My emphasis.

<sup>22</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1382.

slavery.”<sup>23</sup> The bill, which became the Second Confiscation Act, established the basic intellectual framework that Trumbull followed throughout the war and the first years of Reconstruction. Although the purpose of the bill was uncontroversial, and though Trumbull himself was impatient to get it passed, Congressional wrangling kept it off the statute books until July of 1862, at which point the scope of the war had already widened into a revolution. Trumbull made no effort to disguise the sweeping assertion of power involved in his bill. “It provides,” he told the Senate, “for the absolute and complete forfeiture forever to the United States of every species of property, real and personal, and wheresoever situated within the United States” that belonged to persons beyond civil jurisdiction who were aiding the rebellion in any way.<sup>24</sup>

Trumbull acknowledged that the military already had the power to confiscate property in order to put down the rebellion. But without positive legislation, all property confiscated during the war would revert back to its original owners once civil jurisdiction had been restored. Even slaves, he claimed, would return to bondage unless Congress declared their confiscation permanent. Of course, the bill did not interfere with judicial proceedings wherever the civil authority remained intact. Those convicted of treason by a court would only forfeit their property for life, since the Constitution, as Trumbull acknowledged, prohibited permanent forfeiture of real estate as a punishment for treason. Trumbull insisted that the military could only operate where the civil government had been overborne by the rebellion. The crucial point, however, was that Trumbull claimed Congress could and should authorize the military to confiscate the real estate of rebels, systematically and permanently, to help pay for the war and destroy the planter class that had started it.

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<sup>23</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session., 1.

<sup>24</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 18.

Those convicted of treason by a jury, in other words, would not be punished as severely as those convicted by the whim of a military commander. Trumbull saw no contradiction in this disparity, however. Wherever the rebellion swept away the civil authorities, it swept away the Constitution as well. The military was still subject to Constitutional restraints and to civil oversight in loyal states, but the Confederacy all those comprising it were no more protected by the Constitution than any other foreign enemy waging war against the United States. He refused to believe the stark division he identified was in fact quite blurry, and that the tremendous power he demanded be brought to bear on the rebellious States could not be safely isolated from the Constitutional protections he continued to cherish. And thus his argument for a sweeping confiscation policy included several discordant warnings – “Necessity is the plea of tyrants, and if our Constitution ceases to operate the moment a person who is charged with its observance thinks there is a necessity to violate it, it is of little value,” Trumbull insisted in his speech advocating military confiscation. “How are we better than the rebels, if both alike set at naught the Constitution? I warn my countrymen, who stand ready to tolerate almost any act done in good faith for the suppression of the rebellion, not to sanction usurpations of power which may hereafter become precedents for the destruction of constitutional liberty.”<sup>25</sup>

Trumbull’s version of the confiscation bill piously acknowledged the sacrosanct limitations imposed by the Constitution and violated them at the same time. As Trumbull repeatedly emphasized, traitors within reach of regular judicial authorities would not be affected by his Confiscation bill and would enjoy the full protection of the Constitution they were trying to overthrow. All rebels in Confederate held territory, however, were not only traitors but enemy belligerents, and in dealing with them Congress was only bound by the laws of war. This much was uncontroversial. But civilized countries, as Trumbull acknowledged, did not generally do

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<sup>25</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 18.

what his bill proposed – confiscating all property of enemy belligerents, real and personal, by military authority, and using the proceeds of sale to defray the cost of the war. As a precedent, Trumbull could only cite what European powers, along with the United States, had done to Native Americans. “How do the men who inhabited the neighborhood of Port Royal differ from the aborigines that inhabited this continent?” Trumbull asked. “They have laid everything waste and abandoned the country, and by the conquest of it, treating them as belligerents, as we have a right to treat them, we may take possession of that country and apportion it out among the loyal citizens of the Union.”<sup>26</sup>

The very intensity of Trumbull’s Constitutional scruples blinded him to the revolutionary implications of his bill. He really did not see it. All Republicans acknowledged that the military could confiscate any property that served a strategic purpose; they all agreed that the slaves of rebels should be freed whenever they came under federal authority. And Trumbull, ever the Constitutional purist, still maintained that a loyal citizen could reclaim a slave from the federal government upon proving his loyalty. After the war, of course, Congress and the Courts would have to decide what rights the former belligerents might reclaim. Trumbull’s bill was an attempt to preempt those intractable Constitutional questions and eliminate the problem as a simple act of war. Without realizing the paradox, he wanted to precipitate a total revolution in the South in order to prevent it from transforming the Union as a whole.

Despite passionate backroom pleading, Trumbull could not get enough votes to pass his Confiscation Act. The bill that ultimately passed was toothless as a confiscation measure, but the emancipation provisions were as strong as they had been from the beginning. When a weaker confiscation bill emerged from a special committee in May, Trumbull attacked it on two points.

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<sup>26</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 943. (February 25, 1863). One obvious possibility created by Trumbull’s bill, allowing former slaves to own the land they had toiled, had not yet entered his mind. The bill also provided for voluntary colonization of slaves “to some tropical country.”

The first was that it established, for those convicted of treason, milder punishments than death. “I am satisfied with the punishment for treason as it is. If an individual should be convicted of treason against this government, I would execute him,” Trumbull insisted. His second criticism was that it made confiscation of rebel property a judicial proceeding rather than a military act. That made it both ineffectual and unconstitutional at the same time, a sorry combination. The Constitution prohibited permanent forfeiture of property as a punishment for treason, and yet the bill did just that, indirectly, through the imposition of fines. “I want to know whether that is not a perfect evasion of the Constitution, if the Constitution means that you cannot, on an attainder or conviction of treason, take the property except for life?” Trumbull asked. But the real problem was that the unavoidable encumbrances of judicial proceedings were certain to defang confiscation as a war measure. “This is not a confiscation bill at all,” Trumbull complained.<sup>27</sup>

Somehow, Trumbull did not recognize the even more brazen Constitutional evasion in his own bill, which survived to become part of the initial Confiscation Act. The bill provided for confiscating property owned by Rebels within Northern jurisdiction through *in rem* proceedings. An estate in Illinois belonging to a Confederate officer, for example, could be seized as abandoned. The judgment was against the property, not against the supposed traitor, and thus the real estate of rebels could be seized permanently. The evasion was blatant but also essential. As Trumbull pointed out, John Slidell, a Confederate minister to England, owned about \$100,000 in land in Illinois. But confiscation would be fiscally pointless if it were a punishment for treason, and thus limited to Slidell’s lifetime.

The long legislative wrangle over the Confiscation Act culminated with a threatened veto by President Lincoln. Trumbull refused to believe the President would even consider such a veto.

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<sup>27</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 2170.

“It would ruin him and I fear the country were he to refuse,” Trumbull wrote to his wife.<sup>28</sup> When the Senate passed a declaratory resolution disavowing permanent forfeiture of real estate, Trumbull denounced the compromise and stubbornly voted against it. But the resolution passed easily. And Lincoln signed the Confiscation Act into law.

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At the beginning of the very same session of Congress, Trumbull introduced a resolution directing the Secretary of State to inform the Senate “whether, in the loyal States of the Union, any person or persons have been arrested and imprisoned and are now held in confinement by orders from him or his Department, and, if so, under what law said arrests have been made and said persons imprisoned.”<sup>29</sup> As an inquiry, the resolution was superfluous. Everyone knew that Seward had arrested men for sympathizing with the rebellion and that no law except that of necessity could possibly justify it. But as a political statement, it sent an ominous and unmistakable threat to the Administration. And despite the mild language of the resolution, Trumbull did not disguise the dagger it contained.

“What are we coming to if arrests may be made at the whim or caprice of a cabinet minister?” Trumbull asked on the floor of the Senate in defending the resolution. “Are you willing to trust the liberties of the citizens of this country in the hands of any man, to be exercised in that way?” He then contrasted such arbitrary power with the cause they were then upholding. “We are fighting for the Government as our fathers made it. The Constitution is broad enough to put down this rebellion without any violations of it.”<sup>30</sup>

Trumbull contemptuously denied the idea, which Lincoln himself invoked, that the government must ignore some Constitutional restraints in order to save the Constitution itself.

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<sup>28</sup> Trumbull to Julia, July 15, 1862.

<sup>29</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 67.

<sup>30</sup> *Ibid.*

“Sir, it is in just such times as these that the foundations of tyranny and despotism are laid,” he insisted. “It is under the plea of necessity; under the pretense that it is necessary he should assume unwarranted powers for the purpose of preserving the Government or the public peace; and then when the powers are assumed, and the people are bound hand and foot, they have not the ability to extricate themselves from the tyranny that is imposed upon them.”<sup>31</sup>

Lincoln, characteristically taciturn in dealing with attacks from Congress, did not reveal what he thought of this criticism from one of the few men he knew well in the Senate. No one else in the Senate combined such strident attacks on the President’s policy as tyrannical in one moment and ineffectual in the next. A few months earlier, he and Lincoln had a long private talk on precisely the dilemma that Trumbull now denounced as spurious. “He said to me that he did not know of any law to authorize some things which he had done,” Trumbull wrote in reporting the conversation to his wife, “but he thought there was a necessity for them and that to save the constitution and the laws generally, it might be better to do some illegal acts, rather than suffer all to be overthrown.”<sup>32</sup> To his wife, at least, Trumbull seemed to tacitly endorse this logic.

Trumbull exemplifies the problem with treating political labels – whether conservative or radical, Jacobin or copperhead, to name only a few – as anything more than superficial epithets. Trumbull was a “Jacobin” in his frequent demands that the Rebellion be summarily crushed and that weak-willed generals should be replaced with iron-fisted fighters. And yet he sounded almost like a Copperhead in his jealous defense of the Constitution. Trumbull, for his part, blamed not the President, whom he sincerely trusted, but his closest advisor for these lawless usurpations. Seward, as Secretary of State, was a perfect foil for both impulses – he lacked both a decent reverence for the Constitution and a respectable intensity of bloodlust for traitors.

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<sup>31</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> session., 91.

<sup>32</sup> Trumbull to Julia Trumbull, July 2, 1861. Lyman Trumbull family papers. Abraham Lincoln Presidential Library.

Trumbull's wife neatly summarized the contradictory perception Seward inspired. "Seward has acted in violation of the Constitution, in many despotic measures, and others too, and does not wish to be condemned, but I think abuses will be looked into and corrected," Julia Trumbull wrote a week before her husband introduced his resolution. A few sentences later, however, she also complained that "Seward has fully impressed the President with his own idea that we have nothing to do but fold our hands and wait, and time will conquer the rebels."<sup>33</sup> The contrast is certainly revealing, and not just of idiosyncratic differences, but its significance is unintelligible under the traditional categories of a political spectrum that moves from conservative to radical. The relevant ideological difference, though it went unnoticed at the time, amounted to this – Trumbull understood the war as a contest against a belligerent power that must be crushed absolutely; Seward understood it as an internal political rebellion.

For Trumbull, the states and territory held by the Confederacy belonged, inextricably, to the Union. But the Confederacy, and the society supporting it, was a foreign enemy that must be destroyed. Trumbull therefore saw no contradiction in viewing Lincoln's administration as irresolute in crushing the rebellion in the South and despotic at stifling dissent in the loyal states. From a fully nationalist point-of-view, however, Trumbull's outlook made no sense. Imprisoning suspected rebels without trial was certainly a threat to free government, but it was a rather benign threat next to summoning massive armies to conquer an entire section of one's own country.

"I hold that this Government," Trumbull declared in the Senate during the same session, "in putting down rebellion, has the power to do whatever is necessary to accomplish it, taking real estate and everything else. I hold that if it be necessary, this Government may not only slay every white man in South Carolina but every negro, and, if it had the power, sink it and make it

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<sup>33</sup> Julia Trumbull to Hattie Trumbull, December 7, 1861. George Jarvis Brush Papers. Yale University.

like the Dead Sea, engulf the whole State in the ocean, lands, negroes, whites, women, children and all. As a question of power, if it were necessary to put down this rebellion, we could do it.”<sup>34</sup>

The same legal and ideological concepts that allowed Trumbull to deny any complicity in slavery before the war, allowing him to disavow even the *desire* for the Constitutional power to abolish it, emboldened his attack upon slavery once the war began. His zeal did not involve a change in his political philosophy. Trumbull’s rigid devotion to the Constitution never wavered, nor did he relax his distrust of centralized government. And yet these ideological consistencies, his steadfast devotion to principles rooted in the antebellum Union, did not prevent him from ushering in a revolution.

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The stark dichotomy Trumbull used to avoid the basic Constitutional paradox of the war only become more dramatic in the final years of the conflict. Where the Constitution operated, its provisions were as sacred as scripture and its limits as inflexible as iron. But in waging war against belligerent enemies, the Constitution became the source of unlimited power. A stunning sequel to Trumbull’s position on the Second Confiscation Act came two years later, in the debate on a bill to create a freedmen’s bureau. During the debate on the bill, in the summer of 1864, Trumbull introduced an amendment repealing the declaratory resolution limiting the confiscation of real estate to the life of the offender. In arguing for the amendment, Trumbull repeated his familiar distinction, between judicial proceedings and military actions. “In my judgment,” Trumbull declared, “war means desolation; it means death; it means destruction; and if I could have my way, these rebels should have all three, death, desolation and destruction, and I had almost said damnation.”<sup>35</sup>

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<sup>34</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1813.

<sup>35</sup> *Congressional Globe*, 38<sup>th</sup> Congress, 1<sup>st</sup> Session, 3307.

The occasion for this speech gave this familiar point a new significance. It was not a bill to punish treason but to provide for the freedmen. The bill provided for granting the freedmen possession of abandoned rebel property under a lease of one year. But if a loyal soldier happened to kill the rebel owner of that property, the poor freedman would be summarily evicted from the land so precariously given to him, “and why?” Trumbull asked. “Because you can only forfeit the property of that traitor for life, and inasmuch as one of our brave boys slew him in battle you must take your freedmen off from his plantation and give it up to some traitor relative that will furnish the avails of it to fight you still longer.”<sup>36</sup>

Charles Sumner, the author of the Freedmen’s Bureau Bill, opposed Trumbull’s amendment. “I think it is incongruous to this bill; it does not belong to this bill,” Sumner said. And he insisted that Trumbull knew very well “that if it is introduced on this bill, when it goes back to the House of Representatives it will interfere with its passage there.” Trumbull denied both points. He believed the House would be receptive and its connection to a bill providing for the freedmen was obvious. There was no other way to grant significant landownership to freedmen in the South, and whether it was possible then, there was never going to be a better time.

Trumbull boldly advocated for the single most revolutionary policy associated with securing the rights of former slaves. Not even Sumner, the Senate’s most self-conscious champion of black civil rights, was willing to go as far. And yet less than a week earlier, Trumbull had opposed an amendment to the Washington D.C. railroad bill, introduced by Sumner, providing, “That there shall be no exclusion of any person from any car on account of color.”<sup>37</sup> Trumbull’s argument against the bill was bizarre. He insisted that discrimination on the

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<sup>36</sup> *Congressional Globe*, 38<sup>th</sup> Congress, 1<sup>st</sup> Session, 3307.

<sup>37</sup> *Congressional Globe*, 38<sup>th</sup> Congress, 1<sup>st</sup> Session, 3131.

basis of color was already illegal in the Capital, as it ought to be. But it was also true that blacks were routinely discriminated against. And Trumbull argued that the law was needlessly offensive. But offensive to whom? One can only assume people who thought blacks ought to be discriminated against on account of color. Trumbull then compared the law to several enacted by the “slave-power,” which served not to alter existing law but merely to offend antislavery sentiment.<sup>38</sup>

Perhaps the most obvious explanation of this contrast in Trumbull’s position was that it represented a craven deference to public opinion, especially in Illinois. One could popularly defend almost anything in 1864 as a war measure against traitors. But legislation forcing white ladies to ride in railcars with blacks could serve no purpose except affirming the human dignity of the latter. And there were limits to the idealism of the hour. But Trumbull was willing to brave the wrath of public opinion when it conflicted with his bedrock principles.

Even the person who knew Trumbull better than anyone else in the world was baffled by his erratic position on civil rights. “I read your remarks on the constitutional amendment today with great interest,” Trumbull’s wife, Julia, wrote in April of 1864. “I think [the remarks] more liberal than the vote which would exclude a whole race from street cars. I could not understand the inconsistency.”<sup>39</sup> Julia was referencing, quite cuttingly, the language of Trumbull’s own remarks. “Our fathers who made the Constitution,” Trumbull had said in the Senate, “felt the inconsistency of their position, while proclaiming the equal rights of all to life, liberty and

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<sup>38</sup> Sumner’s thinking on post-emancipation issues was no less blinkered. He was simply refighting the political battle of his youth, in which he argued that the racial segregation of Massachusetts public schools was unconstitutional. He always emphasized racial prejudice in advocating on behalf of black Americans, at the expense of economic issues, and his idea of how to enforce civil rights was always doggedly unimaginative. He relied on the courts as the enforcement mechanism, an instrument that might have worked in Massachusetts but was wholly inadequate to reforming the South. This contrast between Trumbull and Sumner continued.

<sup>39</sup> Julia to Lyman Trumbull, April 2 and 3, 1864. Trumbull Family Papers, University of Michigan. This letter was written before Trumbull’s remarks on the railcar bill quoted above. So she was referring to a different but identical vote.

happiness, they denied liberty, happiness, and life itself to a whole race, except in subordination to them.”<sup>40</sup>

### *III: The Thirteenth Amendment and the Limited Revolution*

In crafting and advocating a Constitutional amendment abolishing slavery, Trumbull exemplified his reverence for the Constitution even in his effort to transform it. Many Republicans in 1864, including Charles Sumner, insisted that Congress already possessed the power to abolish slavery. Trumbull clearly disagreed, but he wisely chose to leave those arguments aside and make an even more compelling point – that only a Constitutional amendment could put the matter beyond dispute. There were many rigid Constitutional lawyers in the North who hated slavery but would never pervert their understanding of the nation’s fundamental law to abolish it. Trumbull was one of them! But no one denied the people’s right to amend the Constitution. To inscribe a prohibition on slavery in the nation’s fundamental law was the only way to make those sworn to uphold the Constitution honor-bound to uphold emancipation as well. At the same time, Trumbull’s remarks on the 13<sup>th</sup> Amendment acknowledged a national complicity in slavery that he – and virtually all other Republicans – had once emphatically denied. With the amendment, Trumbull declared, “We restore to a whole race that freedom which is theirs by the gift of God, but which *we* for generations have wickedly denied them [my emphasis.]”<sup>41</sup> This view, having since become an unshakeable consensus, had been antithetical to Trumbull’s conception of the national Union just three years earlier.

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<sup>40</sup> *Congressional Globe*, 38<sup>th</sup> Congress, 1<sup>st</sup> Session, 1313.

<sup>41</sup> *Congressional Globe*, 38<sup>th</sup> Congress, 1<sup>st</sup> Session, 1314.

Perhaps the most revealing aspect of Trumbull's work on the 13<sup>th</sup> Amendment, which he wrote with his own hand, was the language. He adopted as much as he could of the phrasing from the Northwest Ordinance prohibiting slavery in that territory. Trumbull was intimately familiar with how the Ordinance had helped abolish a system of de-facto slavery in Illinois, for he had been the driving force in that effort during the early 1840s. Trumbull was physically attacked by a mob for delivering an antislavery speech in the same year, and in the same region, in which Elijah Lovejoy was murdered for the same offense.<sup>42</sup>

The political lessons Trumbull learned from those youthful efforts imprinted themselves firmly in his outlook and clearly influenced him during the Civil War. He was effective at advocating for basic protections for Illinois blacks, preventing them from being held as slaves or being kidnapped into slavery. But all political efforts that went beyond that, toward political and social equality, invariably provoked a catastrophic backlash. Illinois history was shamefully consistent in this respect. In 1822, free blacks had petitioned the state legislature for suffrage rights. Instead of considering that question, a furious debate ensued over whether to call a constitutional convention to legalize slavery.<sup>43</sup> And Trumbull's own successful efforts to abolish slavery and involuntary servitude in Illinois were followed by draconian black laws prohibiting blacks from immigrating into the State. It is one thing to ignore an injustice entirely; quite another to favor certain strategies for attacking it while avoiding those that risk defeat on all fronts.

In antebellum Illinois, the ordinance prohibiting slavery operated under the compact theory of government. The State was honor-bound to obey the federal ordinance but there was not the slightest threat of federal enforcement. Trumbull's Amendment to the Constitution,

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<sup>42</sup> Krug, *Trumbull*, 62.

<sup>43</sup> See Adam Rowe, "The Republican Rhetoric of a Frontier Controversy" *Journal of the Early Republic* (Winter, 2011), 671-699.

however, quite purposefully went beyond that precedent in the second section: “Congress shall have power to enforce this article by appropriate legislation.” The second section was obviously necessary to make the amendment more than an empty gesture. A law preventing slavery from expanding into a sparsely populated territory was very different from one emancipating a slave society. Trumbull recognized this, and his Constitutional scruples had long taught him not to rely on implied powers. But he did not believe that his Amendment implied a transformation of the entire political order. The crucial question he had yet to face was what “appropriate legislation” would actually mean. Trumbull recognized that black Southerners represented a significant and urgent exception to his political principles. But he still devoutly adhered to his old faith even as he led the effort to transform it.

The crucial turning point came in the first session of Congress during Reconstruction. As the 39<sup>th</sup> Congress opened in December of 1865, however, Trumbull did not have the slightest suspicion that he would soon be in opposition to the President. Quarrelsome by nature, Trumbull had his frustrations with President Johnson’s Reconstruction policy, particularly his expansive use of the pardon. But his attitude toward Johnson’s Administration was, on the whole, friendlier than it had ever been toward Lincoln’s. Johnson’s message to Congress – written, it later turned out, by George Bancroft – precisely conformed to Trumbull’s own ideas. Johnson insisted that the Constitution reserved to each State the right to define suffrage rights, and Trumbull heartily agreed with him on that increasingly crucial point. Congress could not claim authority over suffrage in some states without claiming it in all the states, and that would transform the fundamental relationship between the States and the general government.

But Johnson, like Trumbull, acknowledged that it was “equally clear that good faith requires the security of the freedmen in their liberty and their property, their right to labor, and

their right to claim the just return of their labor... We shall but fulfill our duties as legislators by according equal and exact justice to all men, special privileges to none.”<sup>44</sup> He insisted on the ratification of the 13<sup>th</sup> Amendment as a condition of reunion, and that Amendment vested Congress with the power and responsibility to protect black civil rights. Given the plain language of Trumbull’s own amendment, the conflict ahead both shocked and infuriated him.

Trumbull was the author of the two most important bills considered during the 39<sup>th</sup> Congress. The first was a bill to enlarge the powers of the Freedmen’s Bureau. As “a part of the military establishment,” Trumbull insisted, the Bureau was a temporary institution to manage the restoration of civil society in the postwar South. The Bureau fell under the supervision of the war department, and Trumbull claimed the Constitutional authority for the act under the war powers, not the 13<sup>th</sup> Amendment.

Like a cast on a broken limb, the temporary institution was meant to permanently remold slave societies into free ones. The bill authorized the Bureau to take jurisdiction in any case involving blacks and to punish civil authorities who denied blacks any civil right that belonged to whites. It also authorized the President to reserve, under the homestead laws, three million acres of public lands in the South for the settlement of freedmen and loyal refugees. “I believe a homestead is worth more to these people than almost anything else,” Trumbull told the Senate, “that if you will make the negro an independent man he must have a home; that so long as the relation of employer and employee exists between the blacks and the whites, you will necessarily have a dependent population.”<sup>45</sup>

As for the land confiscated by General Sherman and distributed to freedmen, the bill authorized the bureau to protect the freedmen’s claims for three years, at which point the

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<sup>44</sup> Andrew Johnson, first message to Congress, December 4, 1865.

<sup>45</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 299.

property would revert back to its owners. While disclaiming an opinion either way, Charles Sumner asked Trumbull whether it was possible for Congress to grant the freedmen full title to those lands.<sup>46</sup> To this, Trumbull avoided responding, *yes, two years ago*. Trumbull had tried to seize the best possible chance for doing just that, and Sumner himself had thwarted him. Permeant forfeiture of rebel real estate after the war, however, was both politically and constitutionally impossible.

Because the Freedmen's Bureau dealt only with former slaves and the rebellious states, Trumbull insisted that it posed no threat to the rights of the loyal states. And because it was a temporary war measure, he believed it posed no threat to the Constitution. Nevertheless, Johnson vetoed it.

The Civil Rights bill was more sweeping – the first measure introduced under a new and revolutionary power vested with the general government. Unlike the Freedmen Bureau bill, it represented a permanent change in the relationship between the general government and the States – all the States. But under Trumbull's scrupulous leadership, the change was at once starkly defined and strictly limited. The bill defined the civil rights of all American citizens and vested the general government with the power to protect those rights. "Allegiance and protection are reciprocal," Trumbull observed.<sup>47</sup> If the citizen owed ultimate allegiance to the general government, as the war had demonstrated at such great cost, then the ultimate power to protect the citizen's basic rights must also reside with the general government. Here Trumbull was moving toward a more sweeping argument that was then becoming fashionable, namely, that the organic life of the nation was prior to and above the written Constitution, and the bloody ordeal

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<sup>46</sup> Ibid.

<sup>47</sup> Ibid., 1757.

of the past four years had redefined the fundamental relationship between citizens, the states, and the general government. But Trumbull rejected that argument and its sweeping implications.

The bill empowered the general government to protect civil rights indirectly, not directly, by invalidating discriminatory state laws and punishing state officials who purposefully violated a citizen's rights. It was aimed at the legal discrimination against blacks, not extra-legal violence and terror. "If an offense is committed against a colored person simply because he is colored, in a State where the law affords him the same protection as if he were white, this act neither has nor was intended to have anything to do with his case," Trumbull pointed out, "because he has adequate remedies in the State courts; but if he is discriminated against under color of State laws because he is colored, then it becomes necessary to interfere for his protection..."<sup>48</sup> The bill also allowed the freedmen to transfer any case to federal courts whenever state law or custom discriminated against him.

President Johnson's strongest constitutional objection to the bill was that Congress did not have the power to make the inhabitants under state jurisdiction citizens bearing uniform civil rights. Trumbull himself did not claim that the power to emancipate implied the power to confer citizenship. His Constitutional argument on this point was the weakest part of his response to Johnson's veto message.<sup>49</sup> But his practical argument was unassailable. "If the bill now before us, and which goes not further than to secure the civil rights to the freedmen," he declared, "cannot be passed, then the constitutional amendment proclaiming freedom to all the inhabitants of the land is a cheat and a delusion."<sup>50</sup>

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<sup>48</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 1758.

<sup>49</sup> Before the Civil War, Republicans emphatically denied that the power to establish naturalization laws implied who could – and thus who could not – be a citizen. Blacks could be citizens, they insisted, because national citizenship was conferred through State citizenship. Thus blacks in Massachusetts were citizens of the United States but free blacks in South Carolina were not. Prior to the Civil War, that was the only viable Constitutional argument for black citizenship. Republicans implicitly conceded this error, and corrected it, with the 14<sup>th</sup> Amendment.

<sup>50</sup> *Congressional Globe*, 39 Congress, 1<sup>st</sup> Session, 1759.

Trumbull's unmistakable ambivalence, his sincere reverence for the Constitutional system he was overturning, is what gave him such enormous influence in the Senate. The problem, however, was that Trumbull himself was unclear how to reconcile this new power, as necessary as it was, with the rights of the States which he considered indispensable to Constitutional liberty. "[A] country as extensive as that of the United States cannot exist [as a free Republic] except by means of divided sovereignties," Senator Reverdy Johnson of Maryland said in his remarks on the Civil Rights Bill, "one sovereignty having charge of all external matters, or matters between the States to which the powers of the States are inadequate; the other sovereignties having power over all internal matters to the management of which they are adequate."<sup>51</sup> Trumbull believed that too, believed it in his very bones. It was the bedrock assumption of his political philosophy and everything prior to 1861 had seemed to confirm it. Now for the first time, he could not avoid the inescapable paradox of the war as he understood it by invoking military powers that were inherently temporary and – one could hope – anomalous. He now confronted and tried to contain what the war had indelibly wrought.

Trumbull based all the enforcement mechanisms in the Civil Rights bill on established precedents. The section punishing public officials for denying blacks equal rights "under cover of law" was taken directly from a 1790 Act punishing State officials for suing foreign diplomats. And the other enforcement provisions were taken directly from the Fugitive Slave Act. One can hardly blame Trumbull for relishing the irony: "The act that was passed at that time for the purpose of punishing persons who should aid negroes to escape to freedom," he said, "is now to be applied by the provisions of this bill to the punishment of those who shall undertake to keep them in slavery."<sup>52</sup>

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<sup>51</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 1777-1778.

<sup>52</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 475.

The moral contrast was exhilarating, but the practical implications were rather sobering. The Fugitive Slave Act, after all, had not exactly been a roaring legislative success. Trumbull himself had regarded the enforcement mechanisms of the Fugitive Slave Act as both ineffectual and obnoxious. It provoked many law abiding citizens to disregard or even defy a plain Constitutional duty, and yet totally failed to hold them accountable for doing so. Wherever public opinion acquiesced in the law, it was unnecessary, and wherever public opinion was hostile it could only be enforced with an expensive and obnoxious use of military force. This was not an encouraging precedent, but two differences offered some hope. One was that the large military presence in the postwar South made it possible to enforce federal laws vigorously in a way that no one would have thought possible in 1850. Though always a dangerous instrument of civil government, the general government had no other. More importantly, the 1850 law offended people's innate sense of justice while this measure reinforced it.

On most Civil War issues, Trumbull took an extreme position, adhering rigidly to the Constitution in one instance and demanding a more vigorous war policy the next. But on the Civil Rights bill he clearly occupied a middle ground. On one side were those who believed that the amendment abolishing slavery did not empower Congress to confer any positive civil rights, which remained a question for the States. On the other side were those who insisted that without political rights the freedom conferred by the Thirteenth Amendment would still be "a cheat and a delusion."

The moral, philosophical and Constitutional distinction that guided Trumbull's attitude toward civil rights was between the private rights of individuals and political power. The government protects private rights but political power is a virtue that is asserted, individually and collectively, not a right that is protected. The free labor ideology that informed his conception of

private rights did not displace the political ideology of republicanism informing his view of political rights. Government had a special obligation to protect the private rights of individuals and groups who were too powerless to defend them. But the exact opposite was true of political rights. They were asserted, not conferred. Those controlling the government inevitably resisted sharing power, but they either yielded to these demands or were themselves overthrown. In a decentralized Republic, political power was sure to spread wherever private rights were respected. But a dependent, helpless population could not be empowered by legislative fiat.

As political communities, the States were still autonomously constituted. “The members of [the Senate] can only be elected by State Legislatures,” Trumbull observed in his remarks on the Civil Rights Bill. “Members of the other House can only be elected in pursuance of State laws.” Each State had the collective right, unambiguously recognized by the Constitution, to regulate the qualifications of voters in accordance with the safety and stability of the entire community. This feature of the American political system, Trumbull believed, was essential to the spread and security of democratic self-government. The people could not meaningfully govern a centralized continental empire. The relevant considerations for expanding or limiting suffrage rights differed in every political community. Levels of immigration, economic dependence, racial or ethnic prejudices, and countless other factors influenced the distribution of political power within a State. Beneath any political system is a culture capable of sustaining it. To assume that the government could establish democracy by conferring the ballot was to confuse cause with effect.

As Trumbull frequently pointed out, suffrage rights had been restricted everywhere after the Revolution. In each state, those rights had expanded locally through the distinctive pressures placed upon the State governments by different groups. There was every reason to hope the

process would continue, not only the South but in the North as well. But to vest the general government with the power to control suffrage was to presume a uniformity that did not exist. It represented a dangerous contradiction to the logic and practice of participatory democracy as Trumbull understood it.

One hardly needs to agree with this argument to see that it contains real insight into how a genuine participatory democracy emerged in America. The lawful protection of private rights, in Trumbull's thinking, is the necessary precondition for the successful assertion of political rights. Trumbull was willing to use the federal government to prevent State governments from oppressing private rights, and that very much included the right of groups to assert themselves politically. But political power could only come from the people, not from the government. He did not trust the general government to meddle, in any way, with the organic, participatory processes by which democracy emerges in a community. His philosophy taught him to protect the people from their government. He never considered how to protect one group of citizens from the implacable hatreds of another.

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No one attacked Trumbull's position on suffrage more vehemently than his wife, Julia. "What will prevent the reorganized states from re-establishing slavery if the blacks have no vote to counteract the votes of their former masters," she asked. Then, anticipating an answer so foolish that only a distinguished lawyer could utter it without feeling ridiculous, she added, "Do not say it is a question for the people of the several states to decide when one half of the people are not allowed a chance to decide."<sup>53</sup>

Julia was proud of her husband's work on behalf of human liberty, and both of them were supremely conscious of the grand moral significance of the events in which he took a leading

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<sup>53</sup> Julia to Trumbull, June 25, 1865.

part. The letter Julia wrote to Trumbull's old Illinois rival upon learning of the Emancipation Proclamation doubtlessly contributed to Trumbull's ambition to associate himself with that distinction. "I cannot refrain from sending some extracts from the few who can express their approbation publicly," Julia wrote to President Lincoln on September 2, 1862, "while I beg to assure you of the infinitely greater number, who thank God in silence and tears that you have done that for which not only a disenthralled race, but a redeemed world shall bless you."<sup>54</sup> It was perhaps while reading this letter, if he read it, that Trumbull realized that, legally, the President's Proclamation didn't amount to much more than Congress's Confiscation Acts and that someone should really get to work on a Constitutional Amendment abolishing slavery.

"I do hope you will not be found to clog the wheels of justice, in this day of progress, and God's swift judgments upon the oppressor," Julia admonished her husband in the summer of 1865. "I want to see all that I love in the van of the great host of freedom, God's great army."<sup>55</sup>

Trumbull's replies to his wife's letters on black suffrage have not, alas, survived. But he clearly did respond – they wrote to one another almost every day when separated – and she did not let the matter drop. "You say 'it is a grave question how far the right of suffrage ought to be extended,'" Julia wrote in another letter to her husband. "I say it is a grave question how far it should be denied. It is a strange thing to refuse the ballot to men who have put their lives in jeopardy for the benefit of the country and give it to men who have done their utmost to destroy it."<sup>56</sup> The fact that Illinois was unjust to its black residents was not a defense of the same injustice in the South, she insisted. "If 'the right of voting is an artificial not a natural privilege' it is because the right of civil government is an artificial and not a natural privilege. And we profess to believe that to have any just power government must have the consent of the

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<sup>54</sup> Julia to President Lincoln, September 2, 1862. Trumbull Family Papers. University of Michigan.

<sup>55</sup> Julia to Trumbull, June 25, 1865.

<sup>56</sup> Julia to Trumbull, June 28, 1865. Trumbull Papers. University of Michigan.

governed. Do you propose to govern men without consent merely because the Almighty gave them a different complexion than yours? Does he not say that in his sight all men are alike? What right then have you to make a difference?"<sup>57</sup>

Julia never mentioned a word about her own political rights in these letters, but the connection is not hard to infer. "Don't you think I had better be in bed then sitting up late when I am really very tired and writing about a matter upon which I am not allowed to vote and about which I shall not be considered to know much," she concluded her most impassioned argument on behalf of other people who were not allowed to vote.<sup>58</sup>

Trumbull's biographers did not quote Julia except incidentally, a strange omission since her letters make for compelling reading. And though there are few letters from Trumbull, the correspondence between them obliterates the characterization of him as "cold, calculating."<sup>59</sup> When apart they exchanged letters almost daily and it is obvious that theirs was a warm and happy marriage. They adored one another. Aside from passionate discussions of politics, their letters suggest, as Tolstoy famously wrote, that all happy families are alike. Trumbull inquired anxiously about their children and she replied with amusing stories about them. When Trumbull took one of his sons with him to Washington, the anxious inquiries and amusing anecdotes travelled in the opposite direction.

Though frequently separated as Trumbull travelled on both political and legal business, he and Julia lived together in Washington during the long sessions of Congress until the Civil War. With inflation and rising rents in the crowded capital, however, Trumbull could only afford a second-rate boarding house room, despite being one of the most influential Senators in the

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<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Cited in Donald, *Charles Sumner*, 2:62. "Sponsored by Trumbull, that cold, calculating former New Englander..." This was the impression Trumbull gave to those who did not know him as an intimate friend, even his admirers. A Chicago newspaper editor considered him "as pure as the driven snow, and nearly as cold." White, *Trumbull*, 424.

country, and that meant leaving his growing family behind. He and Julia missed each other desperately. “Your letters have become a necessity of my being when separated from you,” Julia wrote in one letter. “I would be so glad, if now, I could throw aside this pen and paper and seat myself in your lap and be folded to your breast as I have often been before. I feel as if I could swoon in your arms and lose myself in the bliss of your loving presence. My husband, mine only, my own, my heart longs for you, *aches* for your coming.”<sup>60</sup> There were many more such letters, and the sentiments expressed by one were clearly echoed by the other.

During the 38<sup>th</sup> Congress, as Trumbull prepared his Constitutional Amendment abolishing slavery and wrote lonely letters to his wife, he learned that Arthur, their three year old son, had died. After returning home to mourn for three weeks, Trumbull returned to his post at Washington. Both of Julia’s parents were still living, and she had the consolation of their company, but the absence of her husband was surely terrible. “That we miss you I need not write, but do not be distressed about me,” Julia wrote the day after he departed. “That little Arthur is most of the time in my thoughts is true, but I do not think so much of my loss as of how pleasant he was to us...I think I had so much enjoyment in him that I would be willing to go right over his life again even with the last parting. He was a very sweet child to me, his memory will always be sweet.”<sup>61</sup> But each letter carried heartbreaking memories and bitter self-rebuke. She had not realized the seriousness of Arthur’s condition soon enough. She had not been vigilant enough in protecting him from the cold. She pushed such thoughts away with a faith in God’s purposes, but “Oh, I would be thankful if I could go back to Christmas and live over with him again these two months, knowing that in the end I must give him up.”<sup>62</sup>

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<sup>60</sup> Julia to Trumbull, July 8, 1866. Trumbull Papers, University of Michigan

<sup>61</sup> Julia to Trumbull, March 13, 1864. Trumbull Papers. University of Michigan.

<sup>62</sup> Julia to Trumbull, April 7, 1864. Trumbull Papers, University of Michigan.

While receiving these sad letters, and scribbling off his own, Trumbull marshalled the 13<sup>th</sup> Amendment abolishing slavery through the Senate.

#### *IV: Ex Parte McCordle*

When Johnson vetoed the Freedmen's Bureau bill, Trumbull was shocked but tried to avoid a permanent rupture with the President. He appreciated the danger of a party split far more acutely under Johnson than he ever had under Lincoln. But the veto message ended any lingering hope of cooperating with the President. And Trumbull's response to the veto was a full-throated attack, not only on the President's policy, but on his honesty and sincerity of purpose. But the party split also transformed the original coalition, alienating Trumbull from the allies who shared his Constitutional philosophy. "A cultivated and intelligent man like Trumbull," Gideon Welles noted in his diary, did not naturally belong with the cynical and zealous partisan upending the Constitution. "To accomplish a present purpose, he looks not at consequences."<sup>63</sup> The real problem, however, was that Welles and Trumbull were both doomed. The political circumstances that had made them so effective over the past decade, attacking oligarchy in defense of the Constitution, now began to unravel. Choosing either side of the party split was certain to lead, sooner or later, to either betraying their beliefs or becoming irrelevant old men.

On all issues unrelated to Reconstruction, Trumbull continued to oppose centralization of power as jealously as ever. In the final weeks of the 39<sup>th</sup> Congress, he opposed a bill to appropriate \$50,000 for the relief of citizens in Portland, Maine after what was then the worst fire in American history. More than 10,000 residents were left homeless by the fire, which was likely caused by a firecracker during the city's Fourth of July celebration – a fact that surely

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<sup>63</sup> Welles, *Diary*, 2:638.

added an extra layer of national sympathy. After acknowledging that it was “very unpleasant” to oppose such a measure, Trumbull insisted that the Constitution did not authorize Congress to appropriate money from the national treasury for such a purpose, however benevolent. “Now, sir, where is this to stop?” Trumbull asked. “Where is the line,” he continued, separating local calamities worthy of Congressional charity from those that are not. Senator Reverdy Johnson pointed out that Trumbull himself had recommended the Freedmen’s Bureau bill, which had recently passed over the President’s veto. That bill also provided for refugees, but “instead of taking \$50,000, perhaps it will take twenty millions.”<sup>64</sup>

Trumbull could not see the analogy between the two. “Are those appropriations, made for the safety of the nation, to be compared to a fire in one of our cities? Here are four million beings whose condition affects the safety of the Republic; four million people made free by the results of the war; an element which affects the whole nation and the safety of us all.”<sup>65</sup> No doubt that was true, but if the security of the whole nation was concerned with the security of the people in one place, why not in another? “The Constitution cannot decree everything that it is proper to do,” Julia Trumbull wrote her husband after rebuking him for opposing the bill to relieve Portland, “it is sufficient that it does not forbid such a charity. If our government is a great asylum for the oppressed of all nations it may be a reliever of the distress of its own children...”<sup>66</sup>

Trumbull was up for reelection after the first session of the 39<sup>th</sup> Congress, and the political pressures placed upon him were not remotely ambiguous. His authorship of the Civil Rights bill was such a valuable asset that he had to fight off rivals claiming credit for it. But his wartime defense of habeas corpus rights, even for copperheads, in the loyal states was such a

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<sup>64</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 3917.

<sup>65</sup> *Ibid.*

<sup>66</sup> Julia to Trumbull, Julia 22, 1866.

gross liability that he dishonestly denied ever having defended that cherished Constitutional principle. His embarrassment came from a landmark Supreme Court case, *Ex parte Milligan*. Lambdin Milligan had been convicted of treason in Indiana during the war by a military commission. But since local and federal courts were operating in Indiana at the time, the trial was invalid and the Court ruled in favor of Milligan's release. Trumbull had led the effort to impose Congressional limits on military arrests within loyal states, and the resulting Habeas Corpus Act of 1863 supplied that basis for the decision. To distance himself from a principle he had so passionately upheld, merely because it became politically embarrassing, surely troubled Trumbull. And as his reelection became probable, he had the grace to be chastened by his success. "Why so many candidates and the people generally are so much for my re-election I do not know," Trumbull wrote to his wife in October of 1866. "It seems to me I get much more than I deserve and all through life in a thousand ways have been prospered beyond my merits."<sup>67</sup> He was beginning to distrust the popular forces impelling him forward, to fear that in clutching too tightly the reins of power, he was being dragged by a power he did not control.

Trumbull's influence over Reconstruction culminated with another landmark Supreme Court case, *Ex parte McCordle*. A newspaper editor in Vicksburg, Mississippi, William McCordle had showered every epithet and threat imaginable on the military authorities overseeing Reconstruction in his State. Unpersuaded by these editorials, the commanding general in McCordle's district had him arrested for disturbing the peace and fomenting insurrection. In February of 1867, Congress had authorized appeals to the Supreme Court in habeas corpus cases whenever the accused felt he had been detained against his constitutional rights. The purpose of the act was to protect blacks and federal soldiers from unconstitutional arrest under State law, an area over which the Supreme Court had not previously had

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<sup>67</sup> Lyman Trumbull to Julia, October 31, 1866. Trumbull papers. Springfield.

jurisdiction. William McCordle was the exact opposite of the sort of person Congress had intended to protect. But he availed himself of the new law, and the Supreme Court agreed to hear his case. A decision in McCordle's favor threatened to gut Congressional Reconstruction.

Unlike Milligan's arrest in Indiana, Trumbull saw no Constitutional dilemma in recognizing the military authority over civil matters in Mississippi. As he had maintained, that State, like others in Confederacy, forfeited all Constitutional rights by waging war against the United States and became a foreign, hostile power. "The United States then had the same right to conquer and subdue [Mississippi]," Trumbull argued in the McCordle case, "as it would Spain or any other hostile power with which it was at war."<sup>68</sup> When to withdraw the military from Mississippi, and when to restore it as a State in the Union, were political questions which Congress alone had the authority to decide. The Court, Trumbull insisted, has no authority over purely political questions.

President Johnson's Attorney General, having already declared the Reconstruction Acts unconstitutional, refused to argue the government's case before the Supreme Court. That left the War the Department to hire counsel. Who made the decision to hire Trumbull is unclear. Grant, as interim Secretary, made the formal offer, but Constitutional law was not exactly his specialty.<sup>69</sup> The original decision almost certainly came from Edwin Stanton. At any rate, Stanton could easily have made a different choice when he was reinstated a few weeks later. Matthew Carpenter, who served as co-council, was also chosen by Stanton.

No law prevented a Senator from serving as legal counsel for the Government in a case before the Supreme Court, and as Trumbull knew, there were many distinguished precedents. But this case was, to put it mildly, unique and Trumbull's role in it extraordinary. As Senator,

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<sup>68</sup> Philip B. Kurland and Gerhard Casper, eds. *Landmark Briefs and Arguments of the Supreme Court of the United States* (Arlington, VA, 1975), 5:372.

<sup>69</sup> Roske, *Trumbull*, 141.

Trumbull had helped write and pass the very laws whose Constitutionality he then defended before the Supreme Court. In early February, Trumbull argued a motion to dismiss the case for lack of jurisdiction on the grounds that the habeas corpus provisions in the Judiciary Act of 1867 did not apply to *McCordle*. But the Court ruled against him and decided to hear the case on the merits – that is, on the question of whether *McCordle*'s imprisonment under military authority violated his due process rights. Trumbull the lawyer was beaten, but Trumbull the Senator launched a bold counter-attack. The day after the Court issued its initial decision, Trumbull introduced a bill in the Senate “defining the jurisdiction of the United States in certain cases,” – i.e. the case he'd just argued before the Court. “[U]nder the Constitution,” the bill stated, “the judicial power of the United States does not embrace political power or give the judicial tribunals any authority to question the decision of the political departments of the government on political questions.”<sup>70</sup>

As the *New York Times* wryly pointed out, no lawyer in the country could possibly compete with Trumbull's legal services. “It may be doubted whether it is quite fair to the legal brethren throughout the country that Mr. Trumbull should enjoy a monopoly of such remarkable facilities in the professional line. Other lawyers have to argue their cases and carry their points in the laws as they stand, but the Illinois Senator has a workshop at his back, and if he can't suit his client in the ready-made department he takes his measure and guarantees a fit.”<sup>71</sup>

Trumbull was able to push his bill through the Judiciary Committee, which he chaired, but his opponents were prepared to filibuster a vote indefinitely, and it quietly disappeared. Thus this frontal assault on the Court's jurisdiction failed. But in March, as rumors circulated that the Supreme Court was going to rule in favor of *McCordle*, Republicans in the House quietly

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<sup>70</sup> *Congressional Globe*, 40<sup>th</sup> Congress, 2<sup>nd</sup> Session, 363.

<sup>71</sup> *New York Times*, February 22, 1868.

amended a Judiciary bill related to customs officials so as to repeal the provisions in the 1867 Act by which the Supreme Court claimed jurisdiction. Democrats did not notice the significance of the amendment in time to block it. The problem was always getting a vote on the bill, not getting the votes to pass it. The House and Senate passed the bill, and then repassed it over Johnson's Veto.

In his remarks supporting the bill, Trumbull described it as "a bill of very little importance, in my judgement."<sup>72</sup> He then insisted that "there is no case pending in the Supreme Court which this act will affect; it is a mistake and a delusion on our part to suppose that there is any such case there, under the law of 1867."<sup>73</sup> To the extent that this wasn't a bald-faced lie, Trumbull's reasoning was that the Court's failure to accept his argument on that very point in the *McCordle* case was also a mistake and a delusion. In any event, Congress disabused the Court of its presumptuous sense of authority over the matter, and the Court meekly obeyed.

Trumbull's argument before the Court and his actions as Senator were both consistent with views he'd expressed for years. But the combination of the two was unseemly. So why did he agree to serve as counsel? The obvious answer is he needed the money. The war brought no shortage of opportunities for enrichment, but Trumbull had not been adept at seizing them. "I am not a fortunate speculator that is certain," Trumbull wrote of his failed attempts to augment his income in 1866. "Having burned my fingers in trying it, perhaps the lesson will leave me better than to embark in such enterprises again..."<sup>74</sup> Instead the burn quickly turned into an itch to try again. Once again he discovered that finance wasn't his specialty. "I think it will be your lot to loose [sic] whatever you do," Julia wrote in him the following year. "I dont [sic] think you were

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<sup>72</sup> *Congressional Globe*, 40<sup>th</sup> Congress, 2<sup>nd</sup> Session, 2096.

<sup>73</sup> *Ibid.*

<sup>74</sup> Trumbull to Julia, June 3, 1866. Trumbull Papers. Springfield.

born for a speculator.”<sup>75</sup> The problem was that wartime inflation created fabulous speculative opportunities for those who knew how to seize them, and imposed real hardships on those relying on a salary, especially in Washington.

Trumbull’s Senate salary was \$5,000 per year. His fee for the *McCardle* case was \$10,000. The fee allowed Trumbull, for the first time in years, to bring Julia with him to Washington during the long session of Congress, a precious but hardly inordinate luxury. And the fee was customary – Trumbull had checked – though the custom itself may have been excessive. Relative to other paths of personal enrichment available at the time, this one suggested almost Spartan virtue. And yet, aside from the basic problem of using his position as Senator to advance his case as a lawyer, Trumbull’s role in the case threatened to compromise him in a more fundamental sense.

Most of the heavy work on the case, and the major arguments before the Court, was left to Matthew Carpenter. A Democrat until 1866, Carpenter was a recent convert to the cause of Republicanism and universal liberty. His epiphany came during the furious popular uproar against Johnson and all who stood by him, including the Republican Senator in Carpenter’s own State of Wisconsin, whose term was about to expire. As co-counsel in the *McCardle* case, Trumbull and Carpenter also represented the past of the Republican party and its future. The case was Trumbull’s last significant act as one of the foremost leaders of the party and it was Carpenter’s ticket into the front ranks.

Carpenter’s argument made him famous overnight. Aside from being more elaborate than Trumbull’s, it differed in one significant respect. Carpenter argued for a far more expansive view of Congress’s exclusive jurisdiction over political questions. Trumbull, by contrast, was careful to limit the “purely political questions” over which he argued the Court had no jurisdiction.

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<sup>75</sup> Julia to Trumbull, May 20, 1867. Cited in Roske, *Trumbull*, 140.

“What decisions of the political departments of this government are conclusive on this court, and what may it disregard?” Trumbull asked.<sup>76</sup> He did not attempt a complete answer to his question. Instead he simply identified a few unambiguous areas where, he argued, Congress possessed exclusive authority. The decision to declare war against a foreign power, to make treaties, and to admit a State into the Union – all these powers were clearly vested in Congress, unrestrained by any opinion of the Court, and they were exactly the powers relevant to Reconstruction.

Carpenter, by contrast, went much further in arguing for the Constitutional supremacy of Congress. “When congress determines any political matter, never so erroneously in the opinion of this court or the President, its action is final and conclusive,” he argued. “It is far better that individual instances of injustice committed by either department should go unredressed than that the liberties of all should be swallowed up.”<sup>77</sup> The logic of this argument made Congress the sovereign power of the government, as omnipotent as the English Parliament.

A day or two after completing his oral argument before the Supreme Court, Trumbull took his oath in the Senate as a juror in the impeachment trial of Andrew Johnson. At bottom, the McCordle case and Johnson’s impeachment both involved the basic question of whether the coordinate branches of the government were independent or merely the instruments of the sovereign legislative power vested with the people’s representatives. Congress was asserting its supremacy over both of the branches of the government at the same time, and no one was more deeply enmeshed in the Constitutional thicket than Trumbull. Gideon Welles was not entirely paranoid to believe that “the Radicals in Congress are in a conspiracy to overthrow not only the

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<sup>76</sup> Philip B. Kurland and Gerhard Casper, eds. *Landmark Briefs and Arguments of the Supreme Court of the United States* (Arlington, VA, 1975), 5:372.

<sup>77</sup> Flower, *Life of Carpenter*, 111.

President but the government. The impeachment is but a single act in the drama.”<sup>78</sup> And here is where Trumbull’s involvement in the McCardle case was especially compromising.

Edwin Stanton was one of the most relentless schemers ever to run amok in American politics, which is, of course, saying something. He was deeply interested in the impeachment proceeding, since his own job depended on it, and it was obvious that Trumbull’s influence in the trial would be as decisive as anyone’s except Fessenden’s. Trumbull’s co-council on the McCardle case was not bashful about acknowledging what impeachment meant for his own professional prospects. “If this [impeachment] programme shall be carried fully into execution,” Carpenter wrote to his wife, “Stanton will be firmly seated in the department, and I shall have a chance in all the big cases that come up.”<sup>79</sup>

Only a fool would approach Trumbull with an outright bribe. But to approach him as one of the leading authorities on the Constitution, as perhaps the best hope of preventing a misguided Court from imperiling Reconstruction and, indeed, the Republic itself – well, how could Trumbull dispute such sound judgment? And, of course, in serving his country in this capacity, Trumbull would be entitled to a very enticing but entirely customary fee. That was how to buy a man who couldn’t be bought. “Of Grimes’, Fessenden’s, and Trumbull’s honest opinions I have no doubt,” Gideon Welles wrote during the impeachment trial, “but there is a terrible pressure upon them.”<sup>80</sup>

Trumbull surely expected the summer following the impeachment trial to be the worst of his life. His legal fee for the McCardle case was presented as clear evidence that he had been bribed by Johnson, never mind that the truth was exactly the reverse. And his professional ordeal amounted to a mere distraction from a far graver personal calamity. In December of 1867, a few

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<sup>78</sup> Welles, *Diary*, 3:314.

<sup>79</sup> Carpenter to Clara, February 24, 1868. Cited in Flower, *Carpenter*, 115.

<sup>80</sup> Welles, *Diary*, 3:350.

weeks before the impeachment trial began, Trumbull's wife Julia became seriously ill. Large, painful lumps appeared on her side, and she could not eat. A doctor diagnosed inflammation of the intestines. But Julia knew she was dying. She and Trumbull celebrated their 25<sup>th</sup> wedding anniversary in late June, and Trumbull gave her a diamond ring for the occasion. A renowned specialist in internal medicine correctly diagnosed an ovarian tumor and operated to remove it. Julia seemed to recover well from the operation. Trumbull rejoiced, though bitter it had taken so long to discover her true illness.<sup>81</sup> It was too late. She died on August 16, 1868. She was only 45 years old. "Since Mrs. Trumbull's death I feel as if I had no home," Trumbull wrote the following year.<sup>82</sup> Despised by his party, devastated by personal loss, the final years of Trumbull's Senate career were fated to be the loneliest of his life.

#### *V: The True Creed of the Republican Party*

"I do not intend to be driven out of the Republican party," Trumbull wrote in January of 1872, "though some men would be glad to drive me out and I confess it requires a good deal of self-denial at times to help maintain an organization, the leading spirits of which hate and despise you and merely consent to use you for their own purposes."<sup>83</sup> By 1872, Trumbull's lingering allegiance to the Republican party stemmed almost entirely from his proprietary interest in its achievements, since he had taken a leading part in almost all of them. Now those contemptuously shoving him aside still claimed the mantle of the party he had helped lead from its very inception nearly 20 years earlier. He was determined to fight them, but he was certain to lose. And his defeat sent him into the political wilderness.

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<sup>81</sup> Trumbull to William Jayne, July 30, 1868; Sibyl Jayne to Julia Jayne, June 1868. William Jayne Papers.

<sup>82</sup> Trumbull to Mary, June 19, 1869.

<sup>83</sup> Trumbull to W.G. Flagg, January 10, 1872.

Even in his own State, there were distressing signs that the party Trumbull had led for so long was no longer one he could recognize. One clear test of party strength came in the Senate contest between John Logan and Gustav Koerner in early 1871. Koerner had joined the Republican party when it formed and was a close friend to Abraham Lincoln and Trumbull. Logan was a howling radical in 1871, but he had been a Democrat until the end of the war. Perhaps Logan's most significant past legislative accomplishment had been authoring and sponsoring the most disgracefully racist law ever passed in Illinois. The bill provided that any black person caught attempting to settle in the State would be fined heavily. If, as was expected, the accused could not pay the fine, he would be jailed and then sold to anyone willing to pay the fine and costs for the right to "compel said negro or mulatto to work for and serve out" a stipulated amount of time.<sup>84</sup> Surely, the Republican party of the State that produced the authors of both the Emancipation Proclamation and the Constitutional Amendment abolishing slavery would not taint that record with a record like Logan's. In fact, Logan humiliated Koerner in the Republican caucus, receiving 98 votes to Koerner's 8. "I am disgusted at what I hear from Illinois of the bragging, blowing and bluster of Logan's friends," Trumbull wrote. "Judging from the reports he is not only to be elected but everybody is to be made subservient to him and his set."<sup>85</sup>

Though he did not realize it at the time, Trumbull's political fate had been sealed in 1866. The split over Reconstruction killed any hope of reconciling the original principles of the Republican party to the unanticipated moral and political commitments engendered by the war. The organizing purpose of the party had been to save the Constitution from the centralizing despotism of a party machine controlled by a dangerous oligarchy. Too many of those who

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<sup>84</sup> May Strong Hawkins, *The Early Political Career of John A. Logan*. Dissertation University of Chicago. 1934., 16-17.

<sup>85</sup> Trumbull to William Jayne, January 8, 1871. William Jayne Papers, Abraham Lincoln Presidential Library.

shared the party's founding purpose had split, bitterly, over Reconstruction. Others remained, of course, Trumbull foremost among them, but they had lost a crucial number of natural allies. And that left the Republican party in control of a centralizing political machine fueled and corrupted by organized money. Instead of a single dominating economic interest like slavery, the party was controlled by a shared interest in preserving a system of federal graft that would have staggered even the most avaricious antebellum Democrat.

The vote to acquit Johnson was Trumbull's first significant defection – the first time he joined with those he regarded as the worst enemies of the Republic to thwart a crucial aim of his party. But formally, at least, the vote had no long-term consequences for Trumbull's standing in the party. The issue itself, of course, ceased to matter. And after the partisan fever broke, Trumbull's public reputation actually benefited from the vote even among Republicans.

Trumbull's permanent disillusion with his party came, inevitably, as the iron distinction he had maintained since 1861 began to blur and disappear – between the Constitution as a war instrument to protect the people from an enemy belligerent and the Constitution as an iron fetter protecting the people from their own government. The distinction was bound to fade and disappear with the dangers posed by the rebellion, and when it did, Trumbull was appalled at what most of his Republican colleagues thought the general government had the power to do. Suddenly, he discovered that Republican Senators accepted a theory, propounded by Sumner, that turned the political system upside down – that “the powers originally reserved by the Constitution in the States are in the future to be held by them only on good behavior and at the sufferance of Congress.”<sup>86</sup>

Trumbull acknowledged that the war had revolutionized the Constitution in certain respects. As he was so fond of pointing out, he had written the revolutionary amendment to

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<sup>86</sup> Cited in Donald, *Charles Sumner*, 2:426.

nation's fundamental law with his own hand. And he welcomed the 14<sup>th</sup> Amendment as a clarification of what he had intended to accomplish with his own Amendment. Americans now had equal civil rights under the law, and the Federal Courts, including the Supreme Court, were empowered to protect those rights within the States. But Trumbull was wary of letting this change subvert the basic relationship between the general government and the States. He supported the 15<sup>th</sup> Amendment reluctantly, however, unwilling to break with the party on that issue. One suspects that the memory of his wife's convictions on black suffrage dispelled any appetite to fight that battle. And indeed, Trumbull became an advocate of women's suffrage as well.

Under the first full Congressional session under Grant, Trumbull denounced the interference by the general government that went beyond judicial protections of civil rights and interfered with the internal politics of the States. An act to cancel the upcoming election of the Georgia Legislature, allowing the incumbents to remain in power for an additional two years, particularly alarmed Trumbull. "If it can be done in Georgia it can be done in Illinois, Massachusetts, or any other State," Trumbull declared. With that realization, the imaginary wall that had so long protected the Civil War and Reconstruction from the Constitution had fallen. Trumbull also denounced another sinister innovation that threatened the most basic political rights of the States. Congress not only declared the election of some Georgia Representatives illegitimate – which it always had the right to do – but also declared his closest opponent thereby elected. This was going quite a bit further, and would allow Congressional majorities to protect themselves indefinitely.

"It is the duty of the States to preserve the peace within its own borders; not when some man is murdered in a county, not when a sheriff is shot down, to fly to Washington and ask the

President for troops, martial law, and the suspension of *habeas corpus*,” Trumbull insisted. The damage done to habeas corpus rights became a particular obsession of Trumbull’s. One radical amendment to the Georgia bill empowered, “A lieutenant of dragoons to be allowed to declare martial law and suspend the writ of *habeas corpus*!” Trumbull exclaimed. And then he marveled at how far the country had gone since 1861. “Why, sir, it has been a disputed point in this country, even in a time of war, whether the President of the United States himself could suspend the writ of habeas corpus without the authority of an act of Congress.”<sup>87</sup>

The writ of habeas corpus was the most sacred right Americans possessed, Trumbull insisted. “It is the great writ of right wrested from the British Crown hundreds of years ago for the protection of the citizen, and it is all the protection he has against arbitrary power. Suspend that writ of right, and those in authority may take your wife and your child and immure them in a prison at pleasure, and you shall never be permitted to inquire the cause...” It was for this reason that Trumbull opposed the enforcement act against the Ku Klux Klan. “I think that men who put on disguises and go through the country scourging and whipping and murdering innocent people deserve to be visited with severest punishment, and without mercy,” he said. But he would not damage the most important safeguard protecting the liberty of all Americans to do it.<sup>88</sup>

At the start of 1872, however, Trumbull still viewed the impending presidential election as a choice between a party that had become reckless with the Constitution and one that was an absolute menace to it. “I believe the defeat of Gen. Grant would involve a reaction at the South whose consequences would be even worse than the present state of affairs,” Trumbull told a reporter in December of 1871. He took a coldly realistic view of the possibility of creating a new party combining Democrats and reform Republicans. A few hundred thousand reformers could

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<sup>87</sup> *Congressional Globe*, 41<sup>st</sup> Congress, 2<sup>nd</sup> Session, 293.

<sup>88</sup> *Congressional Globe*, 42<sup>nd</sup> Congress, 2<sup>nd</sup> Session, Appendix, 86.

not control a party combination with three million Democrats. They would merely be exchanging one corrupt party machine for an even worse one.<sup>89</sup>

Around the same time, President Grant offered Trumbull the Ministry to Great Britain, a post he politely declined. “It is my purpose to do what I can to correct the abuses of the government and to bring about those reforms which I have advocated for several years and which I believe the good of the country demands,” Trumbull explained. One suspects these purposes were not unrelated to Grant’s desire to send Trumbull off to London.<sup>90</sup>

Indeed, Trumbull had already broken with the Administration on another vital foreign policy issue – the annexation of Santo Domingo. The Senate debate over whether to ratify President Grant’s treaty annexing the Caribbean country was the most dramatic clash between the Republican machine leaders and Senators priding themselves on their independence. It also reveals a degree of incoherence in the historiography over Reconstruction since the 1960s. The interpretation of Reconstruction among progressive historians – as opposed to the racist critiques of earlier historians – identified the mercenary motives of corrupt politicians and opportunistic businessmen as the driving force in Grant’s Administration. In the more sophisticated versions of this interpretation, idealistic efforts on behalf of black Americans were sincere, but they were shamelessly exploited by those wielding real power for their own, distinctly self-interested, purposes.

Grant’s Annexation treaty fits squarely within this interpretive model, even for subsequent historians who reject it out of hand in every other instance touching Reconstruction. “A number of factors came together to produce this disreputable scheme,” Eric Foner writes of the annexation treaty. Military interests coveted a base on the island; influential business leaders

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<sup>89</sup> NY Times, Dec. 6, 1871.

<sup>90</sup> Hamilton Fish to Trumbull, August, 5, 1870; Trumbull to – Dec. 25, 1871. Trumbull Papers. Springfield.

(and a cabinet member) already owned property there and expected to profit mightily from annexation. And finally, the corrupt, unpopular regime governing Santo Domingo was besieged by an internal revolt and needed Uncle Sam's help to remain in power.<sup>91</sup>

President Grant, however, emphasized the lofty cause of human rights, not the cause of crony capitalists or of corrupt local rulers in desperate need of federal bayonets. And he did not have to invent such noble motives, for they were as sincere in the case of Santo Domingo as in the case of Georgia. Frederick Douglass visited the island on a commission to investigate the treaty and wholeheartedly endorsed it. There was no cynicism in his belief that annexation would help the desperately impoverished country and “transplant within her tropical borders the glorious institutions” of the United States.<sup>92</sup> But Douglass's sincere endorsement does not preclude the possibility that more powerful interests were cynically exploiting it. If the federal government were able to transplant those glorious institutions to Georgia or Texas, then why not Santo Domingo? And if this view was entirely too sanguine about the nature of Federal power, and the motives of those who controlled it, in the case of Santo Domingo, why stop there? Were the machine politicians who cynically fell into line in support of Grant's annexation treaty suddenly converted into moral crusaders when exhibiting the exact same partisan behavior in regard to prolonging a corrupt administration in Georgia?

The distinction between an independent country and a State was not nearly so pronounced as it subsequently became. Many Americans, after all, could remember a time when no State had existed west of the Mississippi. The annexation of Santo Domingo was not notably different than the annexation of Texas or California, except that the thirteenth, fourteenth and fifteenth Amendments now guaranteed that expansion would spread the boundaries of freedom

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<sup>91</sup> Foner, *Reconstruction*, 495. I am summarizing his interpretation of the driving motives behind this particular episode.

<sup>92</sup> Cited in Foner, *Reconstruction*, 495.

rather than slavery. That is why Frederick Douglass and other black leaders supported it. The expectation, both theirs and that of the Grant Administration, was that Santo Domingo would become a State in the Union. The object was empire, of course, but empire on exactly the same terms that governed the country's expansion thus far. It is an anachronism to assume that the annexation of Santo Domingo would follow an imperial logic distinct from Reconstruction. If federal power could make interracial democracy work in Alabama, the same achievement in Santo Domingo would be a cinch.<sup>93</sup>

Even Sumner rested his objection on the grounds that the United States was “an Anglo-Saxon Republic, and would always remain so by the preponderance of that race.”<sup>94</sup> Sumner himself had long schemed to annex Canada, so it cannot be said that he was averse to territorial growth. All involved in the debate assumed that annexation would ultimately result in Santo Domingo becoming a State, its inhabitants entitled to all the rights of citizenship under the thirteenth, fourteenth and fifteenth Amendments. As an alternative to this, Sumner advocated placing the island under what amounted to an imperial protectorate – benevolently intended, of course, as with all of Uncle Sam's ventures abroad. The difference was not the “independence” of black republics in the Caribbean, but whether they would be given a fair voice in governing the hegemonic power that governed them.

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<sup>93</sup> See, for example, Hamilton Fish to Grant, May 15, 1870. The treaty provided that Santo Domingo “may be admitted upon such terms and conditions and at such time as Congress shall provide by law.” This exactly followed the precedent established by Reconstruction. Republicans insisted that Congress alone could establish the conditions admitting a territory into a State. And they were not about to blur that distinction in 1870. The word “may” seems purposefully non-committal, but this was a necessary deference to Congress. Fish, the Secretary of State, understood the treaty to promise Statehood as an imperative. He suggested an amendment that would give Congress the option of admitting Santo Domingo or establish its independence – “viz. instead of making the future admission as a state imperative, depending only as to time, in the discretion of Congress – to reserve to Congress the right either to admit the State – or to remit it to a condition of either separate or Confederate Independence – the latter in connection with other of the Islands of the Gulf.” Hamilton Fish Papers, Library of Congress.

<sup>94</sup> David Herbert Donald, *Charles Sumner and the Rights of Man* (New York, 1970), 443.

Of course, Santo Domingo had not attacked the United States, and the United States had not conquered the island by enlisting the support of its slaves. The moral obligation the nation owed to its own citizens did not yet exist in the case of Santo Domingo. But that moral obligation was distinct from the feasibility or desirability of interracial democracy, a question that involved both the capacity of blacks for citizenship and the capacity and integrity of the federal government to confer rights that had traditionally fallen exclusively under local jurisdiction. *That* was the question that divided the Republican party from its internal and external critics. The annexation of Santo Domingo was the pivotal fight that turned a critical number of idealistic Republicans against Reconstruction, establishing the postwar limits of the new birth of freedom both spatially and substantively.

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As punishment for his opposition to the annexation treaty, Grant's lieutenants in the Senate removed Sumner as Chairman of the Foreign Relations Committee, which he chaired. No single act did more to drive the old-guard of the Republican party from its ranks. Charles Francis Adams, noting the partisan vengeance visited upon Sumner, interpreted it to mean that "the doom of the republican party is sealed."<sup>95</sup> Outrage at the Senate's action did not translate into affection for Sumner. Adams, for example, deferred to no one in finding Sumner absolutely insufferable. Trumbull could have had no trouble divining what it meant for his own future in the party. His distinguished leadership of the party from the very beginning, and his personal association with many of its greatest achievements, would count for nothing the moment the party's new leaders became sufficiently annoyed with him.

When the Republicans took control of the Senate in 1861, Trumbull recalled in his response to Sumner removal, he and Sumner had both been appointed to chair two of the most

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<sup>95</sup> Charles Francis Adams, *Diary*, March 28, 1871. Cited in Donald, *Sumner*, 2:501.

important committees. They had continued to hold their posts in accordance with the fixed usages of the Senate, which, unlike the House, was a continuously organized body. The party decision to depose Sumner was a vicious blow at the Senator and at the dignity of the Senate itself. Trumbull then reached for the obvious analogy. “I stood by [Sumner] when he was stricken down in his seat by a hostile party, by the powers of slavery. I stand by him to-day when the blow comes, not from those who would perpetuate slavery and make a slave of every man that was for freedom, but comes from those who have been brought into power as much through the instrumentality of the Senator from Massachusetts as of any other individual in the country.”<sup>96</sup>

Unlike Sumner, however, Trumbull’s defection from the Republican party was not driven purely by personal grievances and outraged vanity. Political corruption and fear that the government was moving irrevocably toward a centralized party despotism were Trumbull’s central preoccupations. And the 42<sup>nd</sup> Congress abundantly demonstrated that his influence within the Republican party had become that of a distinguished figurehead, nothing more. He had no enthusiasm for Horace Greeley as the Liberal Republican presidential candidate or for the coalition surrounding him. His only hope for Greeley’s nomination was that it would “blow up both parties,” and eventually allow honest, principled leaders to coalesce around a new standard, as they had in 1854. “Most of the usurpations of Gov. are made possible through party tyranny,” he wrote to William Cullen Bryant in May of 1872. “Members of the Senate are daily scared into voting contrary to their convictions through party pressure. A notable instance of this was the vote on the impeachment of Johnson and matters in this respect have not improved since.”<sup>97</sup>

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<sup>96</sup> *Congressional Globe*, 42<sup>nd</sup> Congress, 1<sup>st</sup> Session, 49-50.

<sup>97</sup> Trumbull to William Cullen Bryant, May 10, 1872. Trumbull papers, University of Michigan.

In an elaborate speech in Senate, Trumbull contrasted the defining principles of the original Republican party against those that currently prevailed. It had become fashionable for Republicans to insist that “the States possess only such powers as are conferred upon them by the Constitution of the United States; but there has never been a greater heresy. Why, sir, just the reverse of this is the truth,” Trumbull said. With secession and slavery defeated, no single idea was more subversive to the Republican institutions established by the Founders.

If there was any one thing that our fathers prized more highly than any other in the organization of their governments in this country, it was the right to make their local laws and manage their local affairs. It is the great protection of the citizen and when the time shall come, if it ever does, that all the powers of Government shall be centered here at Washington, in the hands, I care not whether of one or of five hundred men, it will be an imperial despotism and the people will have surrendered up their best protection against the encroachments of arbitrary power.<sup>98</sup>

Trumbull was willing to entrust the federal government with the power to prevent State governments from infringing on the legal rights of citizens. State laws which denied any citizen his rights could and should be overthrown. But he insisted that the power and authority to protect the citizen’s rights still belonged to the states. The federal government could prevent the abuse of this power but could not usurp it. If the general government had the power to police and punish crimes within a State, then the States were abolished and the most formidable bulwark against centralized despotism disappeared. “[T]he liberties of the people, the rights of the people, the rights of the individual are safest among the people themselves, and not in a central Government extending over a vast region of country,” Trumbull insisted in opposing the act to suppress the Klan.<sup>99</sup> The line Trumbull tried to maintain was obviously murky. If the General government had to intervene to prevent certain States from virtually re-enslaving an oppressed class of citizens,

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<sup>98</sup> *Congressional Globe*, 42<sup>nd</sup> Congress, 2<sup>nd</sup> Session, Appendix 86.

<sup>99</sup> *Congressional Globe*, 42<sup>nd</sup> Congress, 1<sup>st</sup> Session, 579.

as Trumbull readily acknowledged, then how could it rely on the same States to protect those same citizens from criminal actions aimed at the same purpose?

There was no answer to this question. And he was willing to blur the distinction whenever the power could be limited to the specific issues involving slavery and emancipation. The problem was that Republicans were no longer interested in limiting the sweeping national powers they claimed for themselves. When Trumbull once again insisted that “this national government was not formed for the purpose of protecting the individual in his rights of person and of property,” Matthew Carpenter interrupted him with the obvious answer. “That is what I understand to be the very change wrought by the fourteenth amendment. It is now put in that aspect and does protect them,” Carpenter observed. Trumbull denied such a sweeping interpretation. “Then it would be an annihilation entirely of the States,” he answered, and repeated that the Amendment had not been so intended.<sup>100</sup>

The most interesting exchange in this philosophical dispute occurred when Senator Wilson of Massachusetts asked Trumbull a question that, in his mind, virtually answered itself. Turning to Trumbull, Wilson asked “if he really believes that during the present century life, liberty, or property has been as safe under State legislation and State action as under the Federal Government?” Trumbull considered the answer even more blatantly obvious than Wilson. “Most assuredly I do,” Trumbull answered, and no one with a memory could deny it.

If the Federal Government had had the power in 1856, it would have established slavery in Massachusetts and all throughout the United States and so it would at any time down to 1860, almost....Does the Senator from Massachusetts suppose at the time the fugitive slave law was being enforced through Massachusetts that if the Congress of the United States had the power to put a stopper on his mouth they would have let him advocate the rights of the slave?...We must not forget history. It is only in the last dozen years that there has been freedom of speech, freedom of thought, and freedom of press in this country. And let me tell the Senator from Massachusetts that if the Federal Government

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<sup>100</sup> *Congressional Globe*, 42<sup>nd</sup> Congress, 1<sup>st</sup> Session, 577.

had had the power, and the American people would have submitted to the despotism and the tyranny, it would have put shackles upon free thought and free speech that never would have been shaken off except by revolution.<sup>101</sup>

Wilson had no answer to this. Slaveholders would have smothered the antislavery movement in its infancy if state jurisdictions had not shielded the movement until it grew into a political party capable of dislodging the slaveholders from the general government. As a result of the rebellion, slavery was dead, and the general government had the power to make sure it stayed dead. But the Republican party was wantonly effacing the most essential limitation on the power that would inevitably be abused on behalf of new interests seeking to consolidate into a new oligarchy. For all the limitations of his outlook, Trumbull was not wrong to suspect that the powers asserted for honorable ends would soon be corrupted and bent to serve a new oligarchy. And he lived to see those suspicions vindicated.

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Trumbull's other major grievance was the Republicans' resistance to any reform effort, justified on the grounds that it would only help the wicked Democrats. His analysis of the alarming decline in public honesty was astute, and avoided simple moralizing or scapegoating. During the war, he noted the government at one point "expended \$4,000,000 a day," and when that much money is getting thrown around in an emergency, it is impossible to prevent some people from lining their pockets with it. "[T]he country has not yet recovered from the demoralization which followed the getting rich in a day as was often the case while the war lasted," he observed.<sup>102</sup>

As for the corruption of Southern governments, Trumbull seemed to set up a familiar observation about "black rule" only to veer in a surprisingly different direction. By

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<sup>101</sup> *Congressional Globe*, 42<sup>nd</sup> Congress, 1<sup>st</sup> Session, 579.

<sup>102</sup> *Congressional Globe*, 42<sup>nd</sup> Congress, 2<sup>nd</sup> Session, Appendix 85.

disenfranchising the political leaders who had begun rebellion, he observed, “inexperienced and sometimes corrupt and dishonest persons in those States have been elevated to the control of public affairs, and the result has been that the people of some of those States have been plundered by their State government without example in the history of this country.” But it was the sons of these prominent political leaders who he believed had taken over and plundered their States. “While we have allowed the sons, with less experience and less character than their fathers, equally rebels with them, to take office, we have excluded their fathers, who were acquainted with public affairs and who, whatever may be said of their guilt as rebels, were neither robbers nor thieves.”<sup>103</sup>

Whatever its merits as an observation on the South, this diagnosis certainly captured Trumbull’s general attitude toward the generation of political leaders replacing his own generation in the North. Youth is perpetually accused of reinventing timeless vices, but political corruption is usually a rare exception. The corruption Trumbull identified was not new – though the scale had inevitably expanded – but the old ideals that had once ennobled politics for Trumbull had exploded, leaving only naked, grasping cynicism and resigned pragmatism. Political self-government, as Trumbull understood it, had failed and American political leaders accepted that failure. The machine politicians were not uniquely corrupt or cynical, but compared to their predecessors they were wholly lacking in a higher sense of purpose.

Trumbull hardly had more in common with the young reformers, who shared his moral disgust with the Republican party but wholly lacked his democratic sensibility. An early advocate of civil service reform, Trumbull nevertheless despised the snobby pretense that scholarship was the proper measure of a man’s capacity for public service. Party machine leaders might be cynical thieves, but voters preferred empty flattery to the open disdain of the self-

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<sup>103</sup> *Congressional Globe*, 42<sup>nd</sup> Congress, 2<sup>nd</sup> Session, Appendix 85.

proclaimed “best men.” Despite Trumbull’s best efforts, the Liberal Republican party was soundly whipped at the polls. In his final act as a Senator, Trumbull voted for the notorious “salary grab” which retroactively doubled his salary during that Congress, and subjected him to years of abuse by politicians who considered their salaries the least remunerative aspect of their position.

#### *VI: Return of the Money Power*

“While in high public position men are looked up to, flattered and fawned upon,” Trumbull wrote four years after leaving the Senate in 1873, “the moment they lose these positions they become ordinary individuals and oftentimes soured with the world which ceases to pay them that deference they were wont to receive and which from long habit they had come to think themselves entitled to. I trust I have none of this feeling but I am out of public life and in all human probability shall never enter it again.”<sup>104</sup> Trumbull had been a Senator for 18 years, an era that he recognized as the most significant in the history of the Republic, and, indeed, one of the most significant in the history of the human race. Perhaps he envied those of his peers – Fessenden, Lincoln, Sumner and others – who never had to adjust to the new order they had created. But Trumbull had twenty years left to live as a private citizen in this strange new world, so unlike the one in which he had risen to prominence.

“About the only deference paid to private citizens in cities and which I think the meanest sort of deference is that paid to wealth,” Trumbull complained in 1877. “I am now among my acquaintances here in Chicago, simply one in common with the rest, whose circumstances compel them to live in a moderate way.”<sup>105</sup> In considering his relative position in the world,

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<sup>104</sup> Trumbull to Mary Ingraham, September 23, 1877. Trumbull Papers. University of Michigan.

<sup>105</sup> Ibid. I reversed the order of these two sentences.

Trumbull like most members of his species, looked up rather than down. The poverty of Chicago stockyard workers irked him less than the wealth of their employers. But he still counted himself fortunate overall. He was not a rich man, but had no “desire to compete with the wealthy in my manner of living” and his legal profession supplied him with enough for “ordinary comforts of life.”<sup>106</sup>

There is no record of Trumbull’s attitude toward the labor unrest that erupted in Chicago and throughout the country in the summer of 1877. But his legal work in attacking the Illinois Militia Act provides another fascinating insight into Trumbull’s political philosophy – radical, even revolutionary, and yet also distinctly old fashioned.<sup>107</sup> The Militia Act, which became law in 1879, struck at labor groups in two ways. It created an “Illinois National Guard” of 8,000 men, armed, trained and paid by the State, and it prohibited all other citizens from associating “themselves together as a military company or organization, or to drill or parade with arms in any city or town of this State, without the license of the Governor thereof, which license may be at any time revoked.”<sup>108</sup>

The purpose of the law, as the *Chicago Times Herald* explained, “was to compel the disbandment and prevent the organization hereafter of the extra-legal and now illegal military associations of the communist enemies of society, which in many northern cities are the

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<sup>106</sup> Ibid.

<sup>107</sup> David B. Kopel, “Lyman Trumbull: Author of the Thirteenth Amendment, Author of the Civil Rights Act, and the First Second Amendment Lawyer,” *Loyola University Chicago Law School* (2016), 1117-1192. The emphasis on Trumbull’s work on Second Amendment rights is exaggerated. But legal scholars interested in the Second Amendment, though they tend to elevate its timeless significance well above the Decalogue, deserve credit for uncovering this interesting aspect of Trumbull’s career. Kopel is more interested in a useful precedent than in history, which leads him to distort the very different political motives and contexts operating in that era. One might mischievously suggest, however, that the same is true of historians who frame the era’s failed experiment with racial equality as a simple prelude to the Civil Rights era. That is simply true as a matter of law, but history is more complicated.

<sup>108</sup> Cited in Stephen Halbrook, “The Right of Workers to Assemble and to Bear Arms: *Presser v. Illinois*, Last Holdout Against Application of the Bill of Rights to the States” *University of Detroit Mercy Law Review* 943-989 (Summer, 1999).

counterpart of the lawless “Ku-Klux-Klans”...and other shot-gun associations in the country of the Yazooos.”<sup>109</sup>

One suspects it was this analogy that caught Trumbull’s eye. He had argued again and again that any action infringing on the Constitutional rights of American citizens, no matter how well-intended, would establish a precedent ripe for abuse. Labor lawyers quickly challenged the militia act in court, and Trumbull filed a brief arguing that it was unconstitutional under the 2<sup>nd</sup> and 14<sup>th</sup> Amendments. Because the Militia Act was a State law, the 14<sup>th</sup> Amendment was necessary to argue that it was unconstitutional. But the key issue was the meaning of the 2<sup>nd</sup> Amendment, not as an individual right but as a communal right. The crucial relationship, in the clause “the security of a free state” was between “security” and “free.” One purpose of the militia was, of course, to put down lawless insurrections. But another purpose was to allow the people to protect their liberties from despotic usurpations by the State, or from tyrannical abuse by another group.

The balance between these purposes was simple. The citizens of all communities, however defined, have the right to organize in self-defense. Workers might organize one militia, the businessmen of Chicago another, and the State of Illinois another one still. If they go beyond self-defense and the laws protecting the rights of any other individual or group, then the offenders can and should be tried and convicted by a jury for the offense. But the moment the law goes beyond punishing the criminal act and prohibits particular citizens from organizing in self-defense, it renders the citizen helpless to resist the arbitrary power of the State and of private interests.

In the aftermath of the labor riots and the Paris Commune, this way of thinking had become distinctly unfashionable among the professional class, including the members of the

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<sup>109</sup> Chicago *Daily Times Herald*, September 1, 1879. Cited in Halbrook.

Illinois Supreme Court who affirmed the Constitutionality of the Militia Act. Trumbull got another chance to argue the principle, however, in a test case that went before the Supreme Court. In 1879, Hermann Presser was arrested under the Militia Act for parading an armed militia without a license. Carrying a sword on horseback, he had led 400 members of the *Lehr und Wehr* – a working class German group bearing unloaded rifles– through the streets of Chicago. The Illinois Supreme Court affirmed the legality of Presser’s arrest and fine of \$10, and the U.S. Supreme Court agreed to hear the case, though it did not actually do so until 1885. Trumbull argued for Presser. Once again, the Court ruled against him, insisting that the 2<sup>nd</sup> Amendment protected the private rights of citizens to bear arms, not a collective right to organize and drill as militia.

These cases attracted surprisingly little attention in the major newspapers. And after losing a campaign for governor as a Democrat in 1880, Trumbull faded quietly from public life, a ghost from a different world. A magazine writer, visiting Trumbull’s office in 1895, observed that “his surroundings suggest the simplicity of Jefferson or Lincoln.” The comparison surely made Trumbull smile. Yes, his office furnishings may have made a “striking contrast to the luxurious apartments of the corporation lawyer.”<sup>110</sup> But, however simple the furnishings, Trumbull’s office was perched on the tenth floor of a skyscraper overlooking a city of well over a million souls. These were not surroundings Lincoln would have recognized. When Lincoln last laid eyes on Chicago, it had not been a tenth that size and yet it still seemed positively staggering next to the bustling village he and Trumbull had known in their youths. Trumbull could remember when practicing law in Illinois meant riding from one county to the next, sharing a single bedroom with several lawyers, and bringing along only what he could carry on horseback.

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<sup>110</sup> Richard Linthicum, “Lyman Trumbull” *The Arena*, (March, 1895).

Young pup journalists might feel closer to Lincoln's world in Trumbull's presence, but Trumbull had his memories, and those made him feel very far away indeed.

Trumbull was still beholden to that world, not to its material deprivations and hardships but to its political ideals. He had no fastidious qualms about the vulgarity of the industrial age, no doubts whatsoever that "great improvements, adding to the convenience and comforts of man, have been made in our time."<sup>111</sup> But he was not willing to leave the ideal of democratic self-government behind in the march of progress, or mistake what that ideal had been for the cheap substitute that it was becoming. Here the struggle was always the same. The "rich and powerful too often bend the acts of government to their selfish purposes," as President Jackson declared in his bank veto 60 years earlier. If the people failed to resist these efforts, their rights would be overthrown. The attempt to impose slavery on Kansas had signaled such a crisis, when an oligarchy had become so powerful and lawless it threatened to subvert the Republic completely. In the final years of his life, Trumbull believed a new oligarchy, and the same timeless crisis, emerged with the federal suppression of the Pullman Railroad Strike in 1894.

After the Pullman Railroad company cut wages by 25% to 33%, without lowering rents on company owned homes or eliminating stock dividends to investors, the American Railroad Union, led by Eugene Debs, called a sympathy strike on all trains that carried Pullman cars. 100,000 workers joined in what grew into the largest strike in American history. In response, the Attorney General used the delivery of the mail as a pretense to seek an injunction prohibiting union leaders from supporting the strike; the Court obliged, and President Cleveland sent in federal troops to enforce it. Illinois Governor Altgeld had refused to request troops, so the action was done entirely on federal authority. 30 workers were killed as the government took control of the railroad. Debs and several other leaders were arrested for refusing to obey the injunction. He

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<sup>111</sup> Lyman Trumbull, "Precedent versus Justice," *The American Law Review* (May/June, 1893).

was held without bail and eventually convicted of violating the injunction (but no other crime) and sentenced to six months in jail.

These stirring events brought Trumbull briefly back into the public arena, a final furious skirmish in the battle he had fought his whole life. Federal judges, acting on behalf of the “money power,” Trumbull declared, “have for years silently and steadily enlarged their jurisdiction, and unless checked by legislation, they will soon undermine the very pillars of the constitution and bury the liberties of the people beneath their ruin... Federal judges now claim the right to take possession of and run the railroads of the country, to issue injunctions without notice, and to punish for contempt by fine and imprisonment any one who disputes their authority.”<sup>112</sup>

Both major parties were complicit in this process, just as the Whigs and Democrats had been corrupted by the slave oligarchy. As in 1854, the time had come for a new party. Trumbull wrote the populist platform of 1894, calling on the people to forget all past political differences – as they had in joining the original Republican party – and “unite in the common purpose to rescue the government from the control of the monopolists and concentrated wealth, to limit their powers of perpetuation by curtailing their privileges, and to secure the rights of free speech, a free press, free labor and trial by jury – all rules, regulations, and judicial dicta in derogation of either of which are arbitrary, unconstitutional and not to be tolerated by a free people.” Trumbull copied another resolution verbatim from the Republican platform of 1860 – upholding the “inviolable...rights of the states” and denouncing “the lawless invasion of armed force on the soil of any state or territory.” The Constitutional power to suppress insurrection, the Platform then added, “does not warrant in making use of a standing army in aiding monopolies in the oppression of their employees.” Concluding the resolution with a rhetorical flourish that alluded

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<sup>112</sup> Richard Linthicum, “Lyman Trumbull” *The Arena*, (March, 1895).

to the Civil War, Trumbull declared, “When freemen unsheathe the sword, it should be to strike for liberty, not for despotism, or to uphold privileged monopolies in the oppression of the poor.”<sup>113</sup> So wrote the man who, 30 years earlier, wrote the amendment abolishing slavery.

That connection proved embarrassing to those who considered Eugene Debs the greatest threat to the Republic since Jefferson Davis. “It is very melancholy to see the name of Lyman Trumbull attached to a series of Populist resolutions in Chicago,” *The Nation* lamented.<sup>114</sup> And the connection only grew worse when Trumbull defended Debs before the Supreme Court in the landmark case that affirmed “Government by injunction.” The *Chicago Tribune* could not comprehend the inconsistency of the man who had done so much to put down the rebellion of 1861. “Judge Trumbull has changed front completely in the last thirty-three years,” the paper observed. Aside from a few minor details, the *Tribune* insisted, the rebellions of Jefferson Davis and Eugene Debs were identical. And yet Trumbull had “demanded that the government use every means in its power to suppress Davis and his rebellion... Then he was in favor of broadening the powers of the National government.”<sup>115</sup> Trumbull, of course, had foreseen precisely that analogy coming to the lips of future despots and sought desperately for a way to preempt it.

Long experience had taught Trumbull to distrust precedents. Principles are eternal, but the precedents upholding them are subject to conditions that inevitably change over time, as one who practiced law in Illinois from 1840 to 1895 was bound to notice. “The science of law is not perfect, and will never be improved by that conservatism which is satisfied with the past and rejects all innovation,” Trumbull wrote in 1893. “Laws should be enacted and administered with a view to the conditions of this generation, and not to those of generations dead and buried a

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<sup>113</sup> *Ibid.*

<sup>114</sup> *The Nation*, January 3, 1895.

<sup>115</sup> *Chicago Tribune*, Dec. 31, 1894.

century ago.” In this he was still true to the creed he had learned as an antebellum Democrat, upholding a rigid but limited fundamental law that fettered the government from squashing the local innovations of the people.

Americans had abolished the laws of primogeniture, Trumbull observed, to prevent the accumulation of large fortunes into a few families. But the laws of property in America had since become even more efficient at enabling “the few to accumulate vast wealth while the masses live in poverty,” Trumbull said, “and this is especially true during and since the War of Rebellion.” The courts had construed laws establishing corporations for public or quasi-public purposes into contracts that the people could never alter or repeal, allowing individuals to enjoy immensely profitable monopolies. This abuse led to the even greater evil of allowing any three individuals to establish a corporation for purely private purposes. “Business of all sorts is now to a great extent carried on in the name of corporations, in order that the proprietors may escape personal responsibility,” Trumbull wrote. “This mode of doing business is calculated to destroy man’s individuality by compelling him to get into a corporation, or to do business at a disadvantage.”<sup>116</sup> Since rights of inheritance were regulated entirely by law, there was no earthy reason for the law to bestow a fortune of millions on a favored heir who did not earn it. A law limiting the value of individual inheritances to \$1,000,000 would be as effective as the law abolishing primogeniture had once been in preserving the country’s egalitarian institutions.

There was no need for a revolution, Trumbull insisted, for the Constitution gave the people all the power they needed, if they would only set aside petty bickering and unite to meet the crisis of the hour. Most of the issues he identified fell under State law and the national Government had no Constitutional authority to prevent local legislatures from altering property laws. Perhaps he recognized, to his chagrin, that the Supreme Court would likely strike down

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<sup>116</sup> Trumbull, “Precedent versus Justice” *American Law Review* (May/June, 1893).

every one of these proposed reforms by invoking the amendments he helped inscribe into the Constitution. But then, the people had defied the Supreme Court's efforts on behalf of an earlier oligarchy in the Dred Scott Decision, and they could do it again.

Though some in the press dismissed Trumbull as manifestly senile, he had lost none of his old fire. The New York *Times* acknowledged that he "appeared quite vigorous" in his argument before the Supreme Court in the Debs case. Exaggerating a little, a magazine writer described him as "the best preserved man of his years of whom there is record..."<sup>117</sup> In truth his remarkable vigor was an act of sheer will. Though he never complained about his health, his second wife noted that he suffered terribly from rheumatism. Horrible personal calamities plagued Trumbull through his life. In 1884, his six-year old daughter, Mae, crashed into a kerosene lamp and burned herself badly. Her parents sat by her bedside, helpless and desolate, as she died a prolonged, agonizing death. In 1891, Walter, his first born son, passed away. And then in 1894 another beloved daughter, eleven year-old Alma, died abruptly of a mysterious illness. "The dear little girl," Trumbull wrote. "How I miss her and how little I expected that she would precede me."<sup>118</sup> Another son, Henry, was on his deathbed with tuberculosis, and passed away the following year. "Poor boy," he wrote of his son's death, "his troubles are over and if I could only *know* that he was with his mother, brothers and sisters in a happier state how rejoiced I should be."<sup>119</sup> Of Trumbull's eight children, only one survived him.

As in 1864, when his work on the 13<sup>th</sup> Amendment coincided with another devastating loss, Trumbull seemed to convert his private griefs into political outrage at the injustices of the

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<sup>117</sup> *The Arena*, (March, 1895).

<sup>118</sup> Krug, *Trumbull*, 347-349.

<sup>119</sup> Trumbull to William Jayne, January 20, 1895. The painful lack of certainty in this letter did not reflect Trumbull's opinion of his son. "I certainly hope through the Savior's interposition for a happy hereafter, but at the same time am obliged to confess that the way is to me dark and mysterious, and by no means as discernable as it appears to some others. I rejoice that they can see it clearly and wish that I could too." Trumbull to Sibyl Jayne, April 22, 1877. Jayne Papers.

world. But he knew he was too old to be the standard bearer in the oncoming struggle. “Never have I so regretted my advanced age and my inability to fight in this battle. The brunt and burden of it must be borne by you younger men, and upon you rests a grave a solemn responsibility,” Trumbull said.<sup>120</sup>

One of those young men was the boy he had once mentored as a young law apprentice. William Jennings Bryan, that young apprentice, later recalled that he learned more from Trumbull than from anyone else except his parents. When Trumbull died on June 25, 1896, Bryan, like his mentor, turned personal grief into political thunder. Just over two weeks later, Bryan gave the most famous populist speech in American history – “You shall not press down upon labor this crown of thorns. You shall not crucify mankind upon a cross of gold.” A few days after winning the Democratic nomination for President, Bryan visited Trumbull’s grave. He bowed his head in silence, and then turned to a reporter, his eyes filled with tears. “Any distinction I may have gained I owe in great part to the man who is buried there,” he said.<sup>121</sup>

Trumbull supplied the moral example, but Bryan’s cause was not quite his. He was contending for older ideals and principles, not grappling toward new ones. Of all those who eulogized Trumbull, one of his critics actually described him best: “The real reason why Mr. Trumbull is in sympathy with the populists is that he recoils from the concomitants of large production and the complexities essential to an effective, rapid, and continuous societal movement,” the *Social Economist* complained. “Precisely analogous economic prejudice leads the North American Indian to prefer the forest to the farm, as leads these individualists to prefer the man to the corporation, or the small concentrations of capital to the large.”<sup>122</sup>

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<sup>120</sup> Linthicum, *Trumbull*, (1895).

<sup>121</sup> *Chicago Daily Tribune*, July 13, 1896.

<sup>122</sup> *The Social Economist*, November 1894.

In fact, Trumbull had always celebrated the economic progress of his era. He no more regretted the country's material wealth than he regretted the Amendment abolishing slavery. His prejudice was in refusing to relinquish a political ideal that these achievements had quietly buried. Perhaps this was inevitable. But he was not willing to place the best ideals and aspirations of his nation on a scale, weigh them against one another, and make a bargain. He stubbornly refused to forget the early promise of what the American Republic might have been, even as he took great pride in having played a pivotal role in what it became.

*William Pitt Fessenden: Yankee Cavalier*

*I: "I am Not of a Disposition to Lie Still & Be Trodden"*

Though they occupied similar positions within the Republican party, Fessenden's outlook was very different from Trumbull's during the Civil War. No ideological blinkers limited his view of the revolutionary circumstances over which he presided. What Trumbull called 'the tyrant's plea, necessity' – was Fessenden's motto through every stage of the conflict. He combined immense practical ability with a grim sense of duty and a quick-tempered sense of personal honor and integrity. He detested all moral cant, lashed out bitterly at self-important political posturing, but his keen focus on practical consequences disguised a distinctly romantic sensibility. He considered Lord Byron "the greatest poet of this century."<sup>1</sup> His cause in the war was nothing more or less than honor – his honor as a man and Senator, the honor of his State and section, and the honor of his country. He felt the calamities of the war as fully as anyone, and recognized the enormous dangers it posed to Constitutional liberty. He accepted the beneficial changes it brought, but they were never the ends that drove him. Because he preferred national ruin to dishonor, he did his duty without worrying where it would lead. This was the mindset that made Fessenden the most influential leader of the Senate.

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<sup>1</sup> *Congressional Globe*, 35<sup>th</sup> Congress, 1<sup>st</sup> Session, 617.

Fessenden's most recent biographer has suggested that his irascibility undermined his effectiveness as the Republican powerbroker in the Senate.<sup>2</sup> That is no doubt true, but his temperament was also the key to his influence. The Senate in the Civil War was very different from what it had been or would soon become. There was an unprecedented amount of work to do and the organizational structures of a federal leviathan did not yet exist. The national party was really a confederation of state party machines. Senators did their own work in committees, and then had to persuade their quarrelsome colleagues to accept it. Instruments of party discipline were pitifully weak. No one received deference or respect who did not earn it. Fessenden led by moral example.

An honest and accurate portrait of Fessenden risks succumbing to a cliché: The self-sacrificing sense of duty that compels a noble Senator to bear the burdens of the Republic, despite his desperate wish to be free of them – every pompous fraud ever elected to that august chamber has tried out that pose. No one attained a seat in the Senate without craving it, and no one stayed there without jealously guarding it. Still, a Senator's integrity was measured by the extent to which he made this lofty pretense plausible. Charles Francis Adams Jr. visited Fessenden often in Washington, and he later recalled that Fessenden “impressed me as a man of natural refinement and decided force – every inch a Senator.” But, he continued, Fessenden also struck him with “a sense of the dreariness and solitude in life, as I found him always sitting there in that forlorn private ‘parlor’ of a Washington boarding-house hotel, as Washington hotels then were – unkempt barracks...Fessenden's old-time hotel – furnished sitting room, with its bed-

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<sup>2</sup> Robert J. Cook, *Civil War Senator: William Pitt Fessenden and the Fight to Save the American Republic* (Baton Rouge, 2011), 148.

room attachment, devoid of any pretense of life's amenities and attractions – impressed me with a sense of neither domesticity nor taste.”<sup>3</sup>

Fessenden did not notice the absence of tasteful amenities in his hotel room, but he agreed that his home in Washington was forlorn. “My rooms, handsome and comfortable as they are,” he wrote in December 1860, “look cheerless and forlorn in the absence of a sweet and loving woman.”<sup>4</sup> Though his wife had died a few years earlier, Fessenden had a large family, and he was happiest at home. Personally, his public service was a sacrifice, however much he needed the sense of importance it conferred. His duties as Chair of the Finance Committee involved, by far, the most laborious work in the Senate. Aside from what his professional position required of him, he avoided social life in Washington. And he despised the European affectations that began to proliferate as increasing wealth and travel brought Americans closer to the great and good of the old world.<sup>5</sup> In a tranquil era of peace, Fessenden's austere integrity, his often petulant impatience with his colleagues, would have earned him irrelevance. But in the Civil War it made him admired and feared. “If you determine to probe the sore spots to the bottom, and that right shall be done, we can inaugurate a new order of things, and the country can be saved,” James Grimes, a powerful Senator in his own right, wrote to Fessenden just before the first full session of Congress during the Civil War began. “You have followers – you can control the Senate. The wicked fear you and flee before you.”<sup>6</sup>

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<sup>3</sup> Charles Francis Adams, *An Autobiography* (Boston, 1916), 48.

<sup>4</sup> William Pitt Fessenden to Elizabeth Warriner, December 29, 1860.

<sup>5</sup> “It is like a snob to go abroad to educate children,” Fessenden wrote privately to his cousin and confidante Elizabeth Warriner. “I expect Phil will come home with a coat of Arms – a molasses cork rampart or something of that sort – with an appropriate motto...” Fessenden to Warriner, March 30, 1867.

<sup>6</sup> James Grimes to W.P. Fessenden, November 13, 1861. Cited in, William Salter, *Life of James Grimes* (New York, 1876), 156 -157.

William Pitt Fessenden was born on October 16, 1806, technically a bastard at a time when that word still conveyed the cruel shame of its original meaning. His mother, Ruth Green, was 18 years old, the daughter of Nathaniel Green, Esq., a well-regarded lawyer in Boscawen, New Hampshire. Mother and child were separated a week after the delivery, and the arrangement freed Ruth from the stigma of an out-of-wedlock child. Ruth married soon afterward and bore five more children. But what happened between her and the father of her first child remains a mystery. By all accounts she was beautiful, and the man who nearly ruined her had first fallen madly in love with her.<sup>7</sup>

Samuel Fessenden was 21 years old and broke when he came to Boscawen in the winter of 1805. He was the fifth son of a Harvard-educated, recently deceased minister, and with his father's passing went the modest support he had been receiving as an undergraduate at Dartmouth College. So he came to Boscawen to earn money teaching during the winter break before his final term. He most likely got the job through the help of an old friend, Daniel Webster, who had established a law practice in town. A family friend of the Green's, Webster also likely introduced Samuel to Ruth. They began a passionate romance that lasted until Samuel returned to Dartmouth in the spring. Pining from a distance, he wrote Ruth poetry, which she kept for the rest of her life.

Soon afterward, however, the relationship between Ruth and Samuel ended for unknown reasons even as they became linked by a living bond. One suspects Webster's influence. He had known Ruth much longer than Samuel and was in Boscawen while the latter was away. "The example of my friends sometimes excites me," he wrote around the time his friend's son was conceived, "and induces me to inquire why the deuce female flesh and blood was not made for

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<sup>7</sup> Charles Jellison, *Fessenden of Maine: Civil War Senator* (Syracuse, 1962), 4.

me as well as others.”<sup>8</sup> After William Pitt was born, Webster wrote of the news to another close friend. “I have not seen him,” he wrote of the newborn, “but he is said to be the image & superscription & to carry the proof of his parentage in his countenance.”<sup>9</sup> Webster did not say that there was a need of such proof, but the hint is there. Samuel paid Ruth’s father a note for a sum of money he did not yet have, and took his son to live with his family in Fryeburg, a town a little more than 60 miles Northeast of Boscawen in the District of Maine, then a part of Massachusetts.<sup>10</sup> Soon after, Webster rode through a snow storm to stand as godfather at the infant’s christening. And so young William Pitt grew up a Fessenden, inheriting a prominent name unstained by scandal.

Ruth made no effort to contact her first-born son for the next 21 years and then did so immediately after he reached the age of legal independence. She wrote a letter introducing herself, and asked if her son might pay her a visit. One can only imagine with what anxiety she awaited the response to this motherly right so long deferred. For William Pitt Fessenden, who grew up believing the woman who wrote him was dead, the letter could not have been more shocking if it had come from an actual ghost.<sup>11</sup>

Fessenden lived with his grandmother and aunts in Fryeburg for the first seven years of his life as his father struggled to establish himself in New Gloucester, a town 45 miles away. A strikingly handsome man, Samuel was broad shouldered and a stout six feet tall. He had a deep,

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<sup>8</sup> Daniel Webster to James Bingham, January, 19, 1806. *The Writings and Speeches of Daniel Webster* Edward Everett, ed. 18 vols. (Boston, 1903), 17:221.

<sup>9</sup> Charles M. Wiltse, ed. *The Papers of Daniel Webster*, 14 vols (Hanover, NH, 1975), 1:85.

<sup>10</sup> In 1810, Samuel wrote to Webster asking for help in dealing with “a Mr. Plummer, who it seems, is the holder of the note which I gave Green...” Samuel Fessenden to Webster, June 2, 1810. *Webster Papers*, (Ibid). Samuel did not mention Green’s first name, so this account is based on an inference supported, but not confirmed, by the known facts. Additionally, Ruth’s father, Nathaniel Green was in financial trouble at the time, which explains why he would give the note to a third party. He died two years later, in 1812, with an “embarrassed estate.” See Charles Carleton Coffin, “Memoir of Nathaniel Green” [Ruth’s brother], (Boston, 1878).

<sup>11</sup> There is no record of what Fessenden was told about his mother growing up, but he did not know he was illegitimate until she wrote him. This only seems possible if he was given the impression that she was dead. See Robert Cook, *Civil War Senator: William Pitt Fessenden and the Fight to Save the American Republic* (Baton Rouge, 2011), 20-21.

distinctive voice, a sharp, restless intellect, and a warm and friendly disposition.<sup>12</sup> He had all the tools of an eminent public man, but his ambitions were no match for his politics. First as a New England Federalist and then as an abolitionist, Samuel distinguished himself as a fiery radical on behalf of political causes that were widely unpopular and even flatly despised. “He was one of those large brothers of the human race, whose powers are not easily resisted,” Frederick Douglass recalled of his fellow abolitionist.<sup>13</sup> But such irresistible men are also, more often than not, unelectable.

In 1814, Samuel was elected as a representative to the Massachusetts state legislature (called the General Court; Maine was then a part of the Bay State), where his diatribes on New England’s grievances against the general government during the war against Great Britain made him seem too radical even for the Hartford Convention. In his speech on the proposed convention in the legislature, he declared himself “ready to take the sword in one hand and the constitution in the other, and demand at Washington the constitutional rights of the people.”<sup>14</sup> The very year Samuel proposed to march on Washington, sword in hand and “knee deep in blood” (according to one account), the capital was, in fact, marched upon, and then torched, by the British.<sup>15</sup>

Despite having flouted the first rule of respectable childrearing, Samuel was an extraordinary father. In 1813, Samuel married Deborah Chandler, and with a wife at home he finally felt able to bring his young son, now seven years old, to come live with him. Deborah proved a loving stepmother, even though she and Samuel soon produced no less than ten

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<sup>12</sup> Francis Fessenden, *Life and Public Service of William Pitt Fessenden* (Boston, 1907), 34.

<sup>13</sup> Frederick Douglass to Francis Fessenden, Oct. 10, 1881. Fessenden Collection, George J. Mitchell Department of Special Collections & Archives, Bowdoin College Library.

<sup>14</sup> William Willis, *A History of the Law, the Courts and the Lawyers of Maine* (Portland: Bailey & Noyes, 1863) 549.

<sup>15</sup> “Knee Deep in blood” comes from *Pittsfield Sun*, July 8, 1818. Reprinted from the *Eastern Argus* (Portland).

additional children, all but one of whom lived to adulthood. The growth of Samuel's family was matched by that of his law practice, and in 1822 he moved both to Portland, which was experiencing a rush of prosperity that rapidly transformed the quiet seaside town into a thriving commercial harbor. At a time when less than one percent of Americans attended college, Samuel raised five graduates of Bowdoin and three graduates of Dartmouth. Four of his sons became lawyers, three doctors and one a minister. He is the only father in American history to have three sons representing the same state in the United States Congress at once. William Pitt Fessenden was the most brilliant of the Fessenden boys, and, for a time, the most troubled.

An exceptionally precocious child, Fessenden read everything he could get his hands on. He mastered Latin well-enough to read Virgil's *Aeneid* by the time he was ten. At eleven, already too advanced for the local school, Pitt Fessenden was examined to enter Bowdoin College. Candidates for admission to Bowdoin were expected to write Latin grammatically, and be well versed in Geography and Algebra, Cicero's Orations and the Gospels in their original Greek – quite a lot to learn during the same decade in which one confronts the elemental challenges of walking, speaking and eating. He passed his exams, but the president of the college, struck by his youthful appearance, advised that he wait a year before enrolling. This he did, joining the Bowdoin Class of 1823, but the delay hardly made much of a difference. Nathaniel Hawthorne was two years older than Fessenden but two years behind him at Bowdoin. A drawing of the twelve-year old college boy captures just how absurdly childish he looked when he first enrolled at Bowdoin. One might easily mistake him for a lovely little girl.<sup>16</sup>

But that did not prevent him from getting into trouble. The first discreditable mark on his record came during his sophomore year, when he and a few other students raucously celebrated the end of their algebra course with too many strong drinks. A window was broken, and

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<sup>16</sup> Illustration published in Francis Fesenden, *Life*, 1:2.

Fessenden was fined two dollars for his involvement in the revelry. Another student was suspended. That was the first of 13 disciplinary measures taken against him during his four years at Bowdoin. One evening toward the end of his senior year, Fessenden joined a mob of students to confront a group of local residents who were believed – wrongly, it turned out – to have attacked a fellow classmate. Squabbles between “town and gown” were an old tradition at Bowdoin, so the minor riot was not a cause for serious concern. Fessenden’s disrespectful behavior toward college officials who intervened during the mêlée, however, could not be overlooked. The next morning, the officials visited him at his room to discuss his behavior, whereupon Fessenden apparently went crazy, spouting obscenities at them and then yelling insults from his window as the officials departed. For this outburst, he was summarily expelled.<sup>17</sup>

But it wasn’t just the outburst, Bowdoin’s president, William Allen, explained in a letter. The college authorities, he wrote, “consider young Fessenden, notwithstanding his youth, as one of the most unprincipled and corrupt young men in the college, & they are able to explain the grounds of their persuasion if it be necessary to vindicate the justice of their measures.” “Unprincipled” and “corrupt” were not terms to be taken lightly in the early nineteenth century. Allen could not have expressed a more severe judgment, and his offer to support it with evidence “if it be necessary” was clearly intended as a threat to convince Fessenden and his father to let the matter rest. A few weeks before his expulsion, Allen darkly related, Fessenden had, without permission, gone carousing at a seedy local tavern on a night when “several harlots from Portland” were known to have enlivened the establishment. The accusations of sexual misconduct undoubtedly prompted some guilty memories in Samuel Fessenden, and he fought

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<sup>17</sup> Cook, *Civil War Senator*, 14-16.

like a tiger for his son. Succumbing to protests from his relentless father, the college awarded the intemperate young scholar his degree the following year.<sup>18</sup>

This near-disgrace had a powerful impact on Fessenden, though he never outgrew the fierce emotions that fueled his college outburst. Chastened, he promised his father he would learn “discretion with regard to my temper and my feelings.” At the same time, he would not apologize for being proud, for refusing “to lie still and be trodden.”<sup>19</sup> Fessenden gradually learned to master his unruly nature, however, and the rash, destructive outbursts of his youth matured into relentless, purposeful ambition.

As a college graduate, struggling to find a career at the tender age of 16, Fessenden discovered a world even less welcoming than the one he inhabited under his slightly priggish overseers at Bowdoin. The next several years brought a few mighty blows: career struggles, the death of a beloved fiancée, and the letter from the mother he did not know he had. Upon receiving that letter, Fessenden promptly wrote his father asking for an explanation and angrily claiming his primary interest in the matter: “Will you have the goodness to remember...that this is *my* secret, and as such do not even wish it communicated even to your wife – my mind not being exactly cool enough to bear the consciousness of her acquaintance with what concerns *myself* in this particular.”<sup>20</sup> His reference to the woman who had lovingly raised him since he was seven as “your wife” is an especially jarring signal of the turmoil this revelation must have wrought. He declined his mother’s request for a visit.

Determined to find a place for himself in the world, Fessenden described himself at this time as “a sober, moralizing man, with little care for anything but to win prosperity.”<sup>21</sup> In 1832,

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<sup>18</sup> Jellison, *Fessenden*, 10-11; and Cook, *Civil War Senator*, 14-16.

<sup>19</sup> William Pitt Fessenden to Samuel Fessenden, July 29, 1823. Quoted in Cook, *Civil War Senator*, 15.

<sup>20</sup> W.P. Fessenden to Samuel, Oct. 30, 1827. Fessenden Collection. Cited in Cook, *Civil War Senator*, 21.

<sup>21</sup> Fessenden, Francis, *Life and Public Service*, 6.

he married Ellen Deering. His new father-in-law, James Deering, was one of Portland's wealthiest shipping merchants. So the marriage had obvious practical advantages for an ambitious young man struggling to establish himself. Fessenden came to care deeply for his wife, and she for him. But their marriage was never passionate. And as childbearing took a toll on Ellen's health, her husband's tenderness contained as much sympathy as affection.

Even at the start of their marriage, Ellen had to share her husband with what she ironically referred to as "the Dear Public."<sup>22</sup> In 1831, he was elected to represent Portland in the lower house of the state legislature at Augusta. And, though only 24 years old, he quickly emerged as the leader of the anti-Jacksonian party, a group that soon began calling themselves Whigs, an homage to the British party that had opposed absolute monarchy. The name was intended as an indictment of Andrew Jackson's political ambitions, but for Fessenden, who inherited a lifelong love of British history from his father, Whiggery meant much more than that.

Despite his auspicious start in politics, Fessenden was unable to support his family as a lawyer in Portland. And so in 1834, just after becoming a father, he left the overcrowded Portland bar to establish a practice in the booming lumber town of Bangor, 130 miles northeast from home, where his wife, ill from childbirth, and their newborn son, James Deering Fessenden, remained. Fessenden hated the rough, frontier social atmosphere of the town, and its opportunities quickly paled before its hardships. "Home?" Fessenden wrote in a letter after noting that the thermometer had registered negative 24 degrees during his trip to Bangor, "I wish to heaven I was there and never obliged to leave it."<sup>23</sup> Upon returning to Portland in 1835, he established a law practice with William Willis, a scholarly man ten years Fessenden's senior.

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<sup>22</sup> Cook, *Civil War Senator*, 119.

<sup>23</sup> *Ibid.* pp. 10-11.

The partnership thrived, and soon enough he rivaled his father as the preeminent attorney in town.<sup>24</sup>

In 1837, Fessenden interrupted his legal practice to accompany his father's old friend, Daniel Webster, on a tour of the West. Webster had become Fessenden's godfather, as he never failed to recall, after riding twenty miles through a blizzard to stand at the christening. But it wasn't until this trip that the two became close friends. The Western tour failed to help Webster capture the Whig nomination in 1840, a development Fessenden quickly foresaw. Webster's manner of interacting with the crowds, he wrote, was "decidedly bad." The Great Man would have been much better off staying home, he perceptively observed, and letting "his public fame and public service speak for him."<sup>25</sup> Nevertheless, for Fessenden, the trip was hardly a failure. It signaled his arrival as a rising young man in the nation's politics and allowed him to meet many of the most eminent men in the country, including Henry Clay. The Whig's electoral triumph in 1840 didn't do much for its greatest champions, Clay and Webster, who lost the party's presidential nomination to William Henry Harrison, but the populist campaign for "Tippecanoe and Tyler too" helped elect Fessenden to the United States Congress. Two months before he took his seat, on January 6, 1841, Ellen gave birth to the couple's fourth child. In a gesture that suggests old wounds had begun to heal, they named their son Samuel.

At 35 years old, a father of four healthy sons, a prosperous lawyer and now a congressman, Fessenden was well and truly on his way. Having weathered the disappointments of his early manhood, the sunny possibilities of a cosseted, precocious youth again came into view, and no prize of a noble ambition seemed beyond his grasp. On his way to take his seat in the United States Congress, Fessenden stopped in Boston, where he finally introduced himself to

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<sup>24</sup> Francis Fessenden, *Life*, 1:39.

<sup>25</sup> Cook, *Civil War Senator*, 39.

his mother. His father had not exaggerated, he observed in a letter home to his wife. She was indeed beautiful.

Success had diminished the earlier shame, and the happy father of four young sons no longer regarded his mother's existence as a painful secret. He had come to terms with himself. Within his intimate circle, he was a warm and happy son, husband, and father. His sons, especially, were a constant source of anxiety and joy. But in public life, the scars of youth still showed, and he wore a very hard shell.

### *II: "Treat Your Enemies as Enemies"*

"If I leave my sons nothing else," Fessenden wrote in 1856, "I shall bequeath to them the legacy of eternal warfare upon this infamous slave system, in all its parts and aspects."<sup>26</sup>

Fessenden had not meant this literally, however, and when the real war came it was the one price he was reluctant to pay. All four of Fessenden's sons were eager to give themselves to the cause. And whatever fatherly pride he took from their response was overwhelmed by a feeling of unutterable dread. The war brought no harsher test of his convictions, as he watched his sons put their lives at risk, in the name of the values he had taught them, in the deadly conflict he helped make for them.

As a powerful Senator, Fessenden was in a position to intervene on his sons' behalf during the war, and he happily did so. No Fessenden was ever unfairly overlooked for a promotion. But this nepotism did nothing to increase their safety. Officers died at a higher rate than enlisted men in the Civil War, and generals were at the greatest risk of all. Fessenden was

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<sup>26</sup> Cited in Robert J. Cook *Civil War Senator: William Pitt Fessenden and the Fight to Save the American Republic* (Baton Rouge, 2011), 105.

unwilling to use his influence to keep his sons out of harm's way. When he learned that a friend, Senator Grimes of Iowa, had attempted to secure Frank a diplomatic post abroad, Fessenden quickly wrote to President Lincoln to disavow any prior knowledge of the effort: "I hasten, therefore, to relieve you by saying, explicitly, that I do not ask an appointment for my son," he wrote to Lincoln. He could have left it at that, relieving his conscience without destroying the chance that his son might serve his country from an honorable and safe post. But Fessenden went further. "[A]nd," he continued, "under existing circumstances, [I] should decline to receive one if offered."<sup>27</sup> Though he refused to secure a safe appointment for Frank, he did not want him to enlist. A few months later, as Frank marched off to war, Fessenden wrote, "I would much rather he had been willing to remain at home, but I could not refuse my own contribution to the cause of the country."<sup>28</sup>

Fessenden was most reluctant to see his oldest and youngest sons depart for war. "I cannot reconcile myself to James leaving his business and family," he wrote of his oldest son.<sup>29</sup> But James was 28 eight years old, and his father's opposition did not delay him from joining that spring. Over Sam, however, who was still a minor, Fessenden had legal and financial control, and he was determined to use it. "I have made up my mind," he wrote soon after the first Battle of Bull Run, "that [for Sam] to go into the Army now would just ruin him, and he has set-himself down to the law. If he is *needed*, I am content to let him go, but not otherwise."<sup>30</sup> Sam was relentless, however. He enlisted that autumn. "What I hope for," Sam wrote to his father, "is that before the war is over we may show of what stuff we are made."<sup>31</sup>

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<sup>27</sup> W.P. Fessenden to Abraham Lincoln, March 25, 1861.

<sup>28</sup> Fessenden to Lizzie, June 26, 1861.

<sup>29</sup> Fessenden to James Grimes, September 26, 1861. Fessenden Papers.

<sup>30</sup> Fessenden to Frank, August 18, 1861. Fessenden Papers. Bowdoin.

<sup>31</sup> Sam to W.P. Fessenden, March 20, 1862.

Ultimately, the only son who never saw combat was William, but this was not from any lack of desire. In early spring he seemed the most eager of his brothers to fight. Right after Fort Sumter, William opened a recruiting office to create his own volunteer unit. “A few days of hard work, however, brought back such a return of his old complaints that he was compelled to give up,” Fessenden wrote. “He is too feeble for hard work.”<sup>32</sup> But his absence from the war was, in a way, as unenviable as anything endured by a soldier. “You cannot imagine what I have had to hear,” he wrote to his father in 1864, by way of asking for a commission, “on account my being the only one of the family not in the service.”<sup>33</sup>

Early in 1862, as Fessenden argued in favor of the Legal Tender Bill, the one policy necessity of the war that gave him serious doubts, he briefly paused to predict the consequences of a Union defeat. Even if the Rebellion were successful, he declared, “We retain all that...make a great, a prosperous, and a glorious people; and I am not certain that what we might lose in extent of territory and in the production of certain staples, even should this rebellion be successful, we should not gain by greater homogeneousness and singleness of purpose...and the loss of what after all must be conceded to be an element of weakness to any nation on the face of the earth...”<sup>34</sup>

So a successful rebellion might not even qualify as a national setback. And yet all that Fessenden held dear, the lives of three of his sons – each one of them more precious to him than his own – might be sacrificed to prevent that outcome. So why not give up the struggle and have peace? The father surely felt the question in his very bones. But his resolve in the war only hardened with its costs.

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<sup>32</sup> Fessenden to Lizzie, April, 1861; June 2, 1861.

<sup>33</sup> Wongsrichanalai, *Burden of their Class*, 203.

<sup>34</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 764.

Fatherly affections create their own biases, but they are a sure cure of illusions about war. Throughout the conflict, Fessenden combined a hardened realism with an unpretentious awareness of the loftiest elements involved in the Union cause. He wrote General John C. Fremont a private letter of support immediately upon learning that President Lincoln had rebuked his emancipation edict in Missouri. "It was a most weak and unjustifiable concession to the Union men of the border states," Fessenden wrote, "who cannot take care of themselves, and who are haunted by this slavery demon, night and day."<sup>35</sup> The sectionalism implicit in Fessenden's attitude toward "the Union men of the border states" is striking. To a nationalist, those unfortunate citizens were at the center of the storm. But Fessenden regarded them more like helpless allies, whose screeching demands exceeded their contributions to the cause.

Fessenden also believed the slaveholders had earned a reckoning with "this slavery demon," and he hoped the war would help unleash it. "If the burning of Charlestown is the work of negroes, as many suppose, I hope it is the beginning of a terrible retribution," he wrote in February of 1861, "in response to a false (as it later turned out) rumor that slaves had begun a rebellion in the cradle of secession. "Many southern men say that the question of negro rising is only one of time."<sup>36</sup>

In the summer of 1862, however, when Fessenden delivered an impassioned speech in favor of enlisting black troops, the *Chicago Tribune* reported that the speech "amazed Radical Republicans," for wasn't he a "crabbed conservative"?<sup>37</sup> That perception, even among his own colleagues, goes to show how useless the political label is for anything other than shallow rhetoric. Months earlier, with Fessenden's knowledge, his eldest son James had begun organizing the first black regiment under the authority of General David Hunter, though Lincoln

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<sup>35</sup> Fessenden to James Grimes, September 26, 1861.

<sup>36</sup> Fessenden to William H. Fessenden, Sept. 26, 1861.

<sup>37</sup> Cited in Eric Foner, *The Fiery Trial*, 214-215.

disbanded it. James had been the only member of Hunter's staff willing to take the assignment.<sup>38</sup> But Fessenden avoided the excessive rhetoric others so often indulged in discussing that question – presenting black troops as a panacea that would bring immediate victory, on the one hand, or sanctimoniously presenting oneself as the great white savior of the black race on the other. Fessenden disdained all pious moralizing in discussing the grim work ahead. The army's job was to break the rebellion, not sooth the feelings of those engaged in it. Killing and destruction was the work at hand, and it should be done as quickly and ruthlessly as possible, he declared in his speech on enlisting black troops.

I advise it here from my place, treat your enemies as enemies, as the worst of enemies, and avail yourselves like men of every power which God has placed in your hands to accomplish your purposes within the rules of civilized warfare. The man who tampers with this question, who makes a talk about negroes for services which they can well render, and which they are able to render and ready to render, and which can save the lives of our friends and brothers; the man who hesitates because they are negroes – let me say, it makes me feel sometimes a doubt whether there is not something wanting after all in the heart of such a man.<sup>39</sup>

Just a few weeks before making these remarks, Fessenden had received a letter from his youngest son, Sam, who had just witnessed his first few weeks of hard fighting in the Shenandoah Valley. "I write partly to relieve my mind and partly to inform you that we *are not* crushing the rebellion but making enemies wherever our army goes," Sam wrote to his father on June 13, 1862. "Since then I have witnessed one continual course of plundering, robbing, insulting women, and destroying what could not be used," he continued.

Not content with taking from poor people whatever they had to eat, our troops, the representatives of what we call the best government on the face of the earth, have broken into cupboards, smashing to pieces what household utensils they could not carry off; have opened wardrobes, tearing up clothes of no use to any but the owners; have insulted the women they first robbed, striking them in some instances with the muskets they held in

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<sup>38</sup> Fessenden, *Life and Public Services*, 256.

<sup>39</sup> *Congressional Globe*, 37th Congress, 2nd Session. (July 9, 1862), 3201.

their hands...Every outrage, the worst passions prompt one to, has been attempted. We are a disgrace to our country, and if we are whipped I shall not be sorry...<sup>40</sup>

Sam then concluded by recalling the lofty ideals that had drawn him into the conflict in the first place. “If the present troubles and trials are the crucible fires in which our nation is to be made ‘white and tried,’” he wrote, “I welcome it with all the ardor of a young man interested in his country’s future. Whatever I am, or have, or hope for, I am willing to sacrifice... While I am desirous that the South should suffer, I do not wish to see children starved, and women insulted by the upholders of our government.”<sup>41</sup> Fessenden’s response showed concern for his son but not for those, however vulnerable, belonging to the hostile society his son was fighting to subdue. “You are now seeing the rough side of a soldier’s life, my dear boy,” he wrote to his son during his campaign in the Shenandoah, “and I hope you will get well through it.”

Fessenden’s speech on the Militia Act authorizing the enlistment of black troops seems like a more elaborate response to his son, who was then visiting his father on brief medical furlough. The fate of every soul in the South mattered little to Fessenden next to the fate of his three sons fighting there. “[W]e must do all other men would do and ought to do in such a case,” Fessenden told the Senate with his son likely watching from the gallery, “avail ourselves of all the means which the great Ruler of the Universe has placed in our power in order to overwhelm the wretches who are thus making war upon us and upon humanity and upon civilization.”<sup>42</sup> He naturally despised the excessive moral cant indulged by Senators who sent gentle-hearted boys to contend with the harsh realities of actually fighting the war. That did not make the cause less “just and holy” in Fessenden’s mind. But it was not a humanitarian crusade fought by

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<sup>40</sup> Sam Fessenden to William Pitt Fessenden, June 13, 1862.

<sup>41</sup> Sam to W.P. Fessenden, June 13, 1862.

<sup>42</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 3202.

professional soldiers. It was a grim, defensive struggle, fought by citizens who had no preparation for war and every right to the peace and safety their enemies denied them.

“For the loss of a beloved son, there is no such thing as consolation.” Fessenden wrote soon after learning that Sam, after returning to duty, had died at the Second Battle of Bull Run. “There is, however, a melancholy satisfaction in reflecting that he died in a just and holy cause to which he devoted himself from a sense of duty to God and his country.”<sup>43</sup> That melancholy sentiment captured Fessenden’s attitude toward the war throughout. He lacked the ideological blinkers that allowed others to ignore the horrors and dangers that surrounded them – not only the awful carnage of the war but the terrible uncertainty about where it was leading. He saw all of this clearly. But there was no honorable way of shirking the grim duty of seeing it through.

In eulogizing a departed colleague that winter, Fessenden recognized a virtue he exemplified himself. “His courage was not of that anomalous character which sees no terror in the comet as it rushes athwart the sky,” he said, referencing Milton’s *Paradise Lost*, “and from its horrid hair, Shakes pestilence and war’ while it trembles at every falling star.”<sup>44</sup> When Fessenden delivered this eulogy, in January 1863, the country was still reeling from its defeat at the Battle of Fredericksburg, the worst military disaster the Union cause had suffered so far. It was for the best, Fessenden observed, that mortal eyes could not see “beyond the curtain which divided the present from the future,” for it might prevent men from doing their duty. “Could that mysterious vail be lifted but for a moment, even the stoutest heart might be appalled by what lies beyond.” A year earlier, Fessenden had seen little at stake, aside from honor, in the struggle against the South’s bid to establish a separate slaveholder’s “republic.” But the alternatives had

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<sup>43</sup> William Pitt Fessenden to John L. Hodson, September 14, 1862.

<sup>44</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 3<sup>rd</sup> Session, 294.

since become as stark as heaven and hell. The frightful hour had arrived, he said in the Senate, “when the question of man’s capacity for self-government is to be finally determined;

[W]hen it is to be definitely ascertained whether law and order or anarchy and misrule are to dominate in this hemisphere; whether the cause of progress and civilization is to be benefited or injured, strengthened or weakened, by our example; whether freedom to man is henceforward to be the rule or the exception in government; whether, in fine, this western world is to present the imposing spectacle of a great, united, prosperous, powerful, and free, people, exhibiting the virtues and bestowing the benefits of peace and a regard for human rights upon all mankind; or whether we are to become a hissing and a byword – a feeble gathering of disunited, scattered, fragmentary, shadowy republics, powerless for good, feared and honored by none, despised by all, and most of all by ourselves, the degraded and degenerated descendants of dead heroes.<sup>45</sup>

The bitter consequences of defeat moved him much more than the supposed fruits of victory, for whatever those turned out to be, they would not return to mourning fathers their children.

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A political culture that produces civil war is unlikely to foster a respect for practical moderation, even as it makes that quality so urgently necessary. In the welter of competing fanaticisms, an affable broker is likely to be dismissed with contempt. Thus the hostility and distrust almost all Senate leaders showed toward Seward, who had once been their leader. Fessenden was not affable. Senators joked that a visitor to their chamber could reliably expect to see four things on a given day: “Sumner would make a classical speech, Wilson introduce a bill, McDougal would get drunk and Fessenden get mad.”<sup>46</sup> Fessenden’s angry outbursts were purposeful, however. Vital legislation, in order to pass, required the support of most Republicans, and he tended to lash out at anyone who impeded this necessary consensus with inessentials or abstractions. He clothed his pleas for practical flexibility in a prickly, but entirely sincere, insistence on doing one’s duty.

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<sup>45</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 3<sup>rd</sup> Session, 294.

<sup>46</sup> Julia Trumbull to Hattie Trumbull, March 28 and 29, 1862. George Jarvis Brush Papers. Yale University.

Two skirmishes with Lyman Trumbull during the 37<sup>th</sup> Congress provide revealing examples of Fessenden's style of leadership. In a frustrated outburst after failing to get enough votes to pass his sweeping confiscation bill, Trumbull blamed Fessenden for the failure. "I should be very glad to have my friend from Maine support this bill," Trumbull heatedly observed on the floor of the Senate, referring to Fessenden. "I have no hope that he will vote for any confiscation bill, not the least, and very likely there may not be enough in the Senate to pass any bill..."<sup>47</sup> This was a hard accusation, as Fessenden had not actually spoken publicly against the bill. His opposition consisted only in not actively supporting it. But it was also a testament to his enormous influence in the Senate.

In a long explanation delivered several days later, Fessenden demonstrated how seriously he took Trumbull's accusation. Preoccupied with his responsibilities as Chairman of the Finance Committee, Fessenden insisted that he had not had time to form an opinion on the bill or listen to the debates surrounding it. But he said he was "in favor of confiscating the property of rebels and have been from the beginning."<sup>48</sup> Such a consequential bill, however, inevitably provoked sharp differences even among those who favored the basic proposition. "We are all of us friends to good sound legislation, and the only thing is, how can we accomplish it and do what the good of the country requires, and, if we entertain different opinions, how can we come together upon a common ground, having something yielded on one side, perhaps, and something upon another, of that opinion, and after all come to a conclusion of the great majority, which is very likely to be right on the subject."<sup>49</sup>

In the next breath, however, Fessenden stridently asserted his right to independent judgment. "But I ask gentlemen, suppose I am opposed to confiscation, what then? I have a right

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<sup>47</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1922.

<sup>48</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1963.

<sup>49</sup> *Ibid.*, 1963.

to be, and no man has a right to call me to account for it. No man has a right to question my motives or my opinions, and no man has a right to speak for the people, to threaten me with the judgment of the people or to talk about the disappointment of the people.”<sup>50</sup> Fessenden well knew that confiscation was wildly popular in the North. As Chairman of the Finance Committee, he was framing the most sweeping tax bill in American history. And since, as all good Americans know, taxation is but a polite word for confiscation, the charge that he was unwilling to touch rebel pocket books was apt to be very damaging indeed. “I shall never consent to tax our own people one single cent,” Ben Wade declared, “until this Senate shall have given an indication that they are willing to impose some burdens on the rebellious part of the community.”<sup>51</sup> Nothing made Fessenden bristle more quickly than the threats of popular wrath, with its implication that he would be swayed by that consideration. “[W]e should be unworthy of our seats if we allowed any supposed views of the people, our constituents, to influence us to go against what was our deliberate judgment of our rights and our duties under the Constitution of the United States.”<sup>52</sup>

In the final days of the session, when President Lincoln threatened to veto the Confiscation bill after it had passed the Senate, Fessenden was delegated the role of conferring with the President to avoid what amounted to a party rupture in an election year. Lincoln’s first objection was that the bill “declares forfeiture extending beyond the lives of the guilty parties.” He also objected to *in rem* proceedings against rebel property holders as a violation of due process.

In a hasty compromise effort, the Senate passed an “explanatory” resolution limiting all forfeiture to the natural life of the offender. Ben Wade howled at this “total surrender of the

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<sup>50</sup> Ibid., 1963-1964.

<sup>51</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 2164.

<sup>52</sup> Ibid., 1964.

dignity of this body; it is an unconstitutional submission... I am astonished that men should come in here, creeping in at the back door, with vetoes.”<sup>53</sup> Trumbull also denounced the resolution as an unconstitutional collaboration between the two branches of the Government.<sup>54</sup> Fessenden denied any impropriety in soliciting the President’s Constitutional views on a piece of legislation. He then appealed to basic common sense. A Presidential veto would likely prevent the passage of any confiscation measure, and set the party’s leaders at each other’s throats. The resolution averted that catastrophe at minimal cost to the bill, and without touching its emancipation provisions.

“If all the essential features of the bill can be retained,” Fessenden asked “or if the greater number of the most essential features of the bill can be secured by yielding one, without which the bill cannot become law or may not become law, what is the objection, as a matter of common sense and common prudence, to taking the best we can and the most we can under such circumstances? Is there any loss of dignity in that?”<sup>55</sup> He then insisted that the President had as much right to his opinion as any Senator. If the President “sees a constitutional difficulty in his way, which he cannot surmount, can you ask him to surmount it?” he asked. “Can any Senator, or any Representative, in decency request the President of the United States, acting under his oath to support the Constitution of the United States, to violate his view of the Constitution, in obedience to yours or mine? No, sir. No man could ask him to do so without being guilty of a personal insult.”<sup>56</sup>

Fessenden himself, however, had acknowledged an important qualification to this position in an earlier debate over the Administration’s arrest of citizens suspected of treason in

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<sup>53</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 3375.

<sup>54</sup> *Ibid.*, 3380.

<sup>55</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 3376.

<sup>56</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 3376.

the loyal States. It was obvious, Fessenden insisted, that the Administration had no legal or Constitutional authority to make the arrests, and equally obvious that overwhelming necessity compelled them to do it. “A man who stops, who hesitates, in such a case to inquire, when he sees that the building is about to be wrapped in flames, whether there is a law to guide his action, and pauses for fear that the newspapers may be down upon him, or that he may be called to account, that he may be impeached even, is unfit for a great place.”<sup>57</sup> Fessenden, characteristically, argued for practical flexibility in terms as uncompromising as any other competing dogmatism. While Trumbull dismissed “necessity” as “the tyrant’s plea,” Fessenden invoked it as another word for duty. The man who shirks his plain duty on the plea of abstractions is worse than a tyrant; he is a coward.

Fessenden was never an apologist for the President however; he fully shared the radicals’ discontents with the timid conduct of the war, though he despised the intemperate habit of howling in public when the government desperately needed the public’s confidence. “If the President had his wife’s will and would use it rightly our affairs would look much better,” he privately complained in early 1862. “We suffer,” he wrote in another letter at the end of the year, “in having our military operations directed by men who are not fighting for an idea – indeed, have no feeling in common with the true cause.”<sup>58</sup> But he also understood that moral idealism was not a substitute for military competence. The brilliant generalship of those fighting on behalf of slavery proved nothing if not that. “I believe the military education that is obtained [at West Point] to be of the greatest value to the country,” he had said earlier in the Senate. “But I believe

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<sup>57</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 96.

<sup>58</sup> Fessenden to Samuel Fessenden, December 20, 1862.

the moral education, if I may call it such, is a very bad one; that the pupils there are educated in a narrow, exclusive, miserable spirit, which they are exhibiting every day...”<sup>59</sup>

Nevertheless, an appreciation of the true cause would not prevent the army from getting whipped or the country from going bankrupt. For all the terrible failures of the military professionals conducting the war, the idea that the army would be improved by replacing them with high-minded orators was fatuous. And the Congressional impulse to take control over the conduct of the war was positively insane. “I very much fear that there will be an outbreak in Congress,” Fessenden wrote in December of 1862, “which would be perfectly justifiable so far as the government is concerned, but which would only aggravate the evil by effecting nothing beyond alienation, and putting the President more decidedly into the hands of the democrats. They would like the military power now. That might give them the civil power also...”<sup>60</sup>

Congress had two vital tasks, each complicated by a crucial limitation: To furnish the government with the sinews of war while preventing it from going bankrupt, and to push the Administration toward the most vigorous policy possible without provoking a rupture between the two branches of government. Any other catastrophe might be overcome, but crashing through either of these two prudent boundaries would be fatal. Fessenden worked vigilantly to hold Congress on the safe path while lashing it forward as quickly as possible.

Though his support of the Second Confiscation Act was decisive in getting it passed – “when *he* moves it signifies that the whole glacier has started,” as the *Chicago Tribune* reported – Fessenden himself considered the legislation dangerously misguided.<sup>61</sup> The risks grossly exceeded the possible benefits. He told Senator Browning, one of two Republicans who voted against the measure in the Senate, that “it would have been better not to have legislated on the

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<sup>59</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, 165.

<sup>60</sup> Fessenden to Lizzie, December 7, 1862. Fessenden Family Papers.

<sup>61</sup> Tribune quote cited in Foner, *Fiery Trial*, 214-215.

subject of confiscation at all.”<sup>62</sup> Fessenden deplored the President’s refusal to order generals to emancipate slaves wherever they took control of rebel territory, and had since the beginning. But the idea that Congress could legislate its way into controlling the government was a dangerous fantasy. They did not have the votes to override a veto and provoking one would be ruin. There was a crucial difference between legislation *authorizing* the President to undertake a controversial war policy – which sent a clear party signal – and legislation that attempted to force his hand. The first kind of legislation was safe and useful; the second kind was at once dangerous and impotent. The Second Confiscation Act clearly belonged to the latter category. Yet Fessenden eventually supported the Act in order to maintain control over the dangerous impulses that produced it.

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There was also an element of humbug (to use the prevailing term) in the Second Confiscation Act that Fessenden, as Chairman of the Finance Committee, was in a unique position to resent. *Make the rebels pay the expenses of putting down their rebellion!* was an easy applause line for Northern politicians, but it would not help the government meet its immediate expenses. And this problem threatened the country with ruin. The country’s financial condition was desperate from the moment the war began. Beginning with the depression in 1857, the federal government had run deficits for four consecutive years – the first time it had done so since the War of 1812. Unable to pay for even the modest expenditures of 1860, the Federal government was plainly in a dangerously weak position to undertake an enterprise that ultimately proved far more costly than all its previous expenditures, from 1789 to 1861, combined. When Congress convened in December of 1861 this problem threatened the country with complete calamity.

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<sup>62</sup> Browning, *Diary*, 2:560.

That year the Treasury collected just \$49 million in revenue. At the start of 1861, the Ways and Means Committee estimated that the government's expenses for the next six months totaled \$350 million, of which \$100 million were already due. The Union's greatest advantage over the South, its material resources, would be of no use if the decentralized Republic failed to harness them effectively. "National bankruptcy is not an agreeable prospect," The London *Post*, smugly noted in January 1862, "but it is the only one presented by the existing state of American finance...Never before did a flourishing and prosperous state make such gigantic strides toward effecting its own ruin."<sup>63</sup> Meeting this crisis meant revolutionizing the fiscal structure of the United States.

"At the beginning of 1862, we were physically strong but financially weak," John Sherman recalled. "The problem was not whether we could muster men, but whether we could raise money. We had to create a system of finance that would secure an enlarged revenue, unquestioned credit, absolute certainty of payment of interest in coin, a national currency and such economy as is possible during war." The task, Sherman continued, was "a Herculean one, and the labor required [fell] chiefly on Mr. Fessenden, the chairman of the [finance] committee..."<sup>64</sup> The tax system the committee designed reached into every crevice and cranny of the American economy. Virtually every purposeful activity, except breathing and preaching, had a special tax. Not even street jugglers were overlooked. While the traditional workhorse of federal finance, the tariff, remained in place, the indispensable tool of modern leviathans, the income tax, was imposed for the first time in American history. All incomes over \$800, a sum that exempted wage earners, were taxed at 3 percent and incomes over \$10,000 were taxed at 5 (later 10) percent. "It was one of the most searching, thorough, comprehensive systems of

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<sup>63</sup> Cited in John Sherman, *Recollections of Forty Years in the House, Senate, and Cabinet* 2 Vols. (New York: 1895), 281.

<sup>64</sup> *Ibid.*, 259.

taxation ever devised by any government,” James Blaine later marveled, though scholars familiar with later federal budgets might sigh as Blaine went on to describe the law as “so extended and so minute that it required thirty pages...to express its provisions.”<sup>65</sup>

Fessenden’s tax law promised to put the country on a more stable financial footing in the future, and reassure its creditors, but it could do nothing to allay the immediate fiscal crisis. The government had expenses to pay *now*, with the country’s leading banks crippled and the Treasury virtually empty. Where was the money to come from? The only option, it seemed, was to print it, but the United States had no national currency at the start of 1862. The only money made out of paper was issued by 1,600 state-chartered banks. This paper was a claim on a given amount of gold, and was therefore only as good as the shiny metal supposedly contained in the issuing banks’ vaults. The Union defeat at Bull Run and the threat of a second war with Great Britain made many holders of such paper anxious to redeem their claims for gold, and they had good reason to do so: the amount of these claims greatly surpassed the amount of gold available to redeem them. On December 30, 1861, New York City’s largest banks stopped exchanging their notes for gold, and the smaller banks throughout the country soon followed their example.<sup>66</sup>

And so, in desperate need of money, the government created its own. In February Congress passed the Legal Tender Act, which authorized the Treasury to print \$150 million in notes, backed only by the authority of the United States, as legal tender for all debts, public and private. No other policy necessity imposed by the war troubled Fessenden more. He considered the legal tender provision unconstitutional, immoral, cowardly and ruinous. “What *shall* I do?” he wrote beseechingly to his cousin Lizzie:

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<sup>65</sup> James Blaine, *Twenty Years of Congress from Lincoln to Garfield*, (Norwich, Conn, 1884), 433; McPherson, *Battle Cry of Freedom*, 442-446; Nevins, *War for the Union*, 2:213.

<sup>66</sup> Grant, *Mr. Speaker!* 99-101.

It is opposed to all my views of right and expediency. It shocks all my notions of political morality and national honor. The Sec. [of the Treasury] is in a panic, and has forced it through the House. I am beset with letters and telegrams and told on every hand that not to yield is death to the Union – that without legislation we shall be utterly bankrupt, and cannot carry on the war. I do not believe it, and yet ought I to set up my own judgment as a standard of action. The position I occupy is horrible and this thing has tormented me day and night for weeks. The thing is wrong in itself, but to leave the Gov't without resources at such a crisis is not to be thought of. Would that some kind spirit would only lift the curtain and tell me what I ought to do. If I had sought the responsibility now forced on me it would, I fear, prove too heavy for me to bear.<sup>67</sup>

Four days later, in mid-February, Fessenden still had not made up his mind, but he rose in the Senate to deliver a lengthy speech on the pending bill. “If the necessity exists,” he declared, “I have no hesitation upon the subject, and I shall have none... I would advocate the use of the strong arm of the Government to any extent in order to accomplish the purpose in which we are engaged.” At the same time, he allowed himself to ask whether, if the necessity did exist, “it would not be a more manly course to meet the matter straight in the face,” and simply confiscate property rather than take it by the craven, indirect means of inflation.<sup>68</sup> Still, not long after declaring the legal tender bill worse than outright confiscation, Fessenden voted in favor of it.

Fessenden appreciated, as only an insider can, the terrible limitations thwarting the efforts of those tasked with subduing the rebellion. They were operating a failed political system, enmeshed in its fatal defects, in order to save it from irrevocable collapse. This was not a scenario conducive to efficient governance. For all his irritable awareness of the weaknesses exhibited by the government – rampant corruption, incompetent and craven generalship, the galling necessity of bribing the patriotic support of some through cronyism and stealing the support of others through inflation – Fessenden somehow managed to combine his keen frustration with these obvious problems with considerable pride in the work of the 37<sup>th</sup> Congress. “With all its faults and errors,” he wrote privately when Congress adjourned,

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<sup>67</sup> W.P. Fessenden to Lizzie Warriner, February 8, 1862.

<sup>68</sup> *Congressional Globe*, 37th Congress, 2nd Session, 763.

this has been a great and self-sacrificing Congress. If the rebellion should be crushed, Congress will have crushed it. We have assumed terrible responsibilities, placed powers in the hands of the government possessed by none other on earth short of despotism, borne contumely and reproach, taken the sins of others upon ourselves and forborne deserved punishment of flagrant offenses for the public good, and suffered abuse for our forbearance. Well, future times will comprehend our motives, and all we have done and suffered.<sup>69</sup>

### *III: The Original Fourteenth Amendment*

Throughout the war, Fessenden avoided joining any of the debates on Reconstruction. He refused to consider the matter, he later explained, sensibly enough, because “I thought it better to attend to the proper business we had in view, to quell the rebellion, to overcome the rebellious states, to put them in a condition to be reconstructed before we undertook to reconstruct them.” But as Congress convened for the first time after the war, in December, he observed, “the proper time has now come” to consider the monumental question of how to restore the Union.<sup>70</sup>

As in the war, Fessenden’s view of the Constitutional and practical problems involved in Reconstruction was marked by honest intelligence and an absence of ideological cant. “We are told,” he said in the Senate, “that we did not wage a war of conquest. Certainly we did not...[The war] was not commenced with any such idea, but if it follows that subjugation must come in order to accomplish what we desire to accomplish and what we must accomplish, it is not our fault.”<sup>71</sup> The Constitution did not provide for civil war, and so the Republican had been compelled to rely on their sense of duty and necessity in suppressing the rebellion. To win the war, the Republicans had availed themselves of the services of the former slaves in the South, he observed in his remarks on the bill expanding the powers of the Freedmen’s Bureau.

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<sup>69</sup> Fessenden, *Life and Public Services*, 1:254.

<sup>70</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 987.

<sup>71</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 988.

Now, will any man tell me that under such circumstances, a great people having availed themselves of that very fact, having used these former slaves, having deprived the enemy of all the aid which he received from them, will now throw them upon the world without the slightest protection, without the slightest aid, without any comfort, exposed to persecution and prosecution in every possible shape; and why? Because there is no provision in the Constitution whereby Congress is authorized to feed and clothe anybody.<sup>72</sup>

To shirk such an obvious duty arising from necessities that the Constitution never contemplated would be a cowardly disgrace. “All the world would cry shame upon us,” Fessenden said.<sup>73</sup> As for the vanquished rebels, as the late Judge Taney had once said of another group, they had no rights that the North was bound to respect. The North could hold the Confederate States as conquered territories indefinitely if the safety of the Union required it. And it was for Congress, and Congress alone, to decide when those States should be readmitted.

Unlike many of his colleagues, however, Fessenden held more than one idea in his head at the same time. The South could complain of no injustice at being kept out, “but it is my doctrine that the exercise of power is always dangerous. It is for our own good as well as theirs, *and our own good in preference to theirs*, that I would hasten the day and admit them in the shortest possible time,” Fessenden said.<sup>74</sup> Though there was no way to avoid the temporary necessity of governing the South as a military despotism, “No wise or good statesman would wish it to exist for a single moment longer than it was absolutely necessary, because the inevitable result is that we shall become demoralized ourselves.”<sup>75</sup>

Fessenden’s view of the demoralizing effects of Reconstruction were undoubtedly influenced by the experience of his son James, the only one of his sons in the military who was not either dead or permanently crippled by the end of the war. James had served honorably

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<sup>72</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 366.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 990. My emphasis.

<sup>75</sup> *Ibid.*

throughout the conflict and was in no hurry to return to private life in the final weeks of the war. “I prefer the military profession to any other,” he wrote his father in early April, 1865. “And I understand it better.”<sup>76</sup> But the problems of waging war against the Confederacy were simple compared to the problems of governing the vanquished South.

“I am here now with six men” James wrote in late July of 1865 from the district of Western South Carolina, “though I expect more tonight and am looked upon as the supreme ruler of all the inhabitants white and black for a tract of country about one hundred miles square.”<sup>77</sup> To say he was understaffed and under-provisioned was an understatement. “There is enough to occupy six officers in every one of the thirteen counties of my command in administering justice, settling disputes, and keeping the country under some sort of subjugation,” he wrote. The former slaves were not getting enough to eat and were therefore resorting to robbery, a situation that created an almost impossible dilemma between the obligations of law and justice. “[N]either they nor their former masters can accommodate themselves to the new order of things...I cannot stand this work much longer. If I had been wise I should never have come here. I only hope to get away.”<sup>78</sup>

Given James’s role in organizing one of the first black regiments in South Carolina during the war, and his glowing accounts of their capacity for service to the Union cause, his weary desire to escape the chaos of the vanquished South, was a pointed reminder of the grave difficulties involved in actually fulfilling the obligations entailed by the war. James’s attitude was hardly atypical. “[G]oing home is the uppermost in the soldier’s mind,” one such soldier wrote just a little more than a month after Appomattox. “...In every tent it is the first thing in the

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<sup>76</sup> James Fessenden to William Pitt Fessenden, April 5, 1865.

<sup>77</sup> James Fessenden to William Pitt Fessenden, July 21, 1865.

<sup>78</sup> Ibid.

morning and the last thing at night the first word after salutation is when are you going home.”<sup>79</sup> Desertions increased rapidly after the formal surrender of the South. Rapid demobilization sharply limited the government’s power to reform the South, but there was virtually no support for maintaining the army at its present size.<sup>80</sup> The freedmen had earned their rights, but the soldiers occupying the South had earned the right to go home. To Fessenden’s credit, he never succumbed to the cheap moral substitute of seeing only one side of this dilemma.

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“We are embarrassed by men of extreme opinions,” Fessenden wrote home soon after becoming Chairman of the Joint Committee on Reconstruction, the most significant and powerful committee ever organized by Congress.<sup>81</sup> On one side were those who denounced the very existence of the so-called “Directory,” which presumed to judge whether the States lately in rebellion were in a condition to return to their rightful place in the Union. On the other side were those who were spoiling for a fight with the President and denounced the Committee for its timidity. In this sense, political divisions within the Republican party conformed to familiar categories of “conservative”, “moderate” and “radical.” But these same labels are utterly misleading except in this most superficial sense. Political circumstances changed too quickly and dramatically for deeply rooted philosophical commitments to remain within fixed partisan categories.

The Constitutional significance of the 14<sup>th</sup> Amendment has changed with each generation, a fitting legacy, since the purposes of those who framed it shifted almost daily as they scrambled to keep up with events. At the start of the Congressional session, in December of 1865, Republicans only identified one clear Constitutional problem requiring an amendment –

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<sup>79</sup> Cited in Gregory Downs, *After Appomattox*, 97.

<sup>80</sup> Downs, *After Appomattox*, 89-111.

<sup>81</sup> Fessenden to his father, December 31, 1865.

that of suffrage and representation. The question of black citizenship and the power of Congress to protect their freedom, virtually all Republicans assumed, had been settled by the 13<sup>th</sup> Amendment. But the Constitution clearly vested the power of defining suffrage requirements to the States. So emancipation entitled the former slave States to additional political representation, transforming those counted as three-fifths of a person into full persons, without conferring the vote on any of them. The same amendment that empowered Congress to protect black civil rights also virtually guaranteed the political ascendance of a coalition opposed to doing so. This was the essential problem of Reconstruction – how to restore Southern States to the Union while preserving reforms that had been imposed by military force.<sup>82</sup>

The problem itself never changed, but it grew at once more complicated and more pressing. Questions the Joint Committee had regarded as safe became vulnerable as the President broke into open hostility with his own party. Facing a hostile executive for the next three years, the Republicans had to enshrine virtually everything essential in the Constitution. And even more importantly, the Amendment became the basis of the Republicans' campaign in the midterm elections against the policy of the President they themselves had elected. Those framing the measure understood its sweeping permanence, but they were guided by the pressures of an immediate, overwhelming necessity – to prevent the government from falling into the hands of its enemies. And even at the very beginning, when the problem was relatively simple compared to what it became – the Republicans were baffled by it.

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<sup>82</sup> The most detailed historical account of the 14<sup>th</sup> Amendment, both its political and legal origins, is *William Edward Nelson, The Fourteenth Amendment: From Political Principle to Judicial Doctrine* (Cambridge, 1988). Still useful for political details is Joseph B. James, *The Framing of the Fourteenth Amendment* (Urbana IL, 1956). Also indispensable are the original journal of the committee that framed the Fourteenth Amendment and the interpretive essay of the scholar who rediscovered it. Benjamin Kendrick, *The Journal of the Joint Committee of Fifteen on Reconstruction* (New York, 1914).

In formulating the future 14<sup>th</sup> Amendment, Fessenden favored a provision abolishing “any distinction...of political or civil rights or privileges, on account of race, creed or color.” But this provision was defeated by, among others, his Committee co-chair, Thaddeus Stevens, who, it is safe to say, was not a conservative by anyone’s definition. Nor, however, was Fessenden more “radical.” He merely expressed the prevailing political sentiment among Republicans in his own State. And as Fessenden well knew, a prohibition against racial discrimination would not preclude States from imposing other qualifications, such as literacy tests, that would disproportionately disenfranchise the former slaves even if it were applied fairly. Stevens, by contrast, recognized that such a provision had zero chance of passing the House of Representatives. And he considered land redistribution both more important for the freedmen and more politically feasible in the North.

Class distinctions mattered far more than egalitarian impulses. Among wealthy elites in New England, even the stodgiest “conservatives” had no real qualms about black suffrage. Indeed, this was perhaps the only means of preserving a capital asset class that had become even more valuable than slavery itself had ever been – the federal debt. Conferring the ballot on the freedmen, Charles Sumner informed the Senate, was the only way that you can “save the national debt from the inevitable repudiation which awaits it when recent rebels in conjunction with Northern allies once more bear sway. He is our best guarantee. Use him.”<sup>83</sup> For New England Federalists and Whigs, who had already learned to combat one blinkered – if not hypocritical – egalitarian movement with another, this was hardly a novel or surprising suggestion. But the wholesale confiscation of wealthy planter property was hardly a precedent that New England elites, whether they claimed to be “radical” or not, were eager to establish. Indebted farmers throughout the Northwest, by contrast, who might bolt from the Republican

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<sup>83</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 685.

party over black suffrage, were unlikely to see why the rich planters who started the war should have one red cent left to their name.

The Journal of the Joint Committee on Reconstruction records the process by which the committee members grappled toward a politically viable solution to the problem of representation. In mid-January, the Committee considered two alternative amendments, both of them immensely superior to the final version eventually enshrined in Constitution. It is worth quoting the proposed amendment in full:

Article A.

Representatives and direct taxes shall be apportioned among the several States within this Union, according to the respective numbers of citizens of the United States in each State; and all provisions in the Constitution or laws of any State, whereby any distinction is made in political or civil rights or privilege, on account of race, creed or color shall be inoperative and void.

A proposed alternative to Article A read as follows:

Article B.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, counting the whole number of citizens of the United States in each State; provided that, whenever the elective franchise shall be denied or abridged in any State on account of race, creed, or color, all persons of such race, creed or color, shall be excluded from the basis of representation.

In addition to either of these alternatives, the Committee proposed a second section that read:

Article C.

Congress shall have power to make all laws necessary and proper to secure to all citizens of the United States, in every State, the same political rights and privileges; and to all persons in every State equal protection in the enjoyment of life, liberty and property.<sup>84</sup>

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<sup>84</sup> Kendrick, *Journal of the Joint Committee*, 50-54.

Combined with Article C., establishing the principle of equal political rights, Article B., was the better of the two alternative first sections since it established an enforcement mechanism within the Constitution itself. Thaddeus Stevens, however, moved to separate Article C. from either of the proposed alternatives, allowing Congress to consider them separately. The motion passed easily with ten votes. Fessenden was one of four who voted against it.

The Committee then voted on the proposed alternatives to present to Congress independently of Article C. Fessenden was one of just three members of the committee who voted for the amendment prohibiting all distinctions of political rights on account of color. One of the other two voting with him was Henry Grider, a Kentucky Democrat who considered the second amendment far more likely to fail.<sup>85</sup>

Unencumbered by a rigid sense of personal honor, Stevens was a much better political strategist than Fessenden. Amending the Constitution was a cumbersome, uncertain process. Even if Congressional leaders could get the necessary two-thirds majorities in both houses, they would have almost no control over the ratification process by State legislatures. The only absolutely essential amendment to the Constitution was one changing the basis of representation in a way that protected Republican majorities from being overwhelmed by the return of Southern States entitled to even more votes than they possessed before. If the Republicans could not get that much, they could not get anything more, and everything they had already achieved would be at risk. Once they got that amendment passed, the Republicans could reach for more ambitious ones. But even the most ambitious Constitutional amendment would not protect blacks if Congress did not have the political power to sustain it. It did not require prophetic foresight to see an obvious problem with an amendment that conferred suffrage rights on blacks without

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<sup>85</sup> Ibid., 51.

providing any means of reducing the South's political power if they refused to uphold it in good faith.

In reporting the Committee's amendment to Congress, Fessenden acknowledged that he would have preferred to abolish all caste distinctions in civil and political rights. But he accepted the Committee's judgment that no such Amendment could pass. Even if such an Amendment could get through Congress, he added, its chance of ratification by the requisite 19 States was virtually nil. "I think it would go in Maine, because we are very liberal there, and particularly well educated [Laughter]. I cannot answer for any other State, not even New Hampshire, for I believe New Hampshire will not allow Catholics to hold office..."<sup>86</sup> Timing made the question of political feasibility all the more crucial. The laborious process of ratifying a Constitutional amendment made it essential to get something passed soon, before the Southern States returned to the Union – and no one could say for certain when that would be.

No one, least of all Thaddeus Stevens, considered the amendment a comprehensive solution to Reconstruction; it was simply the safest means of preventing the South from returning to power with the help of Northern allies. "It is not all that we could desire," Fessenden said in concluding his speech on the amendment, "it is not all that our constituents could wish; it does not accomplish, as it stands now, all perhaps that it might accomplish; but it is an important step in the right direction...It opens a way by which the southern mind – to speak of it as the southern mind – may be led to do that which is right and just."<sup>87</sup>

Significantly, Stevens, who reported the amendment to the House, did not concede even the desirability of an amendment abolishing all racial distinctions. "Now, I hold that the States have the right, and always have had it, to fix the elective franchise within their own States,"

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<sup>86</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 704.

<sup>87</sup> *Ibid.*, 708.

Stevens said in introducing the same amendment. “And I hold this does not take it from them. Ought it to take it from them? Ought the domestic affairs of the States to be infringed upon by Congress so far as to regulate the restrictions and qualifications of their voters?” Not five States would adopt such a proposition, Stevens said in answer to his own question. Instead of claiming the power to regulate suffrage requirements within the States, he said, the Amendment tells the slave states, “we leave where it has been left for the past eighty years the right to fix the elective franchise, but you must not abuse it; if you do, the Constitution will impose upon you a penalty, and will continue to inflict it until you shall have corrected your actions.”<sup>88</sup>

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The most outspoken critic of the proposed amendment was Charles Sumner. Democratic denunciations were tame by comparison with the abuse Sumner heaped upon the amendment.<sup>89</sup> The proposed amendment, Sumner declared on the floor of the Senate, was “the most utterly reprehensible and unpardonable” measure ever introduced in Congress. Lest his listeners think this hyperbole rested on a short memory, Sumner removed all doubt. The measure was, he continued, “more essentially bad than the Crime Against Kansas or the Fugitive Slave Bill.”<sup>90</sup> Having opened his speech by claiming that no equal outrage had ever even been contemplated by the United States Congress, Sumner concluded by insisting that no greater evil had ever been perpetrated since the murder of Jesus Christ.

On a former occasion I entreated you not to copy the example of Pontius Pilate, who handed over the Savior of the world, in whom he found no fault at all, to be scourged and crucified. It is my duty now to remind you that you go further than Pontius Pilate...Not content with resolving the Senate into a Pretorium, you imitate Judas who betrayed the

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<sup>88</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 536.

<sup>89</sup> The political pressures operating on Sumner were obvious. He had introduced an identical amendment earlier in the session, which had exposed him to charges of dodging the question of black suffrage. Governor John Andrew seized the opportunity to outflank Sumner as the champion of Massachusetts idealists. So Sumner abruptly reversed himself. See David Donald, *Charles Sumner and the Rights of Man*, 241-246.

<sup>90</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 1224.

Saviour for thirty pieces of silver, and you imitate the soldiers who appropriated to themselves the raiment of the Saviour.<sup>91</sup>

Aside from these deranged comparisons, Sumner's two speeches on the amendment are an almost incredible combination of preening vanity, moral hypocrisy, irrelevant pedantry, fatuous history and political dishonesty. "It is not I who speak," Sumner informed his colleagues. "I am nothing. It is the cause, whose voice I am, which speaks to you." Though Sumner denied that any principle could ever be compromised, he also insisted that it was unimportant that blacks in the North were denied the right to vote. Though unjust, "it is on so small a scale that it is not perilous to the Republic, nor is it vital to the protection of the colored citizen, and the protection of the national creditor." The point was not merely hypothetical, since Sumner also recognized that a Constitutional amendment enfranchising blacks nationally was impossible. The clever thing to do was to impose this condition on the South without offending the prejudices of the North with a fussy insistence on consistency. He therefore contended only for a Congressional resolution affirming the abstract principle and the concrete power of enfranchising blacks in the South.

One might accept the inconsistency for an important practical gain, but a crucial practical objective was precisely what Sumner insisted on sacrificing for a supposedly pristine principle. Such a resolution, which required only a bare majority to pass or repeal, was perfectly compatible with the Constitutional amendment Sumner denounced. Only a Constitutional amendment would be safe from repeal by future Congressional majorities and this was the key protection Republicans were racing against time to achieve.

After a long digression on ancient definitions of the word "Republic," Sumner offered an absurd history of what the Founders had meant by that concept. The "irresistible conclusion,"

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<sup>91</sup> Ibid., 1228.

Sumner insisted was that the definition of a Republican form of government established by the Founders included, as its keystone, “equal suffrage rights for all.” Sumner only made the claim more absurd by anticipating an obvious objection. Slaves, he acknowledged, did not vote, but that was no objection, you see, because “master and servant were grouped with husband and wife, parent and child, and as in the case of wife and child *the slave was represented by the head of the family who also paid the taxes on his account* so that, in his case, the cardinal principle of the Revolution, associating representation and taxation together, was not in any respect violated.”<sup>92</sup> So the Founders were more comfortable with slavery than with denying any free black man the right to vote. The italics were Sumner’s, lest anyone miss this logical triumph from the philosopher-statesman.

Sumner did not argue for a better Constitutional amendment. “To establish the Equal Rights of All,” Sumner insisted, no amendment was necessary. “The actual text is exuberant. Instead of adding new words, it will be enough if you give to those which exist the power which belongs to them.”<sup>93</sup> In the same session, Sumner had introduced an amendment basing representation on the number of qualified voters – i.e. an amendment identical to the one he denounced as “little better than the foul Harpies who defiled the feast that was spread.” In addition to his Constitutional amendment, however, Sumner had also introduced a Congressional resolution – not an amendment – which declared “That in all States lately declared to be in rebellion there shall be no oligarchy, aristocracy, caste, or monopoly invested with the peculiar privileges and powers, and there shall be no denial of rights, civil or political, on account of color or race.”<sup>94</sup>

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<sup>92</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 682.

<sup>93</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 684.

<sup>94</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 707.

As Fessenden pointed out, the resolution was useless. “I do not know what good it does to merely provide by law that the provisions of the Constitution shall be enforced, without saying how, in what manner, by what machinery, in what way, to what extent, or how it is to be accomplished,” he said. “Does this law provide the machinery by which it is to be carried into execution? Does it provide courts to protect rights? Does it provide a military force? Does it provide anything? Words all, and words that may be repealed and struck from the statute book tomorrow, having no force in themselves...”<sup>95</sup>

The whole point of amending the Constitution was to establish guarantees that the Republicans could be sure of protecting once the Southern States returned to the Union. Statutes resting on mere Congressional majorities were fickle indeed next to amendments enshrined in the Constitution. And the amendment Sumner attacked did not preclude Congress from passing laws protecting black suffrage. “I want...to give [the freedmen] the protection of the Constitution,” Fessenden concluded, “not leave them to an act of Congress which may be passed to-day and repealed tomorrow, and they be left to be the sport and football of fortune and of caprice and tyranny but to place them under a safeguard which shall stand as long as the Constitution itself stands, and requires more than the mere action of a majority of Congress to repeal.”<sup>96</sup> With the help of Democrats and Conservative Republicans, however, Sumner was able to kill the proposed amendment in the Senate.

Stevens, characteristically, denounced Sumner with far more colorful invective than Fessenden. “I confess my mortification at its defeat,” he told Congress. Referring to Sumner, he complained that the amendment had been “denounced with every...vulgar epithet which polished cultivation could command. It was slaughtered by a puerile and pedantic criticism...The

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<sup>95</sup> *Congressional Globe*, 39, Congress, 1<sup>st</sup> Session, 707.

<sup>96</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 1280.

large stride which we in vain proposed is dead; the murderers must answer to the suffering race.”<sup>97</sup>

A few days after defeating the original 14<sup>th</sup> Amendment, Sumner introduced his own version, and the vague, clumsy wording of his substitute survived in the final version. The key difference was that it did not mention racial discrimination. Any State which disenfranchised adult male citizens would have its representation “reduced in proportion which the number thus excluded bears to the whole number of male citizens of the United States over the age of twenty-one years in such State.” Since most blacks in any state were women and/or under 21, the State that disenfranchised black voters risked a far milder punishment as a result.<sup>98</sup>

Sumner insisted that the original 14<sup>th</sup> Amendment stained the Constitution by tacitly approving of racial discrimination. Fessenden, Stevens and most other Republicans insisted that just the opposite was true. The provision was intended as a penalty, and like all penalties implied disapproval. Even if one accepts Sumner’s objection, his own substitute introduced the word “male” into the Constitution for the first time. In providing that a State’s representation would be reduced in proportion to the number of “male citizens” who were denied the right of suffrage, his provision undeniably established the principle that only men were entitled to vote under the Constitution. Nothing in the text of the Constitution prior to the 14<sup>th</sup> Amendment justified such an inference. As Fessenden had pointed out, Sumner’s whole argument, “that taxation and representation should go together, would just as well apply to women as to men; but I noticed that the honorable Senator dodged that part of the proposition very carefully...If a necessary connection between taxation and representation applies to individuals in a State, and that is his application of it – an application which our ancestors never made of it; they applied it to

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<sup>97</sup> Beverly Wilson Palmer and Holly Byers Ochoa, *The Selected Papers of Thaddeus Stevens* two vols. (Pittsburgh, PA., 1997), 2:133.

<sup>98</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 1321.

communities, not to individuals – I should like to have him tell me why every female that is taxed ought not to vote.”<sup>99</sup> Sumner had no answer for this except the very same plea invoked by Stevens and Fessenden – political necessity. Though he believed female suffrage “is obviously the great question of the future,” he regarded it as “injudicious” at the present.<sup>100</sup>

His political priority was certainly valid, but then what happened to his preening insistence that no moral principle could ever be compromised? He described the provision punishing States for disenfranchising blacks as “an amendment which like the crab goes backward.” That claim rested on a perverse interpretation of the amendment, the Constitution and all of American history. Yet his own proposed alternative said not a word about black suffrage even as it engrafted the word “male” into the Constitution for the first time. There is a reason why virtually every political leader who worked closely with Sumner came to hate him. Fessenden, for his part, found one redeeming feature in Sumner’s behavior. “It has had the good effect...to make me desperately mad. This is always beneficial...as it starts me out of my accustomed lethargy,” he wrote privately. “I feel very much like screaming...”<sup>101</sup>

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Killed in Congress, the original 14<sup>th</sup> Amendment has never had an appreciative constituency among historians who lament the failures of Reconstruction either for its supposed excesses or limitations. Until the beginnings of the Civil Rights movement a century later, most scholars considered the original amendment grotesquely punitive on the grounds that blacks were either unprepared for the suffrage or innately incapable of exercising it. And historians since the

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<sup>99</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 704.

<sup>100</sup> The first quote came during the next session of congress in which Sumner explained his refusal to vote for an amendment striking out the word male. The second quote was part of Sumner’s response to Fessenden’s criticism. *Congressional Globe*, 39<sup>th</sup> Congress, 2<sup>nd</sup> Session, 107; 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 952. Women would have the right to vote, Sumner said, “whenever the women in any considerable proportion insist that it shall be settled.”

<sup>101</sup> Fessenden to Lizzie, March 3, 1866.

1960's have generally dismissed anything which did not directly contribute to the judicial the efforts of that later era.<sup>102</sup> Given the weak institutional machinery that existed in 1866, however, the provision of the original amendment was the most promising proposed solution to the vexed problems involved in conferring and enforcing black political rights.

Any competent Northern politician recognized, even in the furious political storm through which they were passing, that the public would not support military intervention in the South indefinitely. What then? Only fools and conservatives had much confidence in the courts. And even if the courts boldly upheld principles of racial equality, the only bureaucratic machinery capable of enforcing federal laws was the military – and that brought the problem immediately back into politics. Even a constitutional prohibition against discriminatory voting laws failed to supply either the bureaucratic machinery or the political incentives capable of sustaining it. The original fourteenth amendment was superior on both counts.

In Mississippi, for example, more than half the population was female and significantly more than half was under 21 years old. Since representation was based on the entire population of 828,000, a punishment reducing it in proportion to the number of adult male voters was comparatively mild. Using the census from 1870, Mississippi's population for purposes of representation would drop from 828,000 to 720,000. That might have cost Mississippi a single

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<sup>102</sup> Eric Foner, for example, writes that the original amendment was “a compromise ingeniously designed to allow the North to continue to bar women, aliens, and the illiterate without penalty, while preventing the South from benefiting politically from its disenfranchised black population.” Foner, *Reconstruction*, 252. That is true, but one can just as accurately say that it punished Southern States severely for disenfranchising blacks, the issue of the hour, without changing the basis of representation in other respects. Foner then goes on to say that the “heart” of the amendment was its first section. This is true only from the point-of-view of the court's subsequent use of the amendment, first by making it “the magna charta of accumulated wealth and organized capital” and then as the workhorse of the civil rights movement. But the Republicans who framed it never anticipated either development and were primarily concerned with the problem of political power. And it was emphatically not a radical measure. As mentioned, the man responsible for writing the first section had broken with the radicals and moderates of his party in denying the Constitutionality of the Civil Rights Act. Even though the provision on representation had been weakened considerably, Thaddeus Stevens considered the section “the most important in the article. It fixes the basis of representation in Congress.” And everything Stevens or anyone else might hope to accomplish during Reconstruction depended on Congress.

representative in Congress and one electoral vote in Presidential elections. The remaining 264,000 black women and children in Mississippi would have still counted for purposes of representation even if not a single black person had cast a ballot. And even that much of a reduction would have been difficult, since the vague wording of the 14<sup>th</sup> Amendment made the provision virtually unenforceable. At the very least it would have been necessary to count the precise number of adult male voters who had been actively disenfranchised. Unsurprisingly, then, this provision never amounted to anything.

Under the original 14<sup>th</sup> Amendment, by contrast, if Mississippi were found to have “denied or abridged” the franchise “on account of race or color” the State’s population, for purposes of representation, would have dropped from 828,000 to 383,000. *That* gave Congress the power to tear Mississippi’s political guts out. The provision was as clear as a sunbeam and it relied for its enforcement on the regional self-interest of the North, rather than enduring benevolence toward the freedmen. So long as Southern States discriminated against black voters, Congress had the right to eviscerate them politically. Even the most high-minded Constitutional amendment imaginable, it is worth stressing, would become worthless without the political power to uphold it. Any intelligent observer could have foreseen that the courts would not have the ability to enforce such a contentious political issue without the support of Congress.<sup>103</sup>

Regional and State interests were vitally important in the nineteenth century. When Charles Sumner, among others, proposed an amendment proportioning representation according to voters, rather than population, all of New England howled in protest. Since New England had

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<sup>103</sup> Scholars disagree over the relative importance of the Courts in the Civil Rights era. But its influence in the Civil War era is, or ought to be, much clearer. Imagine if, eight years after *Brown versus Board of Education*, popular resistance to the Court’s ruling led to the repeal of the 14<sup>th</sup> Amendment, followed two years later, by the repeal of the 13<sup>th</sup> Amendment. This essentially captures the Supreme Court’s influence on events following the *Dred Scott* Decision. For an intelligent but unpersuasive revisionist argument, see Stanley Kutler, *Judicial Power and Reconstruction Politics* (Chicago, 1968). Kutler is certainly correct in observing that the Supreme Court emerged from the Civil War more powerful than ever before. But that was an ironic result of the War and Reconstruction – in which the Court was more of a passive beneficiary of a political revolution that the Court itself had helped provoke.

proportionally more women and immigrants, basing representation on the number of voters would hurt them and benefit the West. Hence the awkward phrasing of the actual 14<sup>th</sup> Amendment, which based representation on the entire population while reducing it only in proportion to the number of male voters disenfranchised. Even though the difference was miniscule compared to that which the South faced, Representative James Blaine of Maine echoed the prevailing sentiment of his section when he insisted that such an amendment would unleash an “unseemly scramble” to broaden the franchise. The original amendment favored by Fessenden and Stevens harnessed the exact same incentive, intensified by several orders of magnitude.

“I am one of those who have always thought it was better to govern men by their convictions of their own interests than by force,” Fessenden declared in his speech on the original amendment.<sup>104</sup> What difference this provision would have made is, of course, impossible to say. But given the institutional and political structure of the government, both in the late 1860s and for the next half century, no other Constitutional change had a better chance of effecting that which was most essential to the security of black political rights – the acceptance of those rights by the white Southerners who would be voting alongside them. If white Southerners could be pressured and incentivized into doing “that which is right and just” federal enforcement would be unnecessary. And against their implacable opposition, federal enforcement of black political rights was doomed without a much more profound and creative transformation of the national political system than anyone ever contemplated during Reconstruction.

“To change the character of the government at this point is neither possible nor desirable,” Frederick Douglass wrote in December of 1866. No idea was more “deeply rooted in the minds of men of all sections of the country” than that of the right of each State to control its own affairs. “[N]o general declaration of human rights can have any practical value,” he wrote,

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<sup>104</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 704.

“unless the whole structure of the government is changed from a government by States into something like a despotic central government, with power to control even the municipal regulations of States, and to make them conform to its own despotic will.”<sup>105</sup> The way out of the impasse, Douglass argued, was by conferring suffrage on all loyal men, black and white. “The arm of the Federal government is long, but it is far too short to protect the rights of individuals in the interior of distant States. They must have power to protect themselves or they will go unprotected, spite of all the laws the Federal government can put upon the national statute-book.” Douglass’s argument was free of Sumner’s pretentious dishonesty, but the flaw in his argument was no less glaring:

[W]hen you add the ignorance and servility of the ex-slave to the intelligence and accustomed authority of the master you have the conditions, not out of which slavery will again grow, but under which it is impossible for the Federal government to wholly destroy it, unless the Federal government be armed with a despotic power, to blot out State authority, and to station a Federal officer at every cross-road.<sup>106</sup>

But, as events shortly proved, the legal right to vote does not confer the underlying reality of power represented by the ballot. If one half the population is willing to resort to bullets, there is no safety whatsoever in the ballot. Far from a substitute for federal power, black suffrage would require a much greater assertion of it. President Grant did not even finish his second term before regretting the 15<sup>th</sup> Amendment as a failure.<sup>107</sup> The Republicans, by then, could do nothing more, for they no longer controlled Congress.

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Let us now indulge a brief, limited counterfactual. The original 14<sup>th</sup> Amendment passes the Senate, is ratified by the States, and is duly inscribed into the Constitution. As with the actual

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<sup>105</sup> Frederick Douglass, “Reconstruction,” *The Atlantic Monthly*, December 1866. I have reversed the order of the above two quotes.

<sup>106</sup> Frederick Douglass, “Reconstruction,” *The Atlantic Monthly*, December 1866.

<sup>107</sup> C. Vann Woodward, *The Burden of Southern History* (Baton Rouge, 1960), 106-107.

14<sup>th</sup> Amendment, this version would not have prevented the break with President Johnson and the onset of Radical Reconstruction. And, as with the actual amendment, this version in no way precluded Congress from legislating on the subject of black political rights or from passing another amendment expressly affirming them in the Constitution. Other amendments were, indeed, already in the works. Thus Congress would not only have the tools to legislate on civil and political rights but also an enormously powerful instrument for preserving their power in doing so. Under the original amendment, even partial discrimination against blacks deprived a State of its entire black population for purposes of representation. There was no inconsistency in politically punishing a Southern State for abridging black suffrage rights while also passing additional legislation to enforce those rights.

Now consider the tragic denouement of Reconstruction in the late nineteenth century. In 1874, the Republicans lost control of the House of Representatives in the greatest party reversal of the nineteenth century. Republicans did not control both Congress and the Presidency again until 1889. In that session, Southern Democrats, among others, thwarted Republican efforts to pass a voting rights act. The effort was not repeated for more than half a century. Under the original 14<sup>th</sup> Amendment, the Republicans would have the power to reduce the number of Southern Democrats voting against them, and thus the power to pass legislation protecting black suffrage rights.<sup>108</sup>

But the partisan advantage the amendment would have given Republicans suggests an even more impressive possibility. The economic grievances of the South, as a region, were extreme following the war and Reconstruction. In 1880, the difference in per-capita income

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<sup>108</sup> To be sure, Republicans in the House actually passed a voting rights bill in 1890, but it died in the Senate. And the Senate, rather than the House, remained the most formidable barrier to civil rights legislation for most of the next century. Since the original 14<sup>th</sup> amendment did not change representation in Senate, this fact certainly indicates the limits of its potential. But such a drastic change in the representation of the House and electoral college would have been virtually certain to help the Republican party gain more seats in the Senate as well.

between the States belonging to the Confederacy and the rest of the country was as great as that between Germany and Russia; the postwar tax regime, which relied on tariffs along with excise taxes on tobacco and liquor, was disproportionately borne by the South. And the Civil War pension system, which became the nineteenth century's only important federal welfare program, amounted to more than 40% of federal expenditures in the 1880's while excluding the most impoverished region.<sup>109</sup>

The populist revolt against political domination by eastern financial interests raged hottest in the South. And it was this very same movement that brought the complete disenfranchisement of Southern blacks and the consolidation of Jim Crow. Because poor Southern whites were the most racist, black suffrage was an impediment to economic populism in the Deep South. And thus the Jim Crow regime became a crucial first step in transforming the party that elected Grover Cleveland into the party that eventually elected Woodrow Wilson and F.D.R.<sup>110</sup>

The original 14<sup>th</sup> Amendment offered a possible escape from the paradoxical conflict between economic and racial equality, which has recurred as perhaps the central tragedy in American politics. Under that amendment, political discrimination against blacks allowed the economic interests controlling the government to eviscerate the South's political power. The political trade-off would have become unmistakable even to the most obtuse. White Southerners could disenfranchise blacks only at the cost of their own abject subjugation by the North. Or they could find a way of accepting blacks as partners in the struggle to overthrow the power of those exploiting them both. No one can say what choice Southern whites would have made. But, truly,

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<sup>109</sup> See Theda Skocpol, *Protected Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, Ma, 1992), and W. Elliot Brownlee, *Federal Taxation in America: A Short History* (Cambridge, 2004).

<sup>110</sup> See for example, C. Vann Woodward, *The Origins of the New South, 1877-1913* (Baton Rouge, 1951).

the proposed Constitutional amendment Charles Sumner helped kill in the Senate remains one of the great “what-ifs?” of Reconstruction – and, indeed, of all American history.

#### *IV: “There Is Some Apprehension of a Split”*

As he had with Lincoln, Fessenden played the role of mediator between President Johnson and the Senate. And as he had been with Lincoln during the war, Fessenden was always unsatisfied and often dismayed with the President’s policy during Reconstruction, but he considered an open breach between the two branches an absolute calamity to be avoided at almost any cost. That combination of bristling criticism and cautious prudence gave him influence, for no one could plausibly accuse him of surrendering the dignity and independence of the Senate in abject deference to the President. Those actively seeking a rupture with the President, on the other hand, were playing into the hands of the country’s worst enemies. Not for nothing were Democrats and Copperheads eagerly flattering the President. The division between the two branches was real, and the enemies of the Republican party had everything to gain by widening it.

“It is strange but *entre nous*, Andy feels sore that the Union members are not so friendly in a social way, as they ought to be,” Fessenden wrote in late January of 1866. “It is a fact that the Democrats keep about him all the time – and it is of the first importance to keep his good will in every way. I think we shall have to make the sacrifice and be more attentive. The matter has been particularly pressed on me, as being on friendly terms and having charge of a great matter with regard to which there is some apprehension of a split.”<sup>111</sup>

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<sup>111</sup> Fessenden to Lizzie, January 28, 1866. Fessenden Papers.

The possible outcomes of such a split made it a gamble that no sober politician would make willingly. A Constitutional crisis, and a divided, distracted government, unable to impose a consistent or coherent policy on the South at the pivotal moment of its transformation – that much was virtually certain. But what then? “The consequences I cannot foresee but they must be terribly disastrous,” Fessenden wrote as he accepted the rupture as inevitable. “I see nothing ahead but a long, wearisome struggle for three years and in the meantime great domestic convulsions...perhaps a return to power of the Country’s worst enemies – Northern copperheads.”<sup>112</sup> The possibility of a renewal of civil war hung like a nightmare over the escalating conflict, this time with traitors and copperheads actually controlling one branch of the government. “I never felt so gloomy, as now, in the darkest hour of the war,” Fessenden wrote despairingly.<sup>113</sup> And yet, though he hated Charles Sumner like poison, and considered Stevens and others in his party almost criminally reckless, he denounced the President unequivocally as the sole cause of the rupture. “He has broken his faith, betrayed his trust, must sink from detestation into contempt,” he wrote privately.<sup>114</sup> As before, the *casus belli* that sent Fessenden back into the breach was outraged honor.

The proximate cause of the rupture was President Johnson’s message vetoing the Freedmen’s Bureau bill. In response, Thaddeus Stevens proposed a concurrent resolution to the Joint Committee on Reconstruction, declaring that Congress alone had the power of admitting a State as entitled to representation.<sup>115</sup> Fessenden voted for the resolution and introduced it in the Senate. The evening before the Senate began its discussion of the resolution, President Johnson made the most politically disastrous speech of his life. He denounced the Joint Committee on

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<sup>112</sup> Fessenden to Lizzie, February 25, 1866. Fessenden Papers.

<sup>113</sup> Fessenden to Lizzie, March 31, 1866. He noted the prospect of renewed civil war in a letter to his son William on the same day.

<sup>114</sup> Fessenden to Lizzie, February 25, 1866.

<sup>115</sup> Kendrick, *Joint Committee*, 71-72.

Reconstruction as a despotic centralized “directory” and named Thaddeus Stevens and Charles Sumner as enemies of the Republic equivalent to Jefferson Davis.

John Sherman and other Republicans eager to prevent the impending party split tried to delay an official response from the Senate. They were already exercising the power declared in the Resolution, Sherman pointed out. Given the prevailing excitement, he insisted, the Senate should answer the President with silence rather than widen a conflict that was “bad enough without irritating it by useless and needless controversy.”<sup>116</sup> Fessenden swatted this concern away, insisting he was more than capable of speaking deliberately upon a question, however exciting, after a single night’s sleep. He claimed to have no problem with most of Johnson’s Constitutional objections. He did not share those objections, but he acknowledged that they were sincere and he had no right to insist that the President act against his own convictions. Had the President confined himself to “a criticism of the bill itself,” Fessenden declared, “it is very possible that I might have been quite willing to waive my own feelings and opinions in regard to the bill as it passed, and sustain his veto.”<sup>117</sup> But the President had concluded his message with an objection to the right of Congress to legislate on the subject of Reconstruction until the eleven states affected by that legislation were readmitted into the Union. That final objection, Fessenden insisted, “rendered it impossible, in my judgment, for any member of this Senate with a due respect for himself and the rights of the Senate and of Congress, to vote otherwise than to sustain the bill they have sent him.”

Sir, we should be yielding everything, we should have no power left, we should be less than children, we should hardly be entitled to call ourselves slaves, if a question upon which the very existence of these bodies, the Senate and the House of Representatives may depend, the question of whether a State, or a body of men or an organization anywhere is entitled to representation here, is not for us to settle and us alone, so far as those proposed members are concerned, without any dictation from anybody, ay, without

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<sup>116</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session. 982.

<sup>117</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 985.

any advice from anybody... I could not, without sacrificing all my self-respect, and what is of more consequence as far as I am concerned, sacrificing all the rights and honors of the body of which I am a member, vote to sustain that message, whatever good reasons might be given in other parts of it.<sup>118</sup>

This was the language Fessenden always used when he saw that the next step would likely lead to disaster, and that he had no choice but to take it. Most Republican leaders, desperate to avoid a party rupture, believed the President's veto of the Freedmen's Bureau marked the beginning of a crisis, not the end. There was still hope of averting disaster. Fessenden's position was essentially the same as the one he had occupied during the secession crisis. He recognized the impending calamity for what it was and dreaded it. He also realized that the President had been flattered relentlessly by Democrats even as he endured a daily litany of insults from intemperate members of his own party. He still carefully avoided insulting the President personally. But Johnson's open hostility made it impossible to make any attempt at conciliation.

Contributing to the escalating conflict between Johnson and Congress was the uncertain fate of his home State. Johnson took the delay in readmitting Tennessee's representatives, who were honest Union men, as a personal insult. The President had, as any sincere Republican would have acknowledged, fought like a lion on behalf of the Unionist cause in his State. Even a man less prone to notice insults than Johnson would have been incensed at any reluctance to admit loyal men from a State where loyalty had required real courage. And the Committee on Reconstruction was preparing to recommend readmitting Tennessee's representatives to Congress when Johnson issued his veto. Here was an obvious way to conciliate the President. Congress could insist upon its resolution asserting its own authority over readmitting States while promptly assuring Johnson that his home State would soon be readmitted. Instead,

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<sup>118</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 985-986.

Fessenden grimly asserted his right as a Senator and as Chairman of the Joint Committee on Reconstruction. It was now up to the President to acknowledge his error in denying it, and Fessenden would not offer so much as a smile to help him do so.

Senator John Sherman answered Fessenden's speech with a plea for prudence and conciliation. He acknowledged that Congress had the exclusive right to legislate on the subject of Reconstruction, but it had failed to do so. "Now, I ask Senators this plain question, whether we have a right now, having failed to do our constitutional duty, to arraign Andrew Johnson for following out a plan which in his judgment he deemed the best..." As for the President's intemperate public harangue against Congress, it was undeniably a disgrace to the whole country. But Sherman was willing to acknowledge on the floor of the Senate what Fessenden only acknowledged privately – that the President had been provoked by those spoiling for a fight and was only guilty of taking the bait. Sherman then quoted a notorious insult from Thaddeus Stevens. "Every sentiment of manhood, every dictate of our nature, would induce a man, when he heard these words uttered, in the heat of passion, to thrust them back. When a man becomes President he has none the less feelings of manhood," Sherman said.<sup>119</sup>

The essential purpose of Sherman's speech was to avoid a clash with the President, which he, like Fessenden, recognized as a calamity that might reverse all that the Republicans had won in the war. "Sir, the curse of God, the maledictions of millions of our people, and the tears and blood of new-made freemen will, in my judgment, rest upon those who now for any cause destroy the unity of the great party that has led us through the wilderness of war."<sup>120</sup> Fessenden had no reason to doubt this. But he refused to give any ground, and he held the Senate with him. Even Sherman, after delivering a speech that filled nearly 30 columns in the *Congressional*

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<sup>119</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, Appendix.

<sup>120</sup> *Ibid.*

*Globe* against the resolution, voted in favor of it. There would be no olive branch. The President would have to get over his mulish hostility or go to the wall, perhaps taking the country with him.

In his study of Reconstruction, Eric McKittrick identified Fessenden as the guiding force behind Republican policy during the critical period leading up to the rupture with Johnson. Thaddeus Stevens may have been the most outspoken member of the Committee on Reconstruction, but Fessenden controlled it. “[T]he reins were firmly in the hands of the chairman, who had no intention of relinquishing them to anyone,” McKittrick wrote. He was “thus so strategically and pivotally located that his problems and his experience over the ensuing four months can serve admirably as a paradigm of the experience of an entire party.”<sup>121</sup>

And yet during the period that McKittrick recognized as the dramatic climax of the conflict between the President and Congress – the month between Johnson’s vetoes of the Freedmen Bureau and Civil Rights bills – Fessenden virtually disappears from his narrative. One suspects McKittrick, understandably, could not comprehend Fessenden’s conduct at this crucial moment. Unlike some in his party, Fessenden not only wished to avoid a rupture with the President but dreaded it as an absolute calamity. In dividing the government against itself, the rupture would inevitably unleash chaos in the South. Worse, a united party could stand confidently before the people in the election of 1866 with a clear, definite policy of Reconstruction; the rupture with Johnson compelled the Republicans to play party politics with the most fateful question ever to confront the Republic. Unable to position themselves on

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<sup>121</sup> McKittrick, *Reconstruction*, 273.

anything except opposition to Johnson, they carefully avoided committing themselves on any other pressing issue.<sup>122</sup>

With the single exception of the President himself, Fessenden was in a unique position to prevent the rupture. He controlled the most powerful committee ever organized by Congress, a committee that embodied the incipient conflict with Johnson from the start. He recognized his unique position and the responsibility it conferred. But the first act of hostility from Johnson ended all efforts at diplomacy. Lesser figures, like Sherman, scrambled desperately to find some common ground. But the Chairman of the Joint Committee on Reconstruction took his stand and watched grimly as the President prepared to do the same.

Albeit with less dignity and composure, President Johnson was acting on an identical impulse. He had been roundly abused and criticized by members of his own in party in Congress – Stevens most of all – and he therefore dug in his heels and prepared to fight without calculating the consequences. The intemperate attacks on his prerogative and integrity as President provoked a bristling defense of both. He made no effort to explain himself or to negotiate with Congress. Fessenden had tried to avoid provoking the President in precisely this way, but he felt the insult just the same. Each felt their self-respect had been challenged, and neither would bend an inch to avoid what they both could see was a calamity. In this they were quite a bit alike. And it is interesting to note that the two most powerful men in the country at this particular moment in its

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<sup>122</sup> In different ways, every major interpretive school on Reconstruction has been oddly dogmatic on this point. Both Dunning School historians and progressives like Howard Beale were disgusted with the extent to which Republican policy over Reconstruction became dominated by election concerns. This is certainly true, but hardly a cause for rebuke. The Republicans sincerely believed that if they lost the election the very enemies they had just defeated in battle would return to power, erasing everything achieved by the war, including emancipation. And historians since the 1960s have tended to deplore Republicans timid equivocations concerning black suffrage. But that was precisely the issue the worst enemies of the Republican party hoped to use against them. It would have been insane for the Republicans to take a bold stand on that issue in an election that might result in the restoration of slavery itself. Indeed, Johnson's first message to Congress attempted to isolate the radicals on the question of black suffrage. He conceded everything else the Republicans insisted upon, at least in the abstract. It was Thaddeus Stevens, more than anyone else, who prevented suffrage from defining the radicals' conflict with the President, while still actively baiting a conflict on much more favorable terms.

history, arrayed in opposition to one another out of a bristling sense of honor, had both endured the unearned scorn, in whispers and innuendos, that they had come into the world as bastards.<sup>123</sup>

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As Republicans closed ranks to defend themselves against the President, Fessenden even reconciled with Sumner, whom he hated as much as he could hate anyone. The most bruising legislative fight involved denying John P. Stockton, a Democrat from New Jersey, his seat in the Senate. The details of Stockton's case do not need to be elaborated here. The essential fact is that the Judiciary Committee, Chaired by Trumbull, examined the case contesting his election and reported in favor of Stockton. Under any normal circumstances, that would have ended the matter, especially since the Judiciary committee was controlled by the Republicans. But Johnson's opposition suddenly made it vital for the Republicans to preserve a veto-proof majority. "It is all important that we should have two-thirds in each branch," Fessenden wrote home to his son. Seizing a pretense to deprive a fellow Senator of his seat was a dirty business, but "I am content to take the responsibility," Fessenden wrote grimly to his son. And he led the Republican effort to block Stockton.<sup>124</sup>

Opposing him was Trumbull, who continued to insist that Stockton was entitled to his seat. "I beg the Senator not to argue this matter as if it were a small case before a justice of the peace," Fessenden growled in one heated exchange with his colleague.<sup>125</sup> For Fessenden, the question wasn't whether they had a legal right to block Stockton's election; they had no choice. It was that or the potential defeat of everything they had won in the war. After a nasty struggle

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<sup>123</sup> In Johnson's case the rumors may have been unfounded. Later in this same session of Congress, Fessenden had to demand explanations from several people over a reported rumor that disappointed patronage seekers were attempting to expose his illegitimacy in the newspapers. Fessenden to Forney, July 28, 1866. Fessenden papers.

<sup>124</sup> Fessenden to William Fessenden, March 31, 1866. Fessenden was also referring to his opposition to admitting Senators from Tennessee. The death of his closest friend in the Senate, Solomon Foote, added to his sense of emergency.

<sup>125</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 1597.

that violated several of the traditional norms of the Senate, Stockton was denied his seat. Fessenden had no stomach for this sort of parliamentary brawl. It earned him the applause of men he considered unscrupulous fools and provoked solemn protests from men he considered honorable and honest.

“I never longed for home so much,” Fessenden wrote a few days after expelling Stockton from the Senate, “and little as you may believe me, I really think that, but for being called a coward, I should give up public life at once, and forever.” Anticipating the skepticism this professed wish would receive from his cousin and confidant, who would be overjoyed were he to retire, Fessenden added, “Perhaps I might wish to return but that’s the way I feel now.”<sup>126</sup> His fear that to resign at that moment would amount to cowardice, however, was sincere. Though Fessenden’s argument for rejecting Stockton was applauded as brilliant, it amounted to a clever disguise of an abuse only justified by necessity. No one could plausibly deny that Stockton would have taken his seat if he were a Republican. And yet, as Fessenden had said many times during the Civil War, with the country in peril, any leader who would not “put his own reputation at hazard as readily as he would anything else in order to do his duty, was not fit for his place.”<sup>127</sup>

The week after disposing of Stockton, the Senate overrode Johnson’s veto of the Civil Rights bill by a margin of one vote.

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The break with Johnson at once radicalized and restrained Congress’s approach to Reconstruction. The need to find common ground with the President disappeared, only to be replaced by the need to avoid taking any vulnerable position in the upcoming election. The

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<sup>126</sup> Fessenden to Lizzie, March 31, 1866.

<sup>127</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 27.

President's opposition created political risks far more inhibiting than the hope for harmony between the two branches, even as it provoked a wild fury among leaders who had been restrained by that hope. The result was chaos.

In March of 1866, impatient with the Reconstruction Committee's lack of progress in framing an amendment, Robert Dale Owen, who had served on a committee to investigate the government's treatment of freed slaves during the war, came to Washington with his own proposal. As a prominent social reformer and abolitionist, Owen had little experience with "insider" politics but considerable influence over high-minded public opinion. And his account of his interactions with the Reconstruction Committee provides a revealing and unconsciously amusing portrait of how Stevens and Fessenden handled men of his type – idealistic, earnest and naïve.<sup>128</sup>

Owen's proposed Amendment contained five sections. The first section provided against the denial of civil rights on the basis of race. Section two, the crucial one in Owen's proposal, abolished all racial distinctions on the right of suffrage beginning July 4, 1876 – i.e. in ten years. The third section, like the original proposed amendment, provided that a State's entire black population would not count for purposes of representation until they enjoyed an impartial right of suffrage. The fourth section protected the debt, and the fifth empowered Congress to enforce the measure by "appropriate legislation."

"I'll be plain with you, Owen," Stevens said upon reading the proposal. "We've had nothing before us that comes anywhere near being as good as this, or as complete. It would be likely to pass, too, and that's the best of it." Stevens then promised to put Owen's proposal before the committee, "and I'll do my best to put it through." When Owen then suggested a supplement to the amendment, which provided for readmitting the States upon ratifying the

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<sup>128</sup> Robert Dale Owen, "Political Results from the Varioloid" *The Atlantic Monthly* (June, 1875).

amendment, Stevens frankly admitted his opposition. “That will never do! Far too lenient. It would be dangerous to let those fellows off on such easy terms.” They politely argued the point but Owen failed to convince him of the justice and expediency of prompt readmission. For all his generous impulses, Owen lamented, Stevens “was ruled by an embittered feeling toward the South.”<sup>129</sup>

Owen then approached Fessenden with his amendment. The Senator struck Owen as “the very reverse of Stevens. Cold, deliberate, dispassionate, cautious, he heard me patiently but with scarcely a remark.” Fessenden offered no opinion except that the subject was, indeed, an important one. But he asked Owen to visit him again in a few days after he had time to consider the proposal more carefully. On Owen’s next visit, Fessenden told him “in guarded and general terms, that he thought well of my proposal, as the best that had yet been presented to their committee.” All Republicans on the committee, Fessenden reported, received Owen’s proposal favorably. The only change he expected the Committee to make was in the first section. Congressman Bingham was eager to replace a prohibition against racial discrimination with a section specifically defining the rights of citizenship.

In early April, Fessenden fell ill with small pox, which prevented him from attending Committee meetings until late in the month. In his absence, however, Stevens introduced Owen’s proposal to the committee on April 22<sup>nd</sup>. Though they continued to consider possible alternatives, there was clear support for each of Owen’s provisions on the committee. What happened over the next few days is unclear, but the most likely explanation is that Stevens and his lieutenants counted up the votes in Congress and realized that they could not get a two-thirds majority to support impartial suffrage rights for blacks, even as a prospective right delayed for ten years.

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<sup>129</sup> Ibid.

In any case, Stevens himself introduced a motion to strike out the second section conferring suffrage rights a week later. He then voted in favor of his own motion, which passed easily, 12 to 2. Though recorded in the Committee's official journal, these proceedings were not public.<sup>130</sup> So Owen was bewildered when he learned of the Amendment that emerged from the Committee, which was soon published in the newspapers. "Greatly vexed," Owen recalled, "I called on my friend Stevens for an explanation. 'So that was all labor lost?' I said.

'Yes' replied Stevens hotly, 'but not by my vote. Don't imagine that I sanction the shilly-shally, bungling thing that I shall have to report to the House to-morrow.'"

"'But how came it?'" Owen wanted to know. And Stevens answered his friend with an elaborate, shameless lie. The Committee was ready to propose Owen's amendment to Congress on April 21<sup>st</sup>, Stevens explained. But since Fessenden was nearly recovered from his small pox illness, also known then as the varioloid, someone suggested that it would be best to wait until he was able to introduce it into the Senate. Stevens relented for fear of seeming discourteous to the Chairman. In the meantime, word got out about the proposed amendment and several Congressmen – "hang their cowardice!" Stevens exclaimed upon relating this detail – feared that it would cost them reelection. These cowards communicated their opposition to various members of the Committee. And, Stevens lamented, "Our committee hadn't backbone enough to maintain its ground."

Stevens's account was, of course, comically dishonest from top to bottom. He had personally opposed every attempt by the Committee to propose an equal suffrage amendment on the grounds that it could not pass. He certainly wasn't going to report this version to the House without first getting a sense of its chances. And his judgment is evident in his motion to strike

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<sup>130</sup> Fessenden, who had since recovered, did not vote. Kendrick, *Journal of the Joint Committee on Reconstruction*, 80-120. Stevens's motion to strike the section pertaining to black suffrage is recorded on pages 101-102.

out the suffrage section of Owen's proposal. The delay had nothing to do with Fessenden's illness; he was too weak to give a speech on the amendment anyway. And even if the Committee had reported the amendment immediately, it would not have come to a vote for weeks. But Fessenden's case of varioloid served as a useful pretense for Stevens to commiserate with his dismayed friend at how close they had come, together, to achieving a sacred object.

After hearing Stevens's impassioned account, Owen recalled, "I was silent, thinking to myself how often, in this riddle of a world, results of the most momentous import turn on what seem to us the veriest trifles. But, mortified as I was, I could not help smiling when Stevens, after his characteristic fashion, burst forth, "*Damn the varioloid! It changed the whole policy of the country.*"<sup>131</sup>

Though Stevens's shameless dishonesty is certainly amusing, it is not evidence that he was a fraud. On the contrary, he was a far more reliable friend to the freedmen than almost any other white abolitionist. Moral idealists, committed to the pristine purity of their principles, had no stomach for the ugly work necessary to make their egalitarian ideals a reality in a slave society broken by civil war. Just as every problem looks like a nail to the man with a hammer, abolitionist saw in the South only the need for grand promises conveyed in sublimely eloquent speeches. Stevens, by contrast, saw the grisly task clearly and did not shrink from it. As his best biographer has written, it was his "extraordinary capacity for hatred" that made Stevens perhaps the only leading Republican who genuinely identified with the oppressed.<sup>132</sup>

For Stevens, the key to everything else lay in preventing white Southerners from returning to power. So long as they were kept out of Congress, there was hope of passing laws

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<sup>131</sup> Owen, "Political Results from the Varioloid." *The Atlantic Monthly* (June, 1875). His italics. Owen had no reason to suspect Stevens's deception. The official journal was not published until the early twentieth century. So there is no reason to doubt that his account accurately reflects the impression Stevens gave him.

<sup>132</sup> Fawn Brodie, *Thaddeus Stevens: Scourge of the South* (New York, 1959).

that might transform the Southern social order. It was fatuous to believe that the ballot alone could empower a social class that had been held as property only a year earlier. And this delusion, harmless in itself, would be a disaster if established as the final basis of Reconstruction. In that case, white Southerners would speedily return to power, forever ending the possibility of any further reform and the possibility of actually enforcing earlier achievements. Hence, Stevens' real frustration with the amendment actually passed – not the failure to enfranchise blacks but the failure to more robustly disenfranchise rebels. An inveterate schemer, he purposefully manipulated the moral piety of abolitionists, the fear and anger of the Northern public, and the cynical self-interest of party hacks, all at once, and all from a sincere sense of purpose which he understood with a unique clarity.<sup>133</sup>

The political climate of Reconstruction was uniquely suited to Stevens's style of politics. He had been a conspicuous failure in public life until the Civil War transformed his liabilities into virtues.<sup>134</sup> Like the party he led, he combined seemingly incompatible extremes – a vindictive hatred of the South, a passionate moral commitment to the rights of the former slaves, and a cold cynicism about politics. But his style of leadership, however effective in some ways, sharply limited him in others. He ruled through parliamentary skill rather than personal force. He never achieved his ambition of becoming a Senator, though not for a lack of trying. And it was not a coincidence that Fessenden, as the Republican leader in Senate, seemed like Stevens' exact opposite in precisely these qualities. Honest, icily reserved, and austere, Fessenden was

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<sup>133</sup> Most scholars are unable to understand or even accurately describe Stevens's position during this stage of Reconstruction. "Stevens," Richard White writes, "wanted the [Fourteenth Amendment] to enfranchise blacks and strip leading rebels of their political rights." The official record of Stevens's votes and remarks on the amendment flatly contradict this characterization, yet the confusion persists. White, *The Republic For Which It Stands* (Oxford, 2017). Even academic biographers tend to misrepresent Stevens's position. Hans Trefousse writes that Stevens deferred to the will of the Committee in accepting an amendment that did not enfranchise blacks – again, flatly contradicting the Journal of the Committee itself. This confusion about Stevens belies a broader confusion about the politics of Reconstruction. Trefousse, *Thaddeus Stevens: Nineteenth Century Egalitarian* (Chapel Hill, 1997). Fawn Brodie's biography remains unsurpassed, though she omits the Owen episode.

<sup>134</sup> My analysis here owes a large debt to Eric McKittrick, *Andrew Johnson*, 260-269.

temperamentally prudent in everything except integrity and honor. In tranquil eras, his temperament might be accurately characterized as moderate. But in the Civil War era it was as misleading a characterization of Fessenden as of Jefferson Davis.

### *V: Congressional Reconstruction*

The responsibility of writing the final report of the Joint Committee on Reconstruction fell to Fessenden alone. And the result, which the Committee accepted virtually unchanged, certainly deserves its reputation, more recognized at the time than later, as one of the ablest and most significant state papers in American history. It was the definitive statement of the Committee and, by extension, of the Republican party, explaining why the rebellious States should not be readmitted into the Union on the terms imposed by the President and justifying a more sweeping policy of Reconstruction. But for all its significance, the purpose of the report was to disguise a revolution, not announce one. And Fessenden's style was perfectly suited to the task. The dispassionate, dignified tone belied underlying demands and expectations that would have seemed positively visionary if conveyed in slightly different language. Those who worried that the Republican party was becoming reckless and intemperate would not find a single sentence to confirm their fears; those who deplored the timidity of moderates would find nothing to provoke their scorn.<sup>135</sup>

Fessenden's Report began by defining the powers of the President and Congress in re-establishing civil government in the Southern States and determining "their fitness to take an active part in the administration of national affairs." Whatever the theoretical status of states that

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<sup>135</sup> Report of the Joint Committee on Reconstruction at the First Session of the Thirty-Ninth Congress (Washington, 1866). 150,000 copies of the report were printed to serve as a campaign document. The Report included the 14<sup>th</sup> Amendment, Fessenden's statement for the majority, a minority report, and 850 pages of testimony.

had joined the Confederacy, the results of the war had reduced them to a practical condition of anarchy and martial law. Under the circumstances, it was “plainly the duty of the President to enforce existing national laws, and to establish, as far as he could, such a system of government as might be provided for under existing national statutes.” Conceding that President Johnson had the authority to govern these jurisdictions under the military power, the Report then insisted that only the law making power, vested by the Constitution with Congress, could “fix the political relations of the States to the Union...” The President’s actions in forming local governments within the insurrectionary States, the Report continued, were intended as strictly provisional terms for withdrawing military rule. “Any other supposition inconsistent with this would impute to the President designs of encroachment upon a coordinate branch of the government, which should not be lightly attributed to the chief magistrate of the nation.”<sup>136</sup>

In both tone and content, the passage is characteristic of the entire report— an absolute insistence on Congress’s authority over Reconstruction phrased as an admonishment against supposing the President so wicked as to have entertained any other idea. The report then attacked the argument in favor of Presidential Reconstruction without, of course, imputing it to the President himself. The duty to enforce the laws and suppress insurrections, this thinking went, entailed the authority to determine when the rebellion had been suppressed and civil government restored. Once these tasks had been accomplished, the States would automatically revert to their rightful place within the Union. Restoring the States to the Union did not require any action by Congress because, as a matter of law, the States had never been out of the Union.

“It is more than idle, it is mockery,” the Report observed in answer to this argument, “to contend that a people who have thrown off their allegiance, destroyed the local government which bound their States to the Union as members thereof, defied its authority, refused to

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<sup>136</sup> Ibid.

execute its laws, and abrogated every provision which gave them the political rights within the Union, still retain through all a perfect right to resume, at their own will and pleasure, all their privileges within the Union, and especially to participate in its government and to control the conduct of its affairs...Such a principle is void by its very nature and essence, because inconsistent with the theory of government, and fatal to its very existence.”

Still, Congress might promptly admit the States to their former place, “trusting that time and experience would set all things right,” the Report acknowledged. But every consideration of justice, common sense and self-respect impelled Congress to seek certain basic assurances before doing so.

It should appear affirmatively that they are prepared and disposed in good faith to accept the results of the war, to abandon their hostility to the government, and to live in peace and amity with the people of the loyal States, extending to all classes of citizens equal rights and privileges, and conforming to the republican idea of liberty and equality. They should exhibit in their acts something more than an unwilling submission to an unavoidable necessity – a feeling, if not cheerful, certainly not offensive and defiant.

These expectations were at once perfectly reasonable and laughably absurd. The people referred to had fought a desperate civil war for four long years with the avowed purpose of establishing an independent empire resting on human slavery. They had continued this grim fight long after any rational hope of success, surrendering to defeat only at the point of total exhaustion. The Committee on Reconstruction did not expect to find these people feeling cheerful. That, to be sure, might be expecting too much. But rebels who had been whipped and ruined for their own wickedness had no right to feel sullen about it either. Any traitor without a rope around his neck had every reason to praise the magnanimity of his conquerors. One would hate to think that the people of the Confederacy, prostrated by catastrophic defeat, only accepted the conditions imposed upon them by their conquerors – including the legal equality of three

million souls formerly held as property – merely from “an unwilling submission to an unavoidable necessity.”

This absurdity simply expressed the unavoidable paradox of the war itself. The whole purpose of any war is to compel enemies to submit to superior force. But the North fought the Civil War with the avowed purpose of preserving the rebellious States as equal partners in the political system they were struggling to overthrow. “Treason, defeated in the field, has only to take possession of Congress and the Cabinet,” Fessenden wrote in dismissing the paradox that had always been implicit in the war to save the Union. It was obviously true that communities who did not accept the principles of American republicanism vindicated by the war – who still exhibited the bitter animosity of conquered belligerents – were undesirable partners in self-government. But what was the alternative? Fessenden’s report skillfully avoided this question. Instead of dwelling upon the insoluble problem of how, exactly, to make white Southerners genuinely accept principles they detested, he instead pointed out that Southerners alone could make this problem go away.

Sincere repentance and renewed patriotism would have eliminated all difficulties. But the overwhelming evidence of contempt for the federal government, of “malicious hatred” toward blacks, and of continued esteem for the leaders of the rebellion all made immediate restoration impossible. “In return for our leniency we receive only an insulting denial of our authority,” the report concluded. “In return for our kind desire for the resumption of fraternal relations we receive only insolent assumption of rights and privileges long since forfeited. The crime we have punished is paraded as a virtue, and the principles of the republican government which we have vindicated at so terrible a cost are denounced as unjust and oppressive.”<sup>137</sup>

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<sup>137</sup> *Report of the Joint Committee on Reconstruction*. The Report is published in full in the second volume of Fessenden, *Life and Public Service of William Pitt Fessenden*, 2:67-99.

There is perhaps only one point on which virtually all scholars of Reconstruction, from James Ford Rhodes to the present, have agreed: The defeat of the Confederacy temporarily left its leaders, from top to bottom, terrified at the fate that awaited them. They were at the mercy of their conquerors, and they knew it. In that moment the governing class in the South was nakedly vulnerable to being decimated for the crime of treason. Obviously, the North was not going to convict and execute every white Southerner who had participated in the rebellion. But there were obvious moral and legal justifications for isolating the Southern governing class from everyone else. How far such punishments might reach was impossible to say, but everyone who belonged to the political class felt the uncertainty of his fate, especially in the fury following Lincoln's assassination. And this threat made the political leadership of the South temporarily pliant before the will of their conquerors.

But there was little real appetite for such sweeping vengeance in the North. After the initial shock of defeat, the Southern political class was furious, resentful, resigned, despondent, or defiant – but never again were they ever truly afraid. Johnson's liberal use of the pardoning power imparted a sense of security to Southern leaders far beyond that which could be justified by Northern public opinion. And his denunciations of the radicals made the problem infinitely worse. As Southern fears faded, so too did the best hope for an orderly, effective Reconstruction process. Perhaps it was for the best that this hope died quickly, before the Southern States had returned to their place in the Union. But the first step to appreciating the problems of Reconstruction is to recognize that there were no promising solutions.

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As Congress grappled with the vexed practical, moral and Constitutional problems involved in Reconstruction, a fascinating parallel debate occurred over the admission of

Nebraska and Colorado. The constitutions both territories submitted to Congress expressly defined suffrage as a right belonging exclusively to the white race. Of course, most Northern States had similar provisions in their constitutions, and no one believed Congress had the power to change them except by Constitutional amendment. Territories, however, were different, a distinction Republicans understood well, as it had been the founding idea of their party. Congress possessed complete legislative authority over territories, along with the power and responsibility to reject any constitution it considered inadequate as a basis for statehood. The analogy to Congress's power over Reconstruction was obvious. And yet, in the first session of the 39<sup>th</sup> Congress, the racial exclusions in the Nebraska and Colorado Constitutions raised hardly a whisper of protest even from those clamoring for black suffrage in the South.

The crucial division was not radical versus conservative but New England versus the West. Both Fessenden and Charles Sumner opposed the admission of Nebraska and Colorado on the grounds that its Constitution violated the principle of equal rights. An overwhelming majority of Republicans, however, favored immediate admission on the grounds that it would bring two more Republicans into the Senate, never mind their attitude toward blacks in the abstract. After the bill admitting Nebraska passed, Sumner introduced a resolution requiring voters in the territory to disavow all racial discrimination in political rights before the bill would take effect. Only five Senators, including Fessenden, supported the amendment. Edwin Morgan of New York – no one's idea of a radical – was the only Senator outside New England to support it.<sup>138</sup> Sumner was the only self-proclaimed radical in the Senate to support his amendment. Horace

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<sup>138</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 4222.

Greeley, responding to a petition from black residents in Colorado, expressly rebuffed the idea of making equal suffrage a condition for statehood.<sup>139</sup>

With a crucial election approaching, few in the West wanted to make an issue of whether western territorial governments, composed of loyal citizens, could deny suffrage rights to blacks. Most Republicans who advocated enfranchising former slaves were careful to use arguments that applied only to the States under Reconstruction, where it was even possible to harness Northern prejudices in its favor. “Even black people are better citizens than traitors,” was a line likely to leave a hateful man feeling confused. And if blacks weren’t enfranchised in the South, Republicans argued, they would inevitably swarm into North. But even these arguments, strictly confined in application to the South, weren’t enough to persuade Republicans to make black suffrage a party issue in the election. And the question of black suffrage in a Northern territory, unadorned by the bloody shirt, was obviously political poison for anyone outside New England.

Their landslide electoral victory in November of 1866, however, emboldened the Republicans. When the second session of the 39<sup>th</sup> Congress convened following the election, the Republican party (as opposed to individual leaders) addressed black suffrage rights for the first time. And since President Johnson had blocked the admission of Colorado and Nebraska, that issue was waiting for them along with all the others.

Congress’s first major step was an Act enfranchising blacks in Washington D.C. Though of enormous symbolic importance, its practical significance was limited. Indeed, the very fact that no residents of Washington had real political rights made it easier to bestow the nominal

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<sup>139</sup> Eugene Berwanger, *The West and Reconstruction* (Urbana, 1981), 145. Berwanger mistakenly claims that radicals championed the equal suffrage rights in the territories. It’s an interesting example of how the term gets is used and abused by historians. Berwanger, presumably, merely meant to distinguish a fraction of the party from the Republicans as a whole. The “radical” position is the most advanced position on issues of racial equality, just as the “conservative” position is the least advanced. The problem is that the radicals were also a self-described group, and this definition does not accurately describe them.

privilege on black residents as well. Congress actually governed Washington, and voters in the capital were the only voters in the country who elected no one to Congress. The debate over suffrage rights in Nebraska was far more controversial among Republicans.

“It passes my comprehension,” Charles Sumner declared, “how we can require Equal Rights in the rebel States when we deliberately sanction the denial of Equal Rights in a new State, which is completely within our jurisdiction and about to be fashioned by our hands.” Benjamin Wade, among others, accused Sumner of once again sacrificing a practical good on behalf of an empty abstraction. Though he certainly earned that reputation, Sumner could hardly have exaggerated the practical importance of whether a vast, growing State like Nebraska, and by extension, all Western territories, could deny black citizens voting rights on racial grounds alone. “It seems as if Providence presented this occasion in order to give you an easy opportunity of asserting a principle which is of infinite value to the whole country,” Sumner declared. If Congress refused to insist on equal political rights in Nebraska, where it had the clear Constitutional right to do so, then it would deserve the imputation that its insistence on equal rights in the South was merely punitive.<sup>140</sup>

Ben Wade seemed determined to make precisely this inference as glaringly obvious as possible. Aside from Sumner, Wade was perhaps the most outspoken proponent of making black suffrage a condition of Reconstruction. Yet he opposed any attempt to abolish racial discrimination of suffrage rights as a condition of statehood, dismissing such provisions as mere trifles that would have no effect. Each State, Wade insisted, had equal political rights within the Union. Congress could not claim the power to regulate suffrage requirements in a new State while it remained a “universal and unquestioned...doctrine...that the General Government has no power to fix the qualifications of voters in the several States.” Of course, Wade conceded,

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<sup>140</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 2<sup>nd</sup> Session, 319.

Congress had the Constitutional power to fix Nebraska's suffrage requirements so long as it remained a territory, and it could even make racial equality of all political privileges a condition for admission to Statehood. But what would be the point? "Will you do a vain and idle thing?" he asked. "For the moment you have attached the amendment and permitted the State to come in on that condition, if I am right in my reasoning, the next day she may alter her constitution and throw your amendment to the winds and fix the status of her own voters in her own way...."<sup>141</sup>

More than once, Senators interrupted Wade to ask how he could reconcile this argument with his support of imposing black suffrage on the South. "I am astonished that I should be asked to point out the difference," Wade said in reply. "One, in my judgment, lies prostrate under the arm of the conqueror, who has the same right by public law, as announced by your Supreme Court, to impose just such conditions upon her as he pleases..."<sup>142</sup> Nebraska, by contrast, was not a conquered enemy but a loyal friend. It hardly needs to be pointed out that this response did not come close to answering the Constitutional problem of imposing suffrage requirements on the South without the power of enforcing them once that community was admitted – or readmitted – as a State.

Radicals outside of New England voted consistently with Wade, while many of those with a reputation as conservatives insisted on applying the principle of equal voting rights to Nebraska. Senator Edmunds of Vermont introduced an amendment that provided for a perpetual prohibition against racial discrimination in the Act that made Nebraska a State. If the people should ever defy this law, he explained, it would simply revert to the status of a territory. Congress, he pointed out in an ingenious argument, could not compel States to exercise their functions as States. But if they refused to send lawfully elected Representatives to Congress, then

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<sup>141</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 2<sup>nd</sup> Session, 162.

<sup>142</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 2<sup>nd</sup> Session, 162.

the State would not be represented. Here, again, was a version of the most promising possible solution to the problem Republicans confronted. The best possible solution to Reconstruction was a legal mechanism by which Congress could disenfranchise States for disenfranchising their own citizens on the basis of race. Instead of establishing political rights under laws that could only be maintained by an indefinite assertion of military force, this solution had the potential, at least, of aligning black political rights with the overwhelming interests of white Southerners.

“Then the argument leads directly to this conclusion,” Senator Jacob Howard, who is included in almost any list of Senate radicals, responded in alarm, “and it is irresistible and unavoidable, that in reference to the new States that are to come into this Union hereafter, congress is clothed with omnipotent despotic power over everything, no matter what it may be, which has heretofore been regarded as subject only to the power of a State...I am astonished – I say it, of course, with great respect to the Senator from Vermont – to hear a doctrine so tyrannical and despotic advanced upon the floor of the Senate.”<sup>143</sup>

Given the certainty of a Presidential veto, the Republicans opposed to Nebraska’s Constitution, combining with the minority opposition, had the power to block it. So they were able to force the majority of their party to compromise. Characteristically, Fessenden signaled his consistent support for the strongest measures imposing impartial suffrage on Nebraska while leaving the long, pretentious speeches on the subject to Sumner. The compromise involved accepting the prohibition against racial discrimination of suffrage rights as an amendment to the bill admitting Nebraska to Statehood without submitting the proposition to the voters – who might reject it even at the cost of remaining a territory. In effect, Congress was imposing a demand while disavowing the easiest possible means of enforcing that demand. As James Grimes observed in opposing the compromise, every Senator except Edmunds, the author of the

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<sup>143</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 2<sup>nd</sup> Session, 337.

amendment, admitted that it would have no effect and was unconstitutional.<sup>144</sup> What, then, was the likelihood that the effort to enfranchise blacks in the South would amount to more than what Ben Wade called “a vain and idle thing”?

Historians have curiously ignored this episode, which immediately preceded the debate over military reconstruction. The key issues involved were absolutely central to any permanent solution to the problem of restoring the former Confederate States to the Union. One was whether Congress had a moral obligation to reject any State constitution that expressly confined suffrage rights to whites. The second question was whether Congress, having insisted on impartial suffrage as a condition of Statehood, could enforce that condition after the State had taken its place in the Union. Sumner was the only radical who affirmed either proposition. All others who did so – Fessenden, Grimes, Edmunds, were hostile to the Radical faction. And two of the leading Radicals in the Senate, Wade and Howard, openly denounced the idea as a despotic usurpation of rights constitutionally reserved to the States.<sup>145</sup>

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The Republicans’ sweeping victory in the election of 1866 inevitably brought a bitter dispute over the ambiguous mandate they had won. Voters had placed Congressional Republicans firmly in control of Reconstruction. And yet the demands of that election had made them less than forthright about the exact policy the election had vindicated. Supporters of the President routinely pointed out that he alone had proposed a plan of Reconstruction. “This is unfortunately true,” Horace White, editor of the *Chicago Tribune* wrote to Fessenden. If

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<sup>144</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 2<sup>nd</sup> Session, 262.

<sup>145</sup> One obvious explanation is that this division was mostly driven by sectional economic interests, not black voting rights. The admission of Western States would increase their influence on matters related to the tariff and currency. Certainly, Senators were aware of divisions between East and West on economic questions. No one imputed that motive to anyone during the debate, though Senate norms prohibited such an accusation except in the most blatant circumstances.

Congress adjourns without a plan to stand on, White continued, “a trap will be left open through which every doubtful district in the Union may fall out of our hands.” The first question any constituent was likely to ask his Congressman was whether the Southern States would be readmitted upon ratifying the 14<sup>th</sup> Amendment. “I can conceive of nothing more foolish than the picture of a [member of Congress] sucking his fingers before his audience, unable to answer the question whether he proposed ever to readmit the South on any terms.”<sup>146</sup>

Most Republicans, mindful of this danger, had stood on the 14<sup>th</sup> Amendment as a comprehensive solution to Reconstruction, explaining that the Southern States would be admitted upon ratifying the Amendment and conforming their laws to its provisions. Fessenden, however, had conspicuously refused to commit himself or the party to that promise. In the Committee, he had opposed a resolution declaring that the States “shall” be admitted upon ratifying the Amendment, replacing that word with “may.”<sup>147</sup> But even those who sincerely hoped for a speedy restoration on the basis of the 14<sup>th</sup> Amendment were utterly disillusioned by the failure of the Southern States to recognize the best terms they were ever going to get. President Johnson had encouraged Southern illusions, and thus emboldened the worst Southern impulses.

“The only question now,” Fessenden wrote privately early in the second session of the 39<sup>th</sup> Congress, “is whether we shall hold the confederate rebels where they are or whether we shall proceed to abrogate their State governments and establish new ones.” It was this question that divided Fessenden and the self-proclaimed radicals. “My own impression,” he continued in a letter to his father, “is that it may be as well to wait patiently until they grow wiser. Their condition is a bad one, and reports say that the leading men among them are beginning to feel that they have nothing to hope from autocracy. Every thing will depend upon the next

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<sup>146</sup> Horace White to Fessenden, July 17, 1866. White Papers. Abraham Lincoln Presidential Library. Springfield.

<sup>147</sup> Kendrick, *Journal*, 107.

presidential election. If we carry it I have no doubt of an auspicious result. With a President and Congress working to the same end, our laws could be enforced and our friends protected. Until that time comes I fear that everything will remain unsettled and violence continue to be the order of the day.”<sup>148</sup>

His reference to “autocracy” was the Southern hope, encouraged but not vindicated by Johnson, that the President would overrule the will of Congress. That hope had done immense harm, encouraging Southern bellicosity and delaying the restoration of orderly government. Congress’s first task, Fessenden insisted, was to direct the military to provide the protections of life and property in the South that it had failed to provide under the direction of the Executive. Before involving itself in any more complicated questions, Congress should first see if the President would make an issue on the essential point of providing basic protections to loyal residents, black and white, in the South. “I belong to that class of men who think that in a difficult crisis, where there is confusion and it is troublesome to ascertain what it is best to do,” Fessenden said in Congress, “true statesmanship requires that you should do no more than is absolutely demanded by the exigency of the case.”<sup>149</sup>

The task of placing the South under the control of the military, against the stubborn opposition of the commander-in-chief, was formidable enough. Fessenden saw no chance of safely restoring the Southern states, on any terms, until the Republicans had once again regained control of the White House. Many Radicals appreciated this difficulty and had just the solution. But to precipitate a naked, all-or-nothing, power struggle between Congress and the President, without an unambiguous Constitutional basis for doing so, was to assume a grave, unnecessary risk. They had little to gain, except time, and everything to lose in an attempt to remove the

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<sup>148</sup> Fessenden to father, January 19, 1867.

<sup>149</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1556.

President on dubious Constitutional grounds. He also opposed any attempt to combine an act providing for military rule with any commitment to restore the Confederate States to the Union. “Our great danger is from the hot heads of over-zealous men,” Fessenden wrote privately, “who are in great haste to immortalize themselves – but I am hopeful we may be able to act like men and not like boys...”<sup>150</sup>

Fessenden, however, could no longer control a majority in the Senate, which was determined to combine military rule with provisions for restoring the Southern States into the Union. Though he declared himself willing to yield to the majority, he was not willing to actively support the measure. “My objection to it from the beginning,” Fessenden said of the Military Reconstruction bill, “has been that it does not go far enough in the protection of ourselves,” and was far too binding on them as to the future. “If gentlemen who glory in the name of radical are not so radical on that subject as I am, that is all the difference between us,” Fessenden said, obviously enjoying the contrast.<sup>151</sup>

Those who gloried in the name of radical were not, to put it mildly, persuaded that Fessenden had simply run too far ahead of them. Ben Wade confessed that he would be overjoyed if Fessenden, “with his vast influence here, will throw it on the side of radicalism and aid such poor radicals as I am to get measures satisfactory to ourselves.”<sup>152</sup> The political confusion at that particular moment made it difficult for almost any leader to characterize his position relative to others. Fessenden refused to commit himself to any concrete terms of re-admission for the Southern states, and he clearly expected to hold all or most of them under military rule until the inauguration of a new President in 1869. No radical disputed the need for

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<sup>150</sup> Fessenden to Lizzie, December 8, 1866.

<sup>151</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1559.

<sup>152</sup> *Ibid.*

military rule, but they were also eager to establish civil governments firmly under the control of the loyal people in the South, white and black.

Essentially, “radicalism” at this particular moment meant a simple-minded faith in an immediate solution to the problems of Reconstruction. The military, in Fessenden’s view, could hold the rebel States indefinitely until they voluntarily acquiesced in whatever terms Congress imposed as a condition of restoration, while also satisfactorily demonstrating their good-faith intention of permanently abiding by those terms. But it was madness to use the military to compel the States back into the Union. In any community, power inheres in both formal and informal channels. Fessenden’s basic insight was that whatever military force was necessary to *create* a loyal State in the South would be necessary to *maintain* that State. Whites outnumbered blacks two to one in the States under Reconstruction. And they still possessed every political advantage conferred by a long history of active citizenship within a racialized slave regime. So, obviously, impartial suffrage, even faithfully carried out, would reduce the Republicans’ political power in Congress, and thus, paradoxically, hasten the resurgence of white supremacy in the South.

The only way to avoid this outcome, as the Radicals realized, was to disenfranchise those who had participated in the rebellion. As a punishment for rebellion, this was hardly excessive. Indeed, it could be considered positively magnanimous relative to the aftermaths of most civil wars. But as a strategy for establishing stable civil governments in the South it was absolutely certain to fail.

Ultimately, the Republicans only had two viable alternatives in seeking a durable final settlement with the South. One was to establish clear terms that white Southerners would have to accept, voluntary and unequivocally, and then hold them indefinitely under military rule until

they did so. The overwhelming majority of Republicans favored this approach, though President Johnson destroyed the possibility of reaching any immediate consensus as to the terms. Thus, Fessenden favored military rule – “pure and simple” – until the Republicans once again possessed the undivided power of the government.

The other alternative was to impose a reign of terror on the South beyond anything ever seriously contemplated – let alone implemented – during Reconstruction. As General Sherman, among others, recognized, the North would eventually have to rely upon White Southerners to accept the outcome of the war and its revolutionary consequences for their society.<sup>153</sup> If, therefore, they could not find means of encouraging white Southerners’ better impulses, the only alternative was to bludgeon them into permanent submission to the new order. If the military were willing to exhibit the same ruthless resolve in dealing with white Southerners as they asserted in dealing with the Comanche, then they might be able to “civilize” the region if not the people who inhabited it. The racial paradox evident in the analogy suggests the improbability that such militarized ruthlessness would redound to the ultimate benefit of blacks. But it might have terrorized whites into accepting the legitimacy of governments that disenfranchised them. It had a *chance* of success. Every policy Republicans actually contemplated or imposed, by contrast, was almost perfectly calibrated to make white Southerners angry and unruly without making them submit. Worse, their advocates invariably regarded these measures as solutions to Reconstruction, rather than commitments that would require an expensive, indefinite effort to maintain.<sup>154</sup>

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<sup>153</sup> William Sherman, *Memoirs of William T. Sherman* 2 vols. (New York, 1876), 1:335-342. Letter to General Halleck, September 17, 1863.

<sup>154</sup> “What kind of security do you get by making men desperate, more desperate than they are now?” Fessenden asked in opposing an amendment to a national bankruptcy bill that denied former rebels protection under the law. Sumner advocated the law expressly as a means of providing security to the loyal people in the South. One can understand Fessenden’s bewilderment at the connection between that objective and requiring any debtor to take the ironclad oath in order to file for bankruptcy. “I go as far as anybody in depriving these people of power in the

Fessenden cheerfully supported the first four sections of the first Reconstruction Act, which provided for military rule over the South. But he fought a rear-guard battle against the fifth section, which provided the terms of restoring the States to the Union. All Republicans had agreed on providing for black suffrage. Radicals, however, also insisted on disenfranchising at least some rebels. Democrats, hoping to embarrass or divide their opponents, forced the majority of the party to choose between the Radicals' version or nothing at all.<sup>155</sup> Few Republicans hesitated at this choice. Fessenden, however, did not fit on either side of this division between "radicals" and the rest. From his point-of-view, hasty restoration on any terms was dangerous.

The 40<sup>th</sup> Congress convened for its first session immediately after the 39<sup>th</sup> Congress adjourned. And the first order of business was to put the first Reconstruction Act into effect with a supplementary enabling act. It was this act that set in motion the political machinery denounced as "Carpetbag" governments. Fessenden fought a lonely rear-guard effort to obstruct the act without opposing it outright. "I am content when I am whipped to recognize the fact," he acknowledged in the Senate.<sup>156</sup> He recognized his own views had no hope of carrying a majority of his party. But he continued to insist that it was a pure delusion to think that a State could be safely restored to the Union by using the military to enforce terms imposed by Congress.

"[W]hile I am as anxious as anybody that these States shall be back in full communion with us as soon as possible, I do not want them back a moment sooner than they are prepared to come with

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Republic until I am satisfied that the power can be exercised with safety to the Republic," Fessenden insisted. But the necessity of maintaining this despotism was itself a danger to the Republic. "If I lived in a community of desperate men my policy would be to make them less desperate; my policy would be to encourage them to do something for themselves, to lift themselves above the condition into which they were fallen, to turn their attention to the arts of peace, and not to drive them to robbery and plunder, which follow a feeling of desperate circumstances," he said in the Senate. *Congressional Globe*, 39<sup>th</sup> Congress, 2<sup>nd</sup> Session, 1008.

<sup>155</sup> Historians often note the role of Northern Democrats in bringing about radical reconstruction as a profound irony. But that assumes Northern Democrat's cared about the South, one way or the other. Most of them cared no more for their Southern counterparts than, say, Jefferson Davis, cared how secession would affect his party associates in Wisconsin. Allies of convenience, Northern Democrats were unlikely to sacrifice themselves when their interests diverged from those of the South.

<sup>156</sup> *Congressional Globe*, 40<sup>th</sup> Congress, 1<sup>st</sup> Session, 118.

the right kind of feeling to do their duty by the whole people of the United States,” Fessenden said in the Senate.

The crucial purpose of the military in the South was to protect loyal citizens from oppression and terror by a disloyal majority. That was also the only purpose the military was competent to carry out. Beyond the obligation to protect individual rights, the States, Fessenden believed, should be left “to work out their own salvation in their own way with reference to forming a constitution, we retaining the power to judge of the mode in which it was framed, and the provisions of it afterward. We were, and should have been, perfectly safe on that.” Congress was under no obligation to admit States back into the Union until they proved able and willing to govern themselves in accordance with the Republican principles vindicated at such great cost during the late war. To enforce equal rights in the South with Federal bayonets was not only just but necessarily. To impose “self-government” at the point of those same bayonets was not only illogical but dangerous.

Instead of leaving it to the people to work the matter out in their own way, as I would be perfectly willing to do, retaining the power of supervision, we go further and say, this military government which we send there shall take the initiative, and not only take the initiative, but shall govern all the details and settle the manner in which that is to be done. Now, sir, you see the danger of this... They are not a people satisfied, or likely to be satisfied, with what we do. The large majority of the white population, probably nine-teen twentieths of them, are disposed to find fault with everything we do, disposed to place themselves, if not in an attitude of rebellion, in an attitude of hostility...<sup>157</sup>

Fessenden was not suggesting that the Republicans therefore shrug their shoulders and return the freedmen to the mercies of their former masters. He was, instead, simply insisting that no settlement of reconstruction would be secure until “those who went out should be the men

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<sup>157</sup> *Congressional Globe*, 40<sup>th</sup> Congress, 1<sup>st</sup> Session, 161.

who should ask to come in; that those who complained the loudest should be the men who ask us to take them back.”<sup>158</sup>

There were obvious limitations to what the North could expect white Southerners to accept in exchange for their political rights. But this approach had the merit of clarifying, rather than disguising, the political realities all sides confronted. Given the nature of the federal system in 1867, no other means of reaching a settlement had the slightest hope of enduring. Of all possible solutions, restoring the States by *temporarily* disenfranchising the leadership class of the Confederacy was the most short-sighted. It did not eliminate that class or the *de facto* political power that made them dangerous; it merely deferred the problem – always an attractive solution to political hacks – while removing any incentive or obligation to make these same Southern leaders publicly commit themselves to accepting the terms Congress imposed on them. Fessenden was not clairvoyant in anticipating the “redemption” narrative that emerged from these circumstances; they could almost be predicted as a matter of logic. But it is not in most politicians’ natures to worry about tomorrow when seizing an obvious advantage today.

The sweeping ambitions Congressional Radicals demanded for Reconstruction did not prompt them to strengthen the vital instrument responsible for implementing their agenda. In this sense “Military Reconstruction Act” is misleading. The number of troops occupying the South actually diminished as the military’s mandate broadened. An army of more than a million men occupied the South in April 1865. That force had diminished to just 125,000 when Congress convened seven months later. Only a residual force of 23,000 troops remained at the outset of Military Reconstruction, in February of 1867, and even that force diminished in the following months to just 20,000 by October.<sup>159</sup> Predictably, violence and chaos increased as abruptly as the

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<sup>158</sup> *Congressional Globe*, 40<sup>th</sup> Congress, 1<sup>st</sup> Session, 161.

<sup>159</sup> Downs, *After Appomattox*, 89-90; 188.

tangible presence of military authority withdrew. And yet there was no political support, even among self-proclaimed Radicals, for strengthening the military even as Congress clamored hotly for ends that only a vastly larger military could hope to accomplish. Ideological aversion to a large standing army partly explains Republicans' inability to see what should have been obvious.

But hack political motives, elevating partisan advantages over public purposes, were influential as well. Lawless violence against blacks in the South was politically advantageous for the Republicans – so long as they confined themselves to denouncing these outrages, along with the President and the vicious rebels responsible for them. Drastically increasing the military occupation of the South, on the other hand, would reduce these outrages, but it would also replace a partisan advantage with a fatal partisan liability. No career-minded politician relished the prospect of defending an expensive military occupation in the South, especially if it actually eliminated the outrages that inspired such vivid oratory on the stump. One does not need to infer conscious cynicism to recognize that the Republicans were more adept at protecting their own partisan interests than in resolving the grave challenges besetting the South. But idealistic rhetoric, then and always, does not need to be cynical to be self-serving.

Two years later, Fessenden was able to claim vindication without claiming much in the way of prophetic foresight. The ballot in the South had not proven the panacea that its radical champions had hoped. “Talk of the moral effect of an election on such a people as that! Why, sir, they care no more about it than for the whistling of the idle wind. It must be force, to be exercised by men who dare to exercise it,” Fessenden said in December of 1868. “For myself, I was not exactly convinced that when those governments should be formed by the people they would be able to sustain themselves in all instances, such was the character of the population and such was the nature of feeling existing in those States.”

“For the sake of economy, so called, we have been in a very great hurry to reduce our military force,” Fessenden complained in the final session of Congress under President Johnson.<sup>160</sup> The rash impatience to create civil governments controlled by the loyal citizens in the South had a corollary in the equally rash impatience to diminish military expenditures. The results were only too predictable. “For my part I believe that the great difficulty arises from the fact that we were in such a hurry to build up a reputation for economy that we diminished the army far below what was necessary and what will be necessary for some years to come,” Fessenden continued.

Unless we bring about a condition of things in which there is a power lodged with somebody to repress by force the violence that takes place there continually we shall see no end to the troubles of which we have heard so much for the last year. They will continue and they must necessarily continue, from the nature of the population and the kind of feeling that exists; and the moral force of an election will be found totally inadequate to bring about a change of circumstances and produce an orderly state of society...<sup>161</sup>

It is part of the tragedy of Reconstruction that this opinion aligned Fessenden with neither “radicals” nor “conservatives,” only with the truth. The army in the South continued to shrink, violence there continued to increase, and the Republican party continued to triumph at the polls.

## *VI: Impeachment*

It is impossible to imagine Reconstruction proceeding smoothly under any scenario, but Johnson’s conspicuous contribution to the problem made him seem uniquely responsible for every outrage committed against loyal blacks and whites in the South. The emotional fury this provoked was almost impossible to exaggerate. Behind every legislative skirmish was the

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<sup>160</sup> *Congressional Globe*, 40<sup>th</sup> Congress, 3<sup>rd</sup> Session, 81.

<sup>161</sup> *Ibid.*

mounting impatience to remove Johnson and the frustration with prominent Republicans obstructing that fateful step – Fessenden foremost among them. A majority of Republicans in the House would readily impeach Johnson if they could be confident of securing a guilty verdict from two-thirds of the Senate. But few Congressmen were willing to risk having their vote for impeachment rebuked by distinguished leaders of their own party. Charles Sumner denounced Fessenden as “the captain of the obstructives,” and Zachariah Chandler accused him in the Senate of standing “here month after month, the defender of Andrew Johnson and his cabinet.”<sup>162</sup>

Fessenden was far from a defender of the President, who, he wrote privately, “has undoubtedly been guilty of very serious offenses...the worst consequence of which has been encouraging the South in its opposition to the measures of Congress and keeping alive a spirit of hostility.”<sup>163</sup> For all his combativeness, however, Johnson scrupulously acknowledged the Constitutional limits of his office. Except in his intemperate speeches, he did not encroach upon the dignity or prerogatives of Congress. A good example is his veto of the first Reconstruction Act. Since the 39<sup>th</sup> Congress was about to expire, Johnson could have easily killed the bill with a pocket veto. Instead he promptly vetoed the measure, and Congress, just as promptly, overrode it. Historians generally cite this as an example of Johnson’s pugnacity, provoking a fight he would lose when he could have easily won by doing nothing. But the opposite was true. A deliberate pocket veto was a Constitutionally dubious strategy; a direct veto was not. The charges ultimately brought against Johnson demonstrate the care with which he had stayed within the Constitution.

For most Republicans, Constitutional quibbles were beside the point. Fessenden himself acknowledged that the entire problem of Reconstruction was not contemplated by the

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<sup>162</sup> “Obstructives” from Jellison, Fessenden, 224. Chandler’s speech is in the *Congressional Globe*, 40<sup>th</sup> Congress, 1<sup>st</sup> Session, 752.

<sup>163</sup> Fessenden to father, Dec. 7, 1867. Fessenden Papers.

Constitution and could not be addressed by strictly regarding its provisions. But the distinction in his own mind was obvious. The Constitution should not restrain a responsible public official from defending the Republic against a threat to its existence. Johnson was a bad President, ill-tempered, undignified, and wrongheaded. His Administration was needlessly prolonging the miserable condition of the South. But with the Republicans firmly in control of Congress for the remainder of his Presidency, Johnson posed no threat to the Constitution. They had ample powers to contain the President's capacity for mischief, and they had duly exercised those powers. Under these circumstances, the plot to impeach him represented a far more wanton threat to the Constitution than anything Johnson had attempted.

And yet, at the crucial moment in the struggle to impeach Johnson, Fessenden had given his impassioned support to the very plot he consistently opposed. A majority in Congress had long been prepared to impeach the President, but they were not about to do so without some hope of securing a guilty verdict from two-thirds of the Senate. The key to the whole effort, therefore, was to impeach the President on grounds likely to persuade influential Senators like Fessenden and Trumbull – i.e. a pretense that might satisfy a strict Constitutional lawyer. Their opportunity came with Johnson's removal of Edwin Stanton, a plausible violation of the Tenure of Office Act.

The Tenure of Office Act prohibited the President from removing office holders, including cabinet members, without approval from the Senate. When the Act was under consideration in the Senate, Fessenden had argued against including cabinet members on the grounds that they served primarily as "confidential advisors" to the President. Harmony between

the President and his cabinet was essential in any functional administration. No President should be compelled to rely upon and confide in an advisor he did not trust.<sup>164</sup>

Only the essential details of Johnson's struggle to remove Stanton from office need concern us here. On August 12, he requested Stanton's resignation. "Considerations of public character," Stanton replied, compelled him to refuse the request. Johnson then suspended him from office and appointed General Grant as his interim successor.<sup>165</sup> Stanton denied the President's authority to remove him under the Constitution, "But inasmuch as the General commanding the armies of the United States has been appointed *ad interim* and has notified me that he has accepted the appointment, I have no alternative but to submit, under protest, to superior force."<sup>166</sup>

Johnson carefully conformed to the provisions of the Tenure of Office Act. He did not remove Stanton but "suspended" him and appointed Grant as an interim replacement. Only the Senate's approval could make the change permanent. No one could object that Grant was unfit for the position and many Senators were on record as saying that no cabinet member could honorably serve against the wishes of the President. Those eager for impeachment, however, were eager to force Stanton back in and dare the President to make an issue of it.

And yet Stanton had no firmer friend than Fessenden. A perceptive sycophant, Stanton understood that Fessenden's greatest weakness was his sons. Without any direct solicitation by Fessenden, both his surviving sons in the military received commissions as Major Generals.

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<sup>164</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 2<sup>nd</sup> Session, 384.

<sup>165</sup> Edward McPherson, *Political History of the United States of America During the Period of Reconstruction* (Washington, 1871), 261-262.

<sup>166</sup> *Ibid.* 262.

“Stanton is a good fellow,” Fessenden wrote to his son Frank in the summer of 1865, “and it is a pity every body does not know him as well as we do.”<sup>167</sup>

As the Senate deliberated, in an executive session, over whether to concur in Stanton’s removal, the stakes were obvious: Concurring in the removal would avert a Constitutional crisis; rejecting his removal would precipitate one. The best argument for concurring in the removal was also the simplest. Rightly or wrongly, Stanton did not have the confidence of the President, and no honorable man should persist in office under such circumstances. Were Johnson seeking to replace Stanton with, say, Jefferson Davis, that would obviously justify his resistance. But such considerations hardly applied to the man the Republicans were virtually certain to elect as the next President. This argument, however, was essentially neutral on the personal and professional character of Stanton himself.

But Stanton’s bitterest critics could not possibly leave it at that. James Doolittle used the occasion to re-litigate what he consider Stanton’s foulest crime – his refusal, as Secretary of War, to renew prisoner exchanges unless the Confederates agreed to include captured black soldiers as well, despite knowledge of the horrific conditions endured by Union prisoners. No line of attack could have been better calculated to provoke a roaring defense for Fessenden. With that policy, in Fessenden’s mind, Stanton had courageously upheld a point that he could not have honorably conceded, whatever the consequences. And the very fact that the decision might prove so damaging to Stanton before the public – *he allowed white soldiers to starve to death in unimaginable hells simply because he could not secure the release of black ones too* – further aroused Fessenden’s indignation.<sup>168</sup> “The truth was,” Fessenden later explained, “certain

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<sup>167</sup> Fessenden to Frank, July 26, 1865.

<sup>168</sup> Anyone who has read the harrowing reports Doolittle received on the condition of Union prisoners, starting in the April of 1864, will not judge him too harshly for his own indignation on the matter. He was not wrong to believe that the Union policy, however noble in principle, contributed to the unspeakable suffering of many without helping

personal attacks made upon him which excited my indignation and contempt, and I did not hesitate to express both rather plainly.”<sup>169</sup> Fessenden had not prepared his speech, or even worked out what he wished to say in his own mind before he began. “I simply went on from one thing to another as the subject grew upon me,” he wrote soon after.<sup>170</sup>

“My Dear friend,” Stanton wrote upon hearing of his speech, “You have my thanks and gratitude ever and forever.”<sup>171</sup> Curiously, Fessenden did not seem to anticipate that his impassioned defense of Stanton played right into the hands of the scheme he most feared. “Mr. Stanton is in excellent spirits, and the decision of the Senate has done much good,” he wrote cheerfully to his cousin Lizzie. “I received more compliments upon my speech than for any other I ever made.”<sup>172</sup>

After professing his eternal gratitude to Fessenden, Stanton picked up his pen again to write an even more effusive letter to Fessenden’s son Frank.

His speech in my behalf electrified the Senate and is regarded by those who had the good fortune to hear him as surpassing anything ever heard in the Senate. Unfortunately for me and for the country, it was made in secret session, where there were no reporters, but he has been urged by many to write it out. I know how irksome such task may be, and fear that he may not comply with the request. But whether he does or not, it will always make me happy to have been defended by him, and has given me a claim to regard him as a father, and his sons as my brothers. He has done far more for me than his offspring have ever needed at his hands, for he has delivered me from revilers and persecutors who sought to destroy my good fame and has covered them with confusion.

Accept me, therefore, I beg you, as a brother, whose heart is filled with love and gratitude to your father, and believe me that my heart is dedicated to him and those who are dear to him...<sup>173</sup>

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anyone. And he was also correct in believing that Stanton was personally incapable of the noble motives Fessenden and other admirers attributed to him.

<sup>169</sup> Fessenden to Frank, January 25, 1868.

<sup>170</sup> Fessenden to Lizzie, January 19, 1868.

<sup>171</sup> Stanton to Fessenden, January 14, 1868.

<sup>172</sup> Fessenden to Lizzie, January 19, 1868.

<sup>173</sup> Cited in Francis Fessenden, *Life and Public Service*, 2:150.

The Secretary of War was 53 years old when he beseeched Frank, who was still in his 20s, to accept him as a brother, and the man he professed to revere as a father was 61. From an incompetent or mediocre man such groveling would strike anyone as pathetic. But Stanton was a brilliant lawyer and administrator. It is not easy to resist the abject flattery of such a man. And that, one suspects, is what allowed him to get away with such brazen duplicity. The artfully expressed purpose of the letter was to get Fessenden to write out his remarks for the public. “In his warmth of gratitude,” Fessenden wrote, Stanton “overestimates the speech made by me on the occasion referred to.” Embarrassed at the warmth of Stanton’s praise, Fessenden perhaps suspected his flatter’s motives without being able to reject such an ardent admirer altogether. “Of course, I cannot write it out, for I made absolutely no preparation and could not remember what I said or how I said it.”<sup>174</sup> Well, Stanton could console himself at having played his best card in the attempt.

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It is worth pausing briefly to consider the character of the man who played such a central role in the impeachment drama.<sup>175</sup> Edwin Stanton served the Union cause brilliantly as Secretary of War. As an administrator, he was tireless, honest and capable, even brilliant. But he was also a shameless liar, a bully, and a sycophant. In the antebellum era, influential secessionists, States’ rights Democrats, and antislavery Republicans regarded Stanton as an enthusiastic disciple of their political creeds. “It is hard to run with the hare and hunt with the hounds, but Stanton seems to have mastered the difficulty,” Jeramiah Black, his mentor and friend later marveled. “If he

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<sup>174</sup> Fessenden to Francis, January 25, 1868.

<sup>175</sup> The best biography of Stanton is William Marvel, *Lincoln’s Autocrat: The Life of Edwin Stanton* (Chapel Hill, 2015). Marvel’s work corrects the overly generous interpretation of Benjamin Thomas and Harold Hyman, *Stanton: The Life and Times of Lincoln’s Secretary of War* (New York, 1962). Marvel’s interpretation, by contrast, is often too critical of Stanton.

kept up this fraudulent deceit for thirty years, and thereby got the highest places in the gift of both parties, he was the most marvelous imposter who ever lived or died.”<sup>176</sup>

During the secession crisis, Black had urged James Buchanan to appoint Stanton to his cabinet as Attorney General. After eagerly accepting the job, Stanton immediately offered himself to several prominent Republicans as a spy on the administration, feeding them harrowing tales of imbecility and treason in the cabinet during midnight meetings. Henry Wilson, one of the Republicans so favored, recalled that it was “strikingly providential” that Buchanan had brought “that strong, rugged, downright, patriotic man,” into his cabinet at such a fateful hour. He honestly imagined scenes in which the spy who met him secretly at night spent his days berating the President for his faithlessness immediately after being invited to join his administration. “The President – poor, weak old man – trembled and grew pale,” as Stanton roared like a lion in defense of the Republic.<sup>177</sup>

Wilson’s credulity is amazing, and he was far from the only one taken in by Stanton. In fact, Stanton flattered President Buchanan effusively, not just during the secession crisis but afterward. “The first month of [Lincoln’s] administration,” Stanton wrote to Buchanan on April 3<sup>rd</sup>, 1861, “seems to have furnished an ample vindication of your policy...”<sup>178</sup> The most charitable interpretation of Stanton’s career is that he was as sincere in his loyalty to the Union as he was treacherous in his loyalty to individuals. But that does not explain why he continued to write Buchanan fawning letters even after he had left the White House. After sending Buchanan a scathing indictment of Lincoln’s administration on the day the war began, Stanton relayed the general impression, which he tacitly endorsed, “that in less than thirty days Davis will be in

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<sup>176</sup> Jeramiah Sullivan Black, *Essays and Speeches* (New York, 1885), 272-273.

<sup>177</sup> Henry Wilson, “Edwin Stanton” *The Atlantic Monthly* (October, 1870).

<sup>178</sup> Stanton to James Buchanan, April 3, 1861. Cited in Benjamin Curtis, *James Buchanan*, 2:538.

possession of Washington.”<sup>179</sup> Observing that Seward had been overwhelmed by the war-faction of his party, Stanton wryly noted that the Secretary of State was unlikely to do the honorable thing and resign in protest. “That is a sacrifice no Republican will be apt to make.”<sup>180</sup> Uncertain about the outcome of events, Stanton was prepared to be on the winning side no matter what.

The same duplicity marked Stanton’s posture during the early conflict between President Johnson and Congress. “Stanton must be actin’ double,” Trumbull wrote privately in the Spring of 1866. “He is certainly deceiving somebody.”<sup>181</sup> The object of Stanton’s deceptions, it is only fair to infer, depended on who proved to have the losing hand. And that, of course, turned out to be Johnson. When the Tenure of Office Act came up in the cabinet, “Mr. Stanton was more earnest and emphatic in the expression of his objections than any member of the Cabinet,” Orville Hickman Browning noted in his diary. And Gideon Welles’s diary corroborates the observation. Stanton later used this same Act to defy the President’s authority to remove him from office. When Johnson asked Stanton to write the message vetoing the bill, he demurred on the grounds of poor health.<sup>182</sup> For good reason, Johnson wanted Stanton’s “emphatic” views in writing, and for equally good reason, Stanton did not want to gratify his wish.

No prominent Republican should have been more contemptible to Fessenden than Stanton. No one so brazenly flouted the moral code Fessenden upheld as the essence of honor. And yet his impassioned speech on behalf of Stanton dramatically helped set in motion the movement he had vigilantly obstructed for the past year.

The result of the Senate’s vote of non-concurrence in Stanton’s removal was about as predictable as anything can be in politics. Grant followed the will of those about to make him

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<sup>179</sup> Stanton to Buchanan, April 12, 1861. Cited in Curtis, *Buchanan*, 2:542.

<sup>180</sup> *Ibid.* May, 19, 1861. 2:549.

<sup>181</sup> Trumbull to Julia, May 15, 1866.

<sup>182</sup> Browning, *Diary*, 2:132. And Welles, *Diary*, 3:51.

President and returned the office to Stanton. Johnson persisted in demanding Stanton's removal, and the result was impeachment. Whether Fessenden could have persuaded the Senate to concur in Stanton's removal is, of course, unknowable. A few Republicans who ultimately voted to convict Johnson were on record saying either that the Tenure of Office Act was unconstitutional or that it did not apply to Stanton.<sup>183</sup> In deference to his supposed friend, Fessenden helped set the trap that put the President on trial for the first time in the history of the Republic.

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“You know, probably, that the President has been impeached, and will soon be upon his trial before the Senate,” Fessenden wrote to his father the following month. “The country has so bad an opinion of him, which he fully deserves, that it expects his condemnation and removal from office. This fact places those who are to try him, if they are conscientious men, in a possibly painful position, especially as a failure to convict may be attended with very disastrous consequences to the dominant party, and consequently to the great cause which depends upon its success. Still, it is a responsibility from which there is no escape, and I humbly trust we may be able to judge him impartially, as we have solemnly sworn to do.”<sup>184</sup>

Every consideration capable of enflaming the most intense political passions combined in the Republicans demands for conviction. Contemplated and advocated for two long, bitter years – years that felt like an eternity – the actual impeachment of Johnson had the effect of an exhilarating catharsis. The Constitution did not provide for the removal of a bad or incompetent President. To strike at Johnson, the Republicans had to indict and then convict the Chief

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<sup>183</sup> For example, John Sherman and Timothy Howe. “The Republican press will deny [Johnson’s] authority to remove Mr. Stanton,” Howe wrote privately on February 21, 1868. “If so the Republican Press will lie. I struggled for weeks in the Senate to secure an Amendment to the tenure of office bill which would protect the Secretary of War...Mr. Sherman...stated that it did not and was not designed to protect the Secretary of War and no man contradicted his statement.” Howe papers. Wisconsin Historical Society.

<sup>184</sup> Fessenden to father, March 8, 1868.

Magistrate of the nation as a criminal. Much like Southern secession 8 years earlier, the impeachment movement had crashed violently against a formidable cultural and psychological barrier. And when it finally burst through it carried the full fury of the powerful forces that had held it back. “The public, when roused and excited by passion and prejudice, is little better than a wild beast,” Fessenden wrote.<sup>185</sup> Several Senators who had dreaded impeachment and knew the legal case was pitifully weak, even as a pretext for a political necessity, now “bent like reeds before a popular blast.”<sup>186</sup>

“The counsels of bad men and unwise men have led us to the brink of a precipice, and I fear nothing can save us from going over,” Fessenden wrote privately early in the trial, by which he meant that Johnson would be impeached. “Cowardice has led me to follow bad counsels because the majority so determined as far as I can go. I prefer tar and feathers to life long regret.”<sup>187</sup>

The story of the enormous pressure brought to bear on Senators to convict has been told often. Fessenden, however, rarely looms large in these accounts. He received many violent threats in writing, but no one who knew the man would try such tactics in person. The nastiest attacks fell on Edmund Ross of Kansas, who was considered the easiest Senator to break. Stanton sent General Daniel Sickles – a dear friend since Stanton got him acquitted for murdering Washington’s District Attorney in broad daylight – to “save” Ross from his folly or wickedness. Sickles was perhaps the only man capable of approaching a wavering Senator like a rabid dog, avenging angel of righteousness and satanic tempter simultaneously, threatening preaching and bribing all in one furious burst of noises and gestures. Wisely, Ross stayed in his

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<sup>185</sup> Fessenden to William, May 13, 1868.

<sup>186</sup> Fessenden to sister, Sept. 13, 1868.

<sup>187</sup> Fessenden to Lizzie, April 12, 1868.

room and let his tearful landlady deal with Sickles, who remained in his parlor until 4 o'clock in the morning before cursing Ross's cowardice and departing.

Stanton did not send Sickles to Fessenden's parlor, however, and one wonders whether even Sickles would have gotten beyond looking him in the eye. Instead, Stanton suddenly discovered that the War Department required the exceptional ability and integrity of Frank Fessenden. No doubt, Stanton relished the opportunity to hug his "brother" in person and, perhaps, implore him not let their beloved father forsake him. Still, Stanton also informed Fessenden that he issued the order returning Frank to active service only to pay his expenses in coming to Washington. Should he prefer to stay home with his family, the order would be rescinded.<sup>188</sup> Stanton knew better than to insinuate that his professional dealings with Major General Fessenden were guided by any consideration other than his esteem for that soldier and the good of the country. Senator Fessenden, doubtless considering this judgment astute, had no reason to suspect it. But as Stanton surely understood, a bribe does not need to be recognized by its recipient to work.

The threatening letters that Fessenden received from anonymous patriots were easy to ignore. But he had a harder time dismissing the pathetic pleas of politicians who counted on him as their leader. "If you do not know it, it is nevertheless a fact that there is no man on earth for whom I have so much affection and admiration as yourself, and I want you right all the time," Senator Justin Morrill of Vermont, one of Fessenden's closest friends, wrote to him. Knowing Fessenden well, he carefully avoided suggesting that he would be swayed by any consideration but his solemn oath as a judge. No vote that "you may feel it a duty to give will forfeit my esteem," Morrill assured him, just before turning the screw, "but I want it such a vote as you can defend without tearing your life out of you for the rest of your days." A vote for acquittal would

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<sup>188</sup> Fessenden to Francis, April 4, 1868.

cost Fessenden the public esteem he had earned over a lifetime. And then there was an even worse consideration. “[Y]ou could do nothing which would fulfill the ancient grudge of a certain clique of your foes sooner than a vote on your part in favor of Andrew Johnson. As an idol of a very large portion of our people you would be knocked off your pedestal.”<sup>189</sup> And then he would be at the mercy of his worst enemies.

And, of course, as Stanton had subtly reminded him, Fessenden’s sons had promising careers ahead of them, either in politics or in the public service. Despite their own merits and the honorable service they had already rendered, their prospects would inevitably be diminished if their powerful father became a pariah in the party he led. “Make up your mind, if need be, to hear me denounced as a traitor and perhaps burned in effigy,” Fessenden wrote to his son William as the trial neared its climax.<sup>190</sup>

“If Mr. Fessenden goes for acquittal then I imagine the President will be acquitted,” Senator Timothy Howe predicted to his niece. “But I don’t think it certain in spite of what is said that Mr. Fessenden will take that side, nor is it certain his influence will be fatal if he should.”<sup>191</sup>

Two days later, on May 11, the galleries were cleared, the doors to the chamber locked, and the Senate resolved to discuss their opinions on the trial in secret session. No reporters were permitted to record the session, even for posterity, but every effort at secrecy did not prevent those just outside the chamber from getting a sense of what was happening inside. “Hell going on in the Senate right now,” one telegraph read. “We are sold out!” Benjamin Butler shouted to his colleagues in the House.<sup>192</sup> Fessenden and Trumbull came in for the worst abuse. The charge that likely stung Fessenden the most was that he had known all along how he was going to vote

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<sup>189</sup> Morrill to Fessenden, May 10, 1868.

<sup>190</sup> Fessenden to William, May 3, 1868.

<sup>191</sup> Howe to Grace, May 9, 1868. Howe Papers.

<sup>192</sup> Dewitt, *The Impeachment and Trial of Andrew Johnson*, 520-521.

and withheld the knowledge from his party friends from a cowardly desire to avoid censure. In a panic, Senate leaders delayed the vote on impeachment for five days and then adjourned.

Fessenden walked back to his boarding house, flung himself on his couch, and sobbed.<sup>193</sup>

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“The agony is over so far as I am concerned,” Fessenden wrote three days before formally voting for Johnson’s acquittal, “and having resolved I am “calm as a summer’s morning.”<sup>194</sup> Following Edmund Ross, even Fessenden’s son focused on the dramatic final vote. But for Fessenden, the great drama ended after he declared himself in the secret session of the Senate. There was not the slightest doubt about his vote after that. Radicals descended upon Edmund Ross and few others like a pack of hyenas. But Fessenden they merely hated and ignored. He filed his written opinion with the Senate, and that was that. On May 15<sup>th</sup>, the day before the formal vote, Fessenden’s written opinion occupied almost the entire front page of the *New York Times*. With his own mind settled, he found that the furious excitement on the day of the impeachment vote rather agreed with him. “I am very well,” he wrote on the day Johnson was acquitted, “but my little toe is vexed with a corn which annoys me very much.”<sup>195</sup>

Radicals had a point in dismissing the plea that the Senators were acting in a purely judicial role in trying the President. As Ben Butler pointed out, this meant the Senate could remove the President for any legal crime, even if it did not remotely affect the well-being of the country, but the President’s disastrous handling of Reconstruction was not a sufficient cause for removal so long as he remained technically within the law. The unspeakable horrors of the Ku

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<sup>193</sup> Fessenden, *Life and Public Service*, 2:219. In his son’s account, Fessenden threw himself on the couch and sobbed after giving his vote in the open Senate. For reasons related below, this makes little sense. But it’s unlikely Frank made the story up.

<sup>194</sup> Fessenden to William, May 13, 1868.

<sup>195</sup> Fessenden to Lizzie, May 16, 1868.

Klux Klan were no reason to convict Johnson. But hard evidence that the President had stolen a chicken while in office would easily suffice.

Even at the time, most Senators believed that this was the only argument that carried any weight. Timothy Howe and John Sherman, who both voted for impeachment, acknowledged that the President was fully within his legal rights to remove Stanton. The legal cornerstone of the impeachment trial was not even a cause for censure, in their minds, let alone removal. But the political imperative remained.

In his written opinion, Fessenden conceded that the Constitution left the nature of the impeachment power ambiguous. He believed that it was a judicial function of determining whether the President was guilty of violating a known law. But reasonable men, he allowed, could hold that the function was political. It was not only a Senator's right, in this interpretation, it was his duty, to judge the President by his own sense of right without hiding behind lawyerly technicalities. "Granting, for the sake of argument, that this construction is the true one," Fessenden wrote, then "it is a power to be exercised with extreme caution, when you once get beyond the line of specific criminal charges."

From desperate necessity, the Republicans had availed themselves of powers not authorized by law time and time again over the past several years. When Constitutional liberty itself is attacked, there is no honor in cringing behind its bulwarks as the entire edifice collapses. But in "questions involving great principles affecting the framework of the government itself," Fessenden wrote "it is of the last importance that no sacrifice be made to mere temporary expediency."<sup>196</sup> Americans still struggling to restore constitutional government from the wreckage of the war could not afford to strike any unnecessary blows against it. They could not afford to shake still further "the faith of the friends of constitutional liberty in the permanency of

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<sup>196</sup> Fessenden, *Life and Public Service*, 2:238.

our free institutions and the capacity of man for self-government.” On this essential consideration, the impeachment of Johnson posed a far greater threat than his continuance in office under the jealous watch of Congress. However inept, however stubborn, however false to the honest principles of the party that had made him President, Johnson had not overstepped his Constitutional prerogatives.

Most historians today would argue that if Johnson had been lynched by masked vigilantes, the lasting damage to the country’s “free institutions” might have equaled that inflicted by the terrorist violence of the Ku Klux Klan, enabled in part by Johnson’s inept leadership. Perhaps so, but Americans living in 1868 had no right to be so sanguine about the viability of even a deeply flawed Constitutional democracy. The immediate perfection of a racialized slave society was not even a remote possibility, but the complete failure of democratic government in America was the terror that rightly preoccupied the sober and wise leaders of the time. The violence of the postwar South was terrible, but it never approached that of the awful ordeal the nation had recently endured. More than half century of racial terror and lynching following Appomattox did not produce as many corpses as a single day in the bloodiest battles of the war itself. And even if one takes it for granted – as living participants could not – that the Civil War was over, thus simplifying the political crisis, Johnson’s removal was almost certain to make matters worse.

That outcome would have diminished the furious rage that had led to impeachment. And as those righteous passions cooled the nation would have witnessed the inevitable spectacle of the most sordid scramble for office in the history of the Republic – for the simple reason that the spoils had swelled tremendously since Lincoln had arrived at the White House. And just as inevitably, the unlimited hope for office inspired a far larger army of partisans than the limited

number actually available, an imbalance that accounts for why there were so few two-term presidencies in the nineteenth century (Lincoln was the first since Jackson). Remove blinding passions and personal opportunism, and the mad folly of the impeachment effort was nakedly obvious.

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The outsized cultural significance that the impeachment trial quickly acquired stemmed from the recognition that it seemed to close a romantic epoch in the history of the Senate. The independence asserted in that contest, the insistence on personal integrity over partisan imperatives, belonged to a Senate culture that was already disappearing. In the antebellum and Civil War eras, E.L. Godkin later recalled, “Nearly every State had at least one Senator of the type of Seward, or Sumner, or Fessenden or Trumbull – generally a man of very moderate pecuniary means – who not only exerted great influence on the politics of his State, but spoke with more or less moral and intellectual authority on all the questions of the day.” *Every State* may have been an exaggeration. But in the political culture of the mid-nineteenth century, the Senate came closest to the imagined ideal handed down from the pages of Livy. For reasons of local pride and self-interest, State party machines were eager to send, as their standard bearers, leaders who could distinguish themselves in that august body. Fessenden, James Blaine later recalled, “possessed that peculiar strength with the people – the most valuable and most enduring a public man can have – which comes from a sense of pride in the ability and character of the representative.”<sup>197</sup> The sectional crisis only intensified this impulse among those desperate to vindicate their local rights. If the Republicans managed to unseat Stephen Douglas in 1859, William Herndon wrote proudly to Charles Sumner, Illinois “will send you a man...[who] is

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<sup>197</sup> Blaine, *Twenty Years*, 1:316.

Judge Douglas's or Judge Trumbull's equal if not their superior – that is saying a great deal and yet it is true.”<sup>198</sup>

It is easy enough, as an earlier historiography abundantly illustrates, to get carried away with this ideal image of the Senate. A deliberative body packed with ambitious men, whose formidable talents never exceeded their vanity, was incapable of being an efficient governing institution in a powerful federal system, however noble individual leaders may have seemed in scrambling to distinguish themselves as philosopher-statesmen modeled on Cicero and Demosthenes. Webster, Clay and Calhoun, Seward later recalled, could all be faulted for converting “the Senate-chamber into a mere intellectual arena for their own struggles.”<sup>199</sup> As the Senate's legislative responsibilities swelled, the men who shouldered the business of governing inevitably shrank to the more efficient level of party functionaries. But the leading Senators of the Civil War era carried out the transition without succumbing to it. Fessenden, Trumbull, James Grimes, and a few other leaders met the crisis thrust upon them, fitfully and clumsily, without shedding the sense of personal responsibility entailed by the more romantic estimation of their position. They carried the romance of the old era into the new, and when they parted from the scene there was no one to take their place. “This type,” Godkin lamented in 1890, “has almost completely disappeared... The Senate has, in fact, become almost exclusively a capitalists' chamber.”<sup>200</sup>

The Senators who experienced this transition from the antebellum period were even more acutely aware of the change than Godkin. “Our party now seems to have but one object,” Fessenden wrote in the first session after impeachment, “to break down all its more prominent

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<sup>198</sup> William Herndon to Charles Sumner, January 28, 1858. Sumner Papers. Library of Congress.

<sup>199</sup> Charles Francis Adams, *An Autobiography* (Boston, 1916), 59.

<sup>200</sup> Godkin, “A Retrospect,” *The Nation*, July 3, 1890.

men and elevate demagogues and pretenders.”<sup>201</sup> With Grant elected, Fessenden was amused to find many who had denounced him as a vile traitor six months earlier now greeting him with kindness and flattery. “One of those who had been especially bitter told me that *every body* gave me credit for perfect uprightness, etc. So goes the world.”<sup>202</sup> Far from enjoying this cheap vindication, however, Fessenden considered his last session of Congress “the most disagreeable I have ever known...In fact the Senate is not what it was. It contains a very large number of very small men, and many who think only of themselves – considering their places as private property to be made the most of for their own private advantage.”<sup>203</sup> Perhaps he was forgetting, in his disgust with the present, the days when he had been marginalized, insulted and physically threatened by a clique of slaveholders who had then dominated the Senate. But those adversaries, at least, had been worthy of a heroic struggle. He and his tribe had then contended against the enemies of republican government, and they had prevailed. The struggle had been ennobling, but the victory had elevated men bloated and corrupted by the spoils.

“Perhaps you have observed that I have resigned my place in the Senate,” Grimes, who was Fessenden’s closest living friend in that body, wrote to him in August, 1869. “The truth is, the place has become irksome to me. There are so many men there with whom I have not and never can have a particle of sympathy, so much corruption in the party with which I would be compelled to act, so much venality and meanness all around, that, aside from my ill-health, I had about made up my mind that the Senate was no longer the place for me.” There was no longer any hope of serving honorably and effectively in the Senate, Grimes warned his friend. If Fessenden did not resort to the shoddy means of party hacks, Grimes predicted, he would be defeated when he stood for reelection. “Why the war has corrupted everybody and everything,”

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<sup>201</sup> Fessenden to Lizzie, January 17, 1869.

<sup>202</sup> Fessenden to Lizzie, Dec. 6, 1868.

<sup>203</sup> Fessenden to Lizzie, January 31, 1869.

he continued. “Just look at the Senatorial elections of last winter! They were all corrupt. It is money that achieves success in such affairs nowadays. Thank God, my political career ended with the beginning of this corrupt political era!”<sup>204</sup>

Grimes expressed only one regret about his retirement – that he was, in a sense, abandoning Fessenden and Trumbull, friends who needed his help more than ever. But he needn’t have troubled himself about Fessenden. On the same day Grimes wrote this last letter to his friend, Fessenden’s lower intestine ruptured, the result of an irritation that had been bothering him for years. He died eight days later. And so it was Grimes who unexpectedly found himself grappling with a far more profound sense of loss. “He was my most intimate, sincere, and attached friend, and the sentiment was most cordially reciprocated,” Grimes wrote upon learning of Fessenden’s death. “I knew him as no other man knew him, for he always made me his confidant; I admired as only those admired him who knew him intimately, and I loved him as I never loved a brother. He was the highest-toned, noblest man I ever knew. I never knew or expect to know a man who can approach him in the qualities that go to make a great man and a noble statesman. The man does not live who can take his place in the Senate.”<sup>205</sup>

*Addendum: Charles Sumner*

Aside from Trumbull and Fessenden, the most prominent Senator throughout the Civil War Era was Charles Sumner. For all his revolutionary idealism, however, Sumner had a distinctly old-fashioned view of his role as a Senator. He still imagined the Senate to be what it had been in the era of Webster and Clay, an intellectual arena where great men made great

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<sup>204</sup> Grimes to Fessenden, August 31, 1869. Cited in, William Salter, *Life and Letters of James G. Grimes* (New York, 1876), 661-362.

<sup>205</sup> Salter, *Grimes*, 378.

speeches. What those men did mattered hardly at all next to what they said; they were, first and foremost, secular priests of a national creed. And that was Sumner's aspiration. He occasionally succeeded in hitting a fine phrase designed to echo down through the ages in schoolboy recitations. "Hereafter," he declared in the best sentence of his speech opposing the 14<sup>th</sup> amendment, "the Equal Rights of All will take the place of Slavery, and the Republic will revolve on this glorious pivot, whose infinite, far-reaching radiations will be the happiness of the Human Family."<sup>206</sup>

Unlike Webster and Clay, however, Republican Senators possessed enormous power commensurate with the legislative and political responsibilities they confronted. Classical eloquence that appealed to highly educated idealists would not save the Republic or protect black civil rights. What was desperately needed was creative, realistic thinking on the institutional mechanisms capable of securing peace and justice in the South. No one thought less about this problem than Charles Sumner. The subject did not interest him, and he invariably avoided it with the Pollyannaish obtuseness most conducive to moral preening.

No one could possibly doubt the sincerity of Sumner's commitment to black civil rights. But one crucial condition qualified his support – that he be recognized as their preeminent champion. Whenever his position as the moral conscience of the nation was threatened, he fought back like the devil – and black civil rights often went to the wall. The political pattern is conspicuous throughout his career, but it culminated in 1872. If he can be acquitted of being a hypocrite, it is only because he lacked even the minimal degree of self-awareness that makes conscious hypocrisy possible.

At the start of the long session of the 42<sup>nd</sup> Congress in the winter of 1871, Sumner rediscovered his Civil Rights bill and concentrated all his energy in getting it passed into law.

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<sup>206</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 685.

Sumner considered the bill the crowning legislative achievement of Reconstruction. Its purpose was to abolish racial discrimination against blacks in all public settings, and its ostensible reach went far beyond even the Civil Rights legislation a century later. Discrimination in schools, hotels and all common carriers was prohibited. More ambitiously, discrimination in theaters and “other places of public amusement” was also prohibited. And most ambitious of all, the bill prohibited discrimination by churches – a provision that even a century later would have crashed against the First Amendment.

Sumner’s civil rights bill perfectly reflected the moral and philosophic approach that he had expressed consistently throughout his career. He gestured boldly at a total attack on prejudice while remaining relatively obtuse both to economic inequalities and to the government machinery necessary to make such sweeping gestures a reality. The only enforcement mechanism the bill relied upon was the federal judiciary. Blacks who were denied civil rights could bring their case to court. Exactly the same mechanism already protected the civil rights of black Americans, less broadly defined, and there is no adjective that conveys its limitations. To call it a failure implies that it could have succeeded. Using the same instrument to enforce a much more sweeping definition of civil rights merely widened the gulf between the political gesture and the lived reality of black Americans.

This defect was the forgivable vanity of all idealists, enraptured by grand moral gestures but allergic to the gritty realities of coercive power. Sumner always appealed to this brand of idealism because he embodied it. He was not a politician but a great moralist, ever ready to thunder against any base compromise when it came to the principles of human liberty. The trouble, however, was that Sumner was actually a savvy politician when it came to his own

personal position. And though he believed devoutly in every provision of his civil rights bill, the occasion he chose to fight for it was personal.

By December of 1871, Sumner and Grant both openly hated one another. Sumner denounced him to anyone who would listen as “venal, ambitious, vulgar...obstinate and unmanly.”<sup>207</sup> Grant had passed him over as Secretary of State, a position Sumner coveted, and then Grant’s followers had him removed from the Chair of the powerful Committee on Foreign Relations. Marginalized by Grant and his lieutenants in the Senate, Sumner’s civil rights bill was an attempt to claw his way back to leadership. Sumner could be as conciliatory and flexible as any good politician when he needed votes to get a cherished bill passed. His sponsorship of the Freedmen’s Bureau bill, when he summarily killed Trumbull’s effort to include permanent confiscation of rebel lands, is just one example. But Sumner was not only eager to pass a civil rights bill. He also needed to discredit Grant as a champion of Civil Rights, and provoking his opposition was just the way to do it. Sumner’s strict adherence to principle had the happy effect of putting Grant’s supporters in a dangerous position – confronting them with a bill it would be politically disastrous to support or oppose. He airily dismissed pleas to drop the provision regulating Churches, which would alienate Constitutional purists. You cannot split a party without a sharp edge.

1872 was an election year. The Ku Klux Klan was running riot in the South, and every honest Republican’s blood boiled at the rampant brutality of vicious terrorists wearing masks. On this issue the Republicans could not lose. And they were able to pass, against the opposition of reformers and democrats, an enforcement act with real teeth in it to suppress the Klan. Sumner dutifully supported the Enforcement Act, though he could hardly afford to oppose it. In this context, a bill to desegregate theaters and churches threatened to divide and distract Republican

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<sup>207</sup> Cited in Donald, *Sumner*, 2:542.

voters. Opposition to civil rights, however, threatened to alienate a key constituency, including black voters. Sumner was able to exploit this situation without recognizing his motive for doing so.

“The Rights of the colored race have been sacrificed in this Chamber where the Republican party has a large majority,” Sumner angrily declared in the Senate just a few weeks before the Republican national convention gathered on June 5, 1872.<sup>208</sup> He assailed the only party willing to protect blacks as faithless and left unmentioned the two parties that would abandon the freedmen to the tender mercies of the Klan. In a desperate final effort to prevent Grant’s nomination Sumner gave a long speech exhibiting his worst excesses in pedantry.

So far Sumner’s course was characteristic – high-minded yet suspiciously obtuse to all political risks that did not threaten him personally. But now came an unprecedented test. He had tried to kill Grant’s nomination and failed. The alternative was a coalition of liberal reformers and Democrats. Grant’s victory meant more corruption and continued subversion of local self-government. His defeat meant absolute catastrophe for black Americans in the South. Forget desegregating churches. The defeat of the Republican party meant letting the Klansmen take off their masks and clothe themselves in the police power of the State. It would have been typical of Sumner to maintain a sulky silence during the election: The purist unwilling to compromise his principles by endorsing the lesser of two evils.

Instead, he threw all the moral authority he had earned as the champion of black rights to deliver them into the hands of their worst enemies. In late June, just before the presidential election in North Carolina, he wrote an open letter to black voters informing them that it was their duty to join with the Democratic party and elect Greeley.<sup>209</sup>

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<sup>208</sup> Ibid., 2:547.

<sup>209</sup> Ibid., 2:552.

“The storm beats, but I could not have done otherwise,” Sumner wrote to Henry Wadsworth Longfellow. “My present effort is the most important of my life. Besides bringing an original Abolitionist into the White House, I hope to obtain for the colored men the full recognition of their rights throughout the South.” Whatever their faults, liberal Republicans like Trumbull and Charles Francis Adams followed an honest philosophy in retreated from Reconstruction. Perpetual military interference in the South, Trumbull believed, was undermining the integrity of the government as a whole, imperiling the structural balance that made democratic self-government possible, and exacerbating the vicious hostility of Southern whites. Withdrawing the military would involve a painful adjustment, and many cruel injustices were sure to result, but delay only made the problem worse and the status quo could not go on indefinitely without destroying the civil liberties of all Americans. That was the political view of the most honorable and defensible segment of Greeley’s supporters. The worst of his supporters, and there were many, openly could not wait to put black Americans back in their place. To justify supporting such a coalition as a step toward passing sweeping civil rights legislation would be insane if it weren’t so obviously self-serving. No one, other than Sumner, pretended to support the Liberal Republicans for this reason.

Black voters were not fooled, of course. “The alliance you have made, with the haters and persecutors of our race,” a New York correspondent wrote, “has struck the colored population of this city with astonishment.”<sup>210</sup>

But many who knew Sumner as a colleague believed it was entirely characteristic of a man who had always placed his own moral vanity ahead of the great cause he championed.

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<sup>210</sup> Cited in Donald, *Sumner*, 553.

## 9

### *States' Rights Radicals, Constitutional Conservatives and Machine Democrats*

#### *I: Political Ideas and Organizations*

Because the rhetorical and ideological battles of the Civil War era belonged to a political framework that the conflict itself destroyed, all political labels attached to particular groups tend to be profoundly misleading. Even before the war, confusion of political concepts and names reflected the contradictory extremes that had grown within the polity itself. The party combining Northern laborers and Southern planters under the name of “Democrats” was only the most glaring contradiction in a political system that had abruptly extended itself across the continent. Those who opposed this increasingly grotesque party machine were implicitly divided in blaming ignorant immigrants or arrogant, aristocratic planters for corrupting the party. Those who denounced “the Democracy” were often unclear, even in their own minds, whether they wished to defend democratic institutions or give them up as inherently vulgar and corrupt.

The war hardly clarified matters. A “radical” was a genuine social revolutionary or a simple chauvinist eager to remake distant, hostile communities according to the divinely sanctioned local arrangements with which he was already familiar. Victory, Wendell Phillips declared in 1866, “means [the] North making over the South in its likeness, till South Carolina gravitates by natural tendency to New England.”<sup>1</sup> Transforming South Carolina into New England was certainly a radical proposition, but it was hardly one calculated to alarm even the

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<sup>1</sup> Cited in Summers, *Ordeal of Reunion*, 58.

most hidebound conservative living in the latter. A reactionary at home is often a revolutionary abroad, and the Civil War was no exception.<sup>2</sup> Many Northern radicals found themselves labeled as “conservatives for wishing to preserve a radical political experiment. Meanwhile many genuine reactionaries in the antebellum era, unable to decide whether the country had gone wrong in 1776 or 1800, heartily welcomed the sudden emergence of a fiscal-military state resembling Great Britain.

Everyone was aware of the extent to which events had scrambled old political fault lines, but that awareness only clarified the confusion. Old friendships and hatreds often stubbornly persisted long after the circumstances that occasioned them; intellectuals who formed their political philosophy in the old order stubbornly refused to admit its obsolescence in the new. Only politicians who were uninterested in the ideals and principles contained in party slogans adjusted easily as events scrambled the organizing philosophies and ideologies in American politics. And such politicians – prepare, dear reader, to be shocked – were quite common.

“My own opinion of Douglas is this,” William Herndon, Lincoln’s law partner, predicted in 1858. “He will by 1864 be a howling anti-slavery man.” Herndon did not expect the Little Giant to undergo a moral conversion. He simply recognized that the sectional balance of power was shifting irrevocably, and he expected Douglas to shift with it. “Power is in the North,” Herndon continued. “Wherever Power is, there are the political buzzards. They are true to self and Power...Ambition is their nature, Power the end and Abolitionism the means. Thank God for so much.”<sup>3</sup> Stephen Douglas, of course, was dead in 1864. But in a more general sense

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<sup>2</sup> Obviously, Wendell Phillips was not a reactionary, which makes his rhetorical approach to Reconstruction all the more significant. Neo-conservatism is only the most recent example of how ideological conservatism informs a revolutionary attitude toward antagonistic social orders. Douglass MacArthur, to cite just one other example, was both the darling of reactionaries in the United States and responsible for property redistributions in Japan that rivaled anything attempted by Mao Zedong in China. See, William Manchester, *American Caesar: Douglas MacArthur, 1880-1964* (Boston, 1978).

<sup>3</sup> William Herndon to Charles Sumner, January 28, 1858. Charles Sumner Papers. Library of Congress (microfilm).

Herndon's prediction proved embarrassingly accurate for many prominent Democrats who, having denounced their opponents as "abolitionist," abruptly dropped that epithet as soon as it lost its bite and began wielding the "traitor" and "copperhead" cudgels with the same reckless abandon. Strange as it may seem, only a faith in Douglas's integrity would justify the belief that, had he lived, he would have refused to become a "howling antislavery man," maintaining his political principles even after they doomed him to defeat.

The antebellum Democratic party, like any successful political coalition, attracted both principled adherents and clever opportunists. And the first principle of the party was that the rights of the states were a crucial bulwark of genuine democratic politics against usurpations by the central government that, inevitably, served the interests of economic elites. This was a winning proposition in the antebellum era, and it might have remained so if Southern Democrats had not insisted on a glaring exception with regard to their peculiar institution. Northern Democrats who took their political creed seriously were appalled as the party brazenly abandoned its states' rights doctrine whenever it collided with the interests of slavery, which was not only immoral but also the most obvious example of a powerful economic class bending "the acts of government to their own selfish purposes," as Jackson had declared in his famous bank veto. "When it was apparent that principles were to be sacrificed for the means," Gideon Welles wrote in explaining his revolt from the party in 1854, "that the organization which had been instituted to maintain state- rights and oppose centralization was to be made an instrument to promote centralization and oppose states' rights, I could no longer be a part or parcel of it."<sup>4</sup> For those who regarded political ideas as little more than slogans for obtaining patronage and power, however, such principled defections were treacherous betrayals of a thriving party machine.

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<sup>4</sup> Gideon Welles, "An Old Democrat Leaves his Party and Gives his Reasons" Gideon Welles Papers, Library of Congress (Microfilm).

Nevertheless, the shibboleths that had won Northern Democrats place and power began to doom them to defeat after 1860.

Ordinarily, a partisan opportunist has no reason to switch sides even after a defeat, since the victorious party in power will have no reason to reward him over its own friends. But the Civil War created a unique opportunity for powerful Democrats who were eager to switch to the winning side. With the very existence of the government in danger, the ordinary rules of partisan politics were suspended, and Republicans could not afford to disappoint any powerful Democrat willing to support the war in earnest. And when one compares the careers of the Democrats who flocked to Lincoln's banner after the election with those who joined at the party's idealistic inception, the contrast is almost comical: Benjamin Butler, Daniel Sickles, Edwin Stanton, John A. Logan, Charles Drake – all these men had remained doggedly loyal to the Democratic party throughout the conflict over slavery in the 1850s, only to become fiery radicals thereafter. Meanwhile, many of the most prominent leaders of the original Republican party eventually defected from it in disgust.

When he ran for governor in 1859, Benjamin Butler denounced the Republicans for attempting to destroy the Union “because of a difference of opinion as to the supposed rights and interests of a few Negroes.”<sup>5</sup> Butler had eagerly championed Jefferson Davis for the Democratic Presidential nomination in 1860, and only a year later he was the darling of Northern abolitionists and the most hated man in the South.

As one of Douglas's political lieutenants in the 1850s, John A. Logan personally authored the most racist law ever to disgrace the Illinois legislature. But, like Butler, he used his

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<sup>5</sup> Cited in Howard P. Nash, Jr. *Stormy Petrel: The Life and Times of General Benjamin F. Butler, 1818-1993* (Rutherford, N.J., 1969), 56.

military service to reinvent himself as a howling radical. He and Butler were two of the most active managers of the Republican effort to impeach Johnson.

In Missouri, Charles Drake was a leader of the proslavery party that endlessly denounced the “abolitionism” of the “Black Republicans” led by Francis Blair Jr. During the war, however, Blair’s close association with Lincoln left him vulnerable to attacks of radicals and others impatient with the Administration’s conduct of the war. Drake seized his opportunity. He was elected to the Senate as an outspoken radical during Reconstruction and became one of Charles Sumner’s staunchest allies.<sup>6</sup>

On the other hand, it is difficult to find *any* prominent antislavery Democrats in the antebellum era who did not eventually become bitter critics of Reconstruction: Lyman Trumbull, James Doolittle, Gideon Welles, Francis Blair, William Cullen Bryan – one could go on and on. Nothing could be more absurd than to suggest that opposing the Republican party, in itself, was a mark of political virtue. But it does illustrate the central thesis of the present study: That the political conflict among Northerners during the Civil War was defined by conflicting conceptions of the polity as a whole. Those who originally flocked to the Republican standard were schooled in a republican political tradition that taught them to vigilantly guard their institutions against an oligarchic threat. Those who ignored this threat in the interest of maintaining a successful party machine were, not surprisingly, better equipped to thrive in the postwar Republican party.

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<sup>6</sup> March, David. “The Life and Times of Charles Daniel Drake.” Ph.D. dissertation, University of Missouri, 1949.

## *II: Lincoln's Diarists*

“He must be a superficial observer who fails to perceive that our government has undergone a great change” Gideon Welles wrote in reviewing the effects of the Civil War and Reconstruction. “Power has, in all that time, been passing from the states to the national centre. Instead of a federal union of separate and distinct sovereignties, republican in form and fact, we are becoming a consolidated empire.”<sup>7</sup> For Welles, this tendency had always supplied the “fundamental” conflict in American politics, and thus the organizing principles of the two national parties. On one side were “the advocates of States’ rights, who watched with sleepless vigilance the action of the central government, resisted every exercise of undelegated or doubtful power, and all encroachments on the reserved rights of the states or people.” Invariably opposed to them, according to Welles, was the party insisting on a broad construction of the powers conferred on the general government by the Constitution – that a power expressly conferred implied the power to carry it out efficiently, and that those in power must necessarily be the judge of the necessary and proper means their responsibilities entailed, excepting only what the Constitution expressly prohibited.

This may seem like a rather dry theme for an epic contest animating a nation, not just during the Civil War but throughout its history, but it was the defining idea of Welles’s entire life in politics. Political parties had risen and fallen under different names but the essential principle that organized them was the principle of States’ rights or consolidation. Secession, far from a close cousin of States’ rights, was just as much its antithesis as consolidation, the twin alternatives of rule or ruin with which sectionalists rejected truly democratic nationalism. Welles,

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<sup>7</sup> Gideon Welles, “Government in the Civil War: A Discussion of the Effects of the Civil War on the Government of the United States,” Unpublished pamphlet. University of Chicago Library. Lincoln Miscellaneous Manuscripts.

a Connecticut Yankee, was old enough to remember the Hartford Convention, where secession had been tried by New England Federalists well before it had become the doctrine of John Calhoun, another arch-nationalist who reverted to the opposite extreme.

So it did not require any philosophical adjustment for Welles, along with countless other Democratic-Republicans, to support the Union war effort against secession. He was not at all ambivalent about the need to defeat the rebellion at all costs: An oligarchy resting on slavery, thwarted in its attempts to subvert the democratic principles of the national government, had then attacked that government and threatened its very existence. But the war to preserve constitutional government involved a glaring contradiction, and Welles was not unaware of it.

Welles's diary is, by far, the fullest record of the private thoughts of a Republican occupying a position of immense responsibility during the war. More than a record of daily events and impressions, the diary vividly reveals Welles's mind in motion, as he grappled philosophically with the meaning of events even as he scrambled to keep up with his responsibilities as Secretary of the Navy. The overriding theme of Welles's diary is his concern with preserving the rights of the States while vindicating the authority of the general government. The two most divisive effects of the war – the abolition of slavery and the dramatic growth of the government's role in the national economy – hardly registered. Indeed, Welles believed that if the Union armies prevailed without effacing the rights of the States, all other matters would resolve themselves. It was beyond dispute in Welles mind that the Rebels “had made war for slavery, had appealed to arms, and must abide by the result.”<sup>8</sup> What would have happened had the Confederacy speedily collapsed in the first year was impossible to say. But by 1863, Welles had no doubt that the war would involve the destruction of slavery, in one way or another, if the Union prevailed. “But we must be careful, in our zeal on this subject, not to

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<sup>8</sup> Welles, *Diary*, August 13, 1863, 1:403.

destroy the great framework of our political governmental system. The States had rights which must be respected, the General Government limitations beyond which it must not pass.”<sup>9</sup>

Welles was supportive but unenthusiastic about Lincoln’s preliminary Emancipation Proclamation. He did not share the widespread belief that it would hasten the defeat of the South, since the military was already striking at slavery wherever it went, and the expanded commitment was only likely to make the rebellion more formidable. But he also believed the war had reached a point where it must conclude with either the emancipation of the slaves or “submission to their Rebel owners.” Summarizing his ambivalence, he concluded that the Proclamation was “an arbitrary and despotic measure in the cause of freedom.”<sup>10</sup>

No practical step toward crushing the rebellion, no matter how revolutionary, provoked a serious objection from Welles. In his first annual report as Secretary of the Navy, Welles risked his position by ordering Naval officers to welcome fugitive slaves and put them to work at standard wages, though this flatly contradicted Lincoln’s policy toward the army. To Welles’s surprise, Lincoln warmly approved Welles’s policy in the Navy Department even as he had sternly rebuked Cameron for implementing the same policy at the War Department.<sup>11</sup> Not for a moment did he wish to hinder emancipation when no Constitutional scruples interfered. Much later in the war, when the proposed Constitutional amendment abolishing slavery passed Congress, Welles welcomed it as “a step towards the reestablishment of the Union in its integrity.” Welles acknowledged that it would also “be a shock to the framework of Southern society. But that has already been sadly shattered by their own inconsiderate and calamitous

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<sup>9</sup> Welles, *Diary*, August 13, 1863, 1:403.

<sup>10</sup> *Ibid.*, Sept. 22, 1862. 1:145.

<sup>11</sup> Niven, *Gideon Welles*, 394 – 395. Later in the war, Welles would have no trouble grasping the logic of Lincoln’s position. Always eager to balance different factions in order to keep them all together, Lincoln was eager for an antislavery policy that would not antagonize states still at risk of falling into the Confederacy – Missouri and Kentucky.

course.”<sup>12</sup> The only way for the rebellious States to resume their original position, he continued, was to extinguish the cause of discord. No antislavery radical ever felt the need to claim anything more. And yet Welles refused to believe that this practical objective required any adjustment to the traditional relationship between the States and the general government. And he reacted with shocked indignation at every attempt to reconcile the results of the war with the theory of the Union.

Throughout the war, Welles’s mind was sensitively attuned to any deviation from his cherished States’ rights philosophy, no matter how trivial. He insisted that the navy should orchestrate a massive effort to close all ports held by those rebelling against the government – *not* a blockade, for a blockade implied a war against a belligerent state rather than a domestic rebellion. When Seward suggested that days of Thanksgiving, which had previously been a State institution, should become national, Welles was there to object. Perhaps a national day of thanksgiving was harmless, but “it would hardly do to make this institution national with mandatory orders,” for individual States often had their own reasons to give thanks, and it was customary to enforce observance in the local laws.<sup>13</sup> Earlier in the war such quibbling was nourished by the hope that a quick victory would limit the revolutionary results implied by emancipation and conquest. But Welles kept on quibbling even as he supported, tacitly or actively, every expansion of the war effort.

There is surprisingly little in his diary about the influence of economic interests over the radical agenda – “surprising,” given that Howard Beale edited the definitive edition of Welles diary and relied on it heavily for his own thesis on the financial motives underlying radical Reconstruction. Welles summed up his attitude toward the financial issues surrounding the war

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<sup>12</sup> Welles, *Diary*, January 31, 1865. 2:234.

<sup>13</sup> *Ibid.* Oct. 3, 1863.

in response to an accusation by Salmon Chase, the Secretary of the Treasury, that he, Welles, had surreptitiously opposed needful financial legislation. He had done nothing of the sort, Welles insisted. “I had given his financial questions little or no attention, had never read his bill, had but a general conception of his scheme.” It was hardly a secret that the financial policies of the government “were not in conformity to my old notions,” but his place did not require him to take an official position on such matters, beyond his general support of the Administration, and he was quite glad of it. “I had neither time nor inclination to study new theories,” he acknowledged. Later on – it is unclear when – he added to this sentence that he “was wedded to old doctrines and settled principles.” Only with this subsequent addition did Welles indicate that he was not agnostic about the continued relevance of his “old notions” as his fellow Republicans transformed the national financial system beyond the boldest ambitions of Hamilton or Clay.<sup>14</sup> Though it is impossible to say for sure, Welles likely added that final line after the Constitutional battles over Reconstruction had led him back into the Democratic party.

To be sure, Welles had his hands full overseeing the largest naval blockade in history, and the financial difficulties involved in waging the war could not be resolved by referring to first principles. But his conspicuous indifference to financial issues, relative to his constant anxiety about other Constitutional problems, demonstrates that the former possessed only a proximate importance for Welles. Political economy was almost exclusively political for Welles. It derived its significance from its relation to the grand principles of Constitutional liberty and popular sovereignty. Free government, as Welles understood it, was the gravitational center of his ideological system, the conceptual star that illuminated and organized all other ideas. Purely economic issues, considered apart from his cherished political principles, had little interest. In

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<sup>14</sup> Welles, Diary, 1:238.

this, Welles was entirely characteristic of Republicans more generally, the Secretary of the Treasury very much included.<sup>15</sup>

“In these tempestuous days,” Welles wrote on another occasion, “when to maintain its existence the Federal government is compelled to exercise extraordinary powers, statesmen and patriots should take care that it does not transcend its authority and subvert the system.”<sup>16</sup> But Welles primarily worried about heretical ideas rather than practical assertion of power.

During the final months of the war, as the Confederacy stubbornly resisted inevitable defeat, Welles realized that even military victory and abolition might not be enough to restore the South to the Union. “Perhaps there must be a more thorough breakdown of the whole framework of society, a greater degradation, and a more effectual wiping out of family and sectional pride in order to eradicate the aristocratic folly which has brought the present calamities upon themselves and the country,” he wrote in January 1865. “If the fall of Savannah and Wilmington will not bring them to conciliatory measures and friendly relations, the capture of Richmond and Charleston will not effect it. They may submit to what they cannot help, but their enmity will remain.”<sup>17</sup>

But for Welles it was of paramount importance that every measure necessary to defeat and punish the rebellion, however extreme, should be directed against individuals, not States, which could not secede and therefore retained all their inviolate rights. Popular clamor for heads of prominent traitors did not trouble Welles; theoretical disquisitions on the suicide of States filled him with unutterable horror. “We are testing the strength and inviolability of a written constitution,” Welles wrote. “We can imprison, punish, hang the Rebels by law and

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<sup>15</sup> The most comprehensive scholarly biography of Salmon Chase is John Niven, *Salmon P. Chase: A Biography* (Oxford, 1995). Niven, of course, also wrote the most complete biography of Welles. A brilliantly insightful character study of Chase is Thomas and Marva Beldon, *So Fell the Angels* (Boston, 1956).

<sup>16</sup> Welles, *Diary*, August, 22, 1863.

<sup>17</sup> Welles, *Diary*, January 21, 1865, 2:229.

constitutional warrant, but where is the authority or power to chastise a State or to change its political status, deprive it of political rights and sovereignty which other States possess?”<sup>18</sup> Any attempt to impose conditions on the readmission of states, Welles insisted, amounted to recognizing “the right and the fact of secession.”<sup>19</sup> If a State could not secede, then there was no conceivable basis by which the general government could impose conditions of readmission. Notice again, the enduring link in Welles’s mind between secession and centralization, the natural antitheses to States’ Rights and Union.

Even after General Lee and Johnson had surrendered, however, Welles remained far more concerned that the country, in its relief and exhaustion, would fail to protect itself against a renewal of the rebellion. Welles also failed to note much of Lincoln’s conciliatory attitude toward the South in his final days. Only later, as the conflict over Reconstruction drove Welles from his old party associates, did he return to older entries in his diary and add recollections of what Lincoln had said on that vexed question during his final days. There is no reason to think he actively misrepresented Lincoln’s attitude. Welles’s memory echoes most other sources. The significant point is that Welles was not particularly fixated on Lincoln’s Reconstruction policy at the time, for his own views were as tentative and uncertain as the President’s. Even after Lincoln’s assassination, with the country howling for vengeance, Sherman’s conciliatory terms of surrender appalled him as recklessly generous. Only later – how much later is unclear – did he add that subsequent events had vindicated Sherman’s attitude.<sup>20</sup>

In the chaotic aftermath of the war, the direction of events seemed uncertain to everyone, and Welles was no exception. He expressed no decided views on how the South was adjusting to emancipation, nor whether defeat would tarnish the prestige of those who had led the rebellion.

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<sup>18</sup> Welles, *Diary*, 1:414.

<sup>19</sup> Welles, *Diary*, July 22, 1864. 2:85.

<sup>20</sup> Welles, *Diary*, January 23, 1865, 2:295-296.

And he was no less uncertain about the position of the administration to which he belonged, for that depended on behavior in the South and, equally important, on the behavior of Congress. As much as he detested Radical theories on Reconstruction, Welles also recognized that “[t]he entire South seem to be stupid and vindictive, and are pursuing just the course which their opponents, the Radicals, desire.”<sup>21</sup> Still, with each month after Appomattox the threat posed by the rebellion receded in Welles’s mind, and the threat of consolidation increased in proportion. The change in perception was gradual, but the political shift was positively dizzying in transforming friends into enemies and enemies into friends.

When Mary Welles hosted a reception in late January 1866, as the Congressional Republicans’ feud with Johnson threatened to split the party, she was disconcerted to find herself called upon by Washington citizens who had studiously ignored her previously and openly sympathized with the Rebels. Naturally, this abrupt friendliness from hostile quarters was enough to “excite her suspicions, and lead her to ask if I was not conceding too much,” as Welles noted in his diary.<sup>22</sup> If such visitors excited Mary Welles suspicions toward her own husband, one can only imagine the feelings of Republicans who encountered the same guests smiling happily at the White House. Ultimately, a party is defined by the men who compose it, by the relative power of loosely aligned factions within the larger coalition.

The crucial question for most Republicans, before, during and immediately after the war, was what most threatened the stability of the government and its defining principles? So long as Republicans agreed on that, party cohesion was assured, though they might disagree on virtually everything else. So long as the war continued, the status of the states in rebellion could be

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<sup>21</sup> Welles, *Diary*, January 30, 1866. 2:420. I have omitted a clause Welles added later to this sentence, between “vindictive,” and “and,” – “know not their true friends.” At this point, Welles, at most, equated the Southern traitors with Northern radicals – secessionists and consolidationists – and would not consider himself a true friend to either.

<sup>22</sup> Welles, *Diary*, January 31, 1866. 2:421.

dismissed as a “pernicious abstraction,” in Lincoln’s words, since even those who thought the point crucial knew that it would be settled by force rather than logic. But with the Confederacy defeated and the rebels eager to resume their place in the government, the old question reasserted itself in a new form: Was the risk of restoring the Union without adequate guarantees of good behavior from the South greater than the risk of extracting such guarantees by means directly antithetical to the theory of the Union? For the first time, Republicans who took this question seriously faced a difficult choice.

Throughout the winter and spring of 1866, Welles’s diary records heated exchanges with erstwhile friends over Reconstruction. Again and again, he posed “the kernel of the question” to them – “can the people govern themselves?”<sup>23</sup> In his own mind, at least, Welles got the better of everybody in these disputes, for his interlocutors could not answer how, if the people governed themselves better than they could be governed by others, the immense problems of Georgia were not best left to the people of Georgia. And in Welles’s record, these discussions generally remained fixed in the realm of political theory. That point was paramount for him, though it obviously wasn’t for those who disagreed with him on Reconstruction while essentially sharing his principles.

It is not hard to infer what Republicans said in answer to the arguments Welles considered unanswerable, for the counterarguments were on everyone’s lips at the time.<sup>24</sup> One suspects that Welles was rarely the only Republican to emerge from these private arguments feeling triumphant while also lamenting the stubborn obtuseness that prevented some honest men from seeing the truth. Nor was Welles the only one profoundly uncomfortable with what he was determined to accept as a lesser evil. Virtually all prominent Republicans had learned their

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<sup>23</sup> Welles, *Diary*, Feb. 9, 1866, 2:431.

<sup>24</sup> Since I have described these arguments elsewhere at length, I won’t repeat myself here.

political values under the antebellum Republic, had inherited a fixed understanding of the Constitutional order, and still regarded as sacred their oath to uphold it. All those who refused to disavow these older ideals – radicals, moderates, conservatives and war Democrats – were all confronting an irresolvable dilemma. They differed considerably in the mixture of ambivalence and self-deception with which they chose a lesser evil. But their sense of how their government should operate was fundamentally incompatible with the immediate and long-term problems they had to resolve, and this incompatibility deprived them of a coherent philosophy. Only those who did not take these ideas and principles seriously were unencumbered when circumstances compelled them to make a choice between them.

It was this last class of politician who alarmed Welles the most. An amusing example was Welles's first impression of Ulysses Grant's approach to difficult political and Constitutional issues. At President Johnson's invitation, Grant sat in a cabinet meeting in which the members gave their opinions of a recent bill to enfranchise black residents in the District of Columbia and disenfranchise those who had participated in the Rebellion. Both Welles and Grant objected to the bill, but for exactly opposite reasons. Welles grounded his objection on the element disenfranchising former rebels: The bill which conferred suffrage as a right in one moment, he observed, deprived it in another expressly as a punishment by means of an *ex post facto* law without a trial by jury. It thus violated two fundamental and unmistakable Constitutional principles.

Grant, by contrast, "rather liked" the provision disenfranchising Rebels but "thought it very contemptible business for Members of Congress whose States excluded the negroes, to give them suffrage in this district." Welles agreed with the second observation but was appalled that the man likely to be the next President would consider the meanness of Congressmen the

strongest grounds for a veto. No legislation ever emerged from Congress untainted by mean motives! “I do not think he intends to disregard the Constitution, but he has no reverence for it – he has no political principles, no intelligent ideas of constitutional government, and it is a day when organic law seems to be treated as of less binding authority than a mere resolution of Congress.”<sup>25</sup>

Welles’s assessment of Grant, however damning in his own eyes, was neither discreditable nor surprising. Grant had paid no attention to politics before the Civil War. Only vaguely aware of the Constitutional abstractions that had led politicians to plunge their country into a terrible war, he had restored peace by way of the only truly fundamental law of politics – the law of superior force. This was not a background to inspire reverence for Constitutional abstractions, or even much respect for its plainest provisions. Nor is it surprising that the meanness of Congressmen offended him more than the substance of their ideas. Their rhetorical squabbling was bound to seem petty to anyone who had seen the results of that squabbling on the battlefield.

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Long after Lincoln’s death, Welles insisted that the President’s past as a Whig was motivated by personal admiration for Henry Clay, “not by conviction or much thought on the really grave and profound political questions involved in the conflict of parties.” He even credited Lincoln with reconsidering his earlier Whig doctrines, to the extent that he held them, and became “a friend of States’ rights and an anti-consolidationist” during his administration.<sup>26</sup> It would be hard to think of an interpretation more fantastically at odds with what Lincoln’s administration actually accomplished, except perhaps that he had reconsidered his youthful

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<sup>25</sup> Welles, *Diary*, January 9, 1867. 3:15.

<sup>26</sup> Gideon Welles, “Government in the Civil War: A Discussion of the Effects of the Civil War on the Government of the United States,” Unpublished pamphlet. University of Chicago Library. Lincoln Miscellaneous Manuscripts.

opposition to slavery. Yet Welles was not deluding himself about Lincoln's outlook during the Civil War; the delusion was in his stubborn belief that the old ideological divisions persisted even as the war swept away the Constitutional order that had arrayed them in opposition. Welles's belief that Lincoln had ultimately adopted the political ideals of Jacksonian Democrats reflected a trust and affection that he never felt for any other former Whig. He never trusted Seward, even when the two became the only original members of Lincoln's cabinet to continue supporting Johnson's embattled administration. By contrast, even the most heretical former Democrats, like Edwin Stanton and Benjamin Butler, had to declare their hostility openly before Welles accepted that they had really given up the true faith.

Old Whigs and Democrats had different ways of expressing their dismay as the consensus both parties had once held in common crumbled. Edward Bates, who served in Lincoln's cabinet along with Welles, wrote one of the most eloquent protests against Radical Reconstruction: The Constitution created a genuine nation out of a confederation of states, and there was "no bond of union and no guarantee of the strength necessary to maintain nationality, but the provision of that blessed instrument," Bates wrote in July 1866.

We are familiar with the spectacle of governments formed and reformed, changed or abolished, at the will of a conqueror, or a faction, but ours, I believe, is the only nation recorded in history which sprang into existence and began its national life, by a single effort of popular will. We are the only instance on the face of the earth, of a nation, with a definitive form of government, created and regulated by direct, written social contract – that law at once of our national existence and of our civil and political government. Destroy that constitution, and we are thrown into anarchy, and left to grope our way, in darkness and through blood, in search of some other nationality, and some other form of government, more suitable to our altered condition – a condition in which liberty is lost because law is disregarded, and peace and order are destroyed, because there is no lawful power strong enough to restrain and punish injustice and violence.<sup>27</sup>

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<sup>27</sup> Edward Bates to James Doolittle, July 28, 1866. James Doolittle Papers, University of Wisconsin.

For all practical purposes, Bates and Welles were in an identical position in the summer of 1866. Both had unconditionally supported the war to defeat the rebellion and restore the Union. They both bitterly opposed the radical policy of treating the defeated states as conquered territories to impose any terms beyond the issues settled by the war – secession and slavery. And they both opposed the radicals for subverting the essential principle of the Union, while hardly bothering to consider the practicability or desirability of what the radicals were trying to accomplish in the South.

But Bates and Welles both expressed their opposition in the language of the past party ideologies, of cultural Whiggery and radical Democracy, respectively. For Bates, the crucial concept was written law as the ultimate source of authority, created by the sovereign people voluntarily rather than imposed by conquest. That was the essence of self-government in Whig thought. Its antithesis was not despotism, but anarchy. When the people voluntarily submitted to the fundamental laws of their own making, despotism was impossible, and when they refused to do so, despotism was inevitable. This was a critique of democratic excesses. And the same key concepts and vocabulary were central to Lincoln's antebellum writings, though Lincoln also emphasized the Declaration of Independence as the nation's foundational document – a significant difference. Though Whig ideas were, in part, a reaction to the rise of democracy, they also appealed to idealists who were appalled by the excesses of majorities untrammelled by moral or legal restraints, especially in the West.

Bates never invoked the key concepts of Welles's political vocabulary – States' rights and consolidation. Indeed, in his diary he only mentions the phrase "states' rights" in order to

sneer at it.<sup>28</sup> And yet, in the context of the political battles over Reconstruction, he readily granted everything a States' rights enthusiast would have contended for in his emphasis on Constitutional law. But he did so by appealing to the cultural preoccupations of conservative Whiggery. "Surely Cicero was right," Bates characteristically observed in February of 1864, "when he said that 'in every Civil war, Success is dangerous, because it is sure to beget arrogance and a disregard of *the laws of the Government.*'"<sup>29</sup> Welles expressed the same objection in the rhetoric of Jacksonian Democracy. And this cultural antagonism continued to resonate with individuals even as it ceased to matter politically. Those most determined to preserve the antebellum Constitutional order were also the least willing to acknowledge that its defining cultural and political conflicts had become irrelevant.

Bates, however, had the advantage of recognizing himself as a conservative. As a temperament, "conservatism" has little relation to the variety of political creeds that often fall under that name. American society transformed too rapidly for all but the most pliable of natures to keep up. Many temperamentally conservative Americans inherited a revolutionary creed in their youths and then stubbornly adhered to it as circumstances transformed their hopeful principles into stale slogans and bitter laments. Those who recognized the conservative temperament in their natures at least had the consolation of not being utterly bewildered by events. Bates described himself as "a very old fashioned man; for in spite of the rushing current of new opinions, I still believe that we once had good old times, good old principles, and good old men to profess them and act them out, and a good Constitution worthy to be preserved to the

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<sup>28</sup> For example, Bates noted that his friend John S. Millson of Norfolk Virginia was "a good man, and, in the main, not unwise. Yet he has some strange cranks, -- e.g. he seems to me absurdly sincere in his old Virginia ideas of State rights."

<sup>29</sup> Bates, Diary, 331, February 10, 1864.

latest posterity.” At 70 years old, he suspected he might be “little or nothing better than an *old fogey*.”<sup>30</sup>

But even an old fogey knew the difference between an avowed enemy of his principles and an imprudent friend, zealous but sincere. Bates’s conservative lament included an unequivocal determination to preserve “the constitutional Union of the States” and a belief “that we cannot preserve our free institutions without a frequent recurrence to the first principles of our government.”<sup>31</sup> He was therefore dismayed when writers championing the Democratic party called it, “preposterously enough, *Conservative*; forgetting that Democracy has always heretofore, claimed for itself the title of *Progressive*, as the very opposite of *Conservative*; and affected to despise and hate conservatism, as, at once, a weakness and a crime.”<sup>32</sup>

Welles, however, had spent most of his adult life identifying as a Democrat in precisely this mold. He was no more willing to think of himself as a conservative than Bates was willing to think of himself as a champion of “States’ rights.” Only during Reconstruction, when the nature of his political allies became undeniable, did Welles begin to refer to conservatives in a friendly tone. But he was never comfortable with that label. And he never stopped believing that, behind the sound and fury of confused and distracted parties, the true division in American politics was between Union and States’ rights, on one side, and consolidation and secession, on the other – between those who loved the Union for the political liberty it afforded and those who meant to dominate or destroy it.

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<sup>30</sup> Bates to Madam --, an officer of the Sanitary Commission, February 2, 1864. Reprinted in his diary.

<sup>31</sup> *Ibid.*

<sup>32</sup> Bates, Diary, Sept. 14, 1864.

*III: James Doolittle, Timothy Howe, and the Shifting Meaning of Radicalism in Wisconsin*

The political careers of James Doolittle and Timothy Otis Howe, Republican Senators from Wisconsin during the Civil War, provide another view of how principled partisans of the radical Democracy and conservative Whiggery fell into and out of the Republican ranks during the Civil War era. Both Senators were distinguished Constitutional lawyers, but in temperament and philosophy Doolittle and Howe could not have been more different. Immediately before and after the Civil War, the two men fell into a bitter dispute over the nature of the Federal system. Though as willing to compromise and trim in the name of expediency as any other successful politician, each man had a principle he would not sell even at the price of his own dearest personal ambitions. And each had the chance to prove it.

Had Mark Twain written a satire of Washington during the Civil War Era, James Doolittle might have inspired one of his more memorable characters. The author's mockery would have been less scathing and more affectionate than his and Charles Dudley Warner's portrait of the Gilded Age, but every bit as amusing. Doolittle was broad-shouldered and handsome, and he possessed a loud, sonorous voice – physically, at least, a model Western politician. He was smart, literate and capable of soaring eloquence, though whenever he hit upon a fine phrase, he could not help repeating it to death. Even for a Senator, he was absurdly vain, but the child-like simplicity of his vanity, the total absence of guile or even self-consciousness, made it endearing, as a forgivable vice inevitably becomes when swelled into a caricature of itself. His favorite speech for important public occasions was a breathless account of how the future greatness of the United States was foretold in Biblical prophecy. And he intended it to be taken literally. His political outlook contained no ambiguities, no perception of first principles in

conflict with one another. And though his political judgment suffered as a result, there was an unmistakable decency in his dogmatic certainties.

Doolittle made his first political speech as a 16 year-old freshmen at Geneva College in Western New York. Though it was an abject failure, the speech perfectly captured his entire career. This was in 1831, when proslavery arguments were just becoming fashionable among Southern intellectuals. A few clever students echoed these doctrines in the college's literary society. Doolittle was shocked. He prepared an elaborate reply, complete with quotations from Jefferson and Washington. But when he stood up to deliver it, his emotions overwhelmed him. "Mr. President, Liberty is liberty," was all he managed to say before abruptly sitting down. Though this short speech subjected him to weeks of ridicule by his classmates, Doolittle's later fame as an orator rested on his ability to express the same basic idea for two or three hours.<sup>33</sup>

Timothy Howe, the junior Senator from Wisconsin during the war, was Doolittle's exact opposite. Where Doolittle had the temperament of a great stump orator, Howe's was the temperament of a novelist. He had the capacity to see people clearly without becoming cynical. He was not vain – again, by the standards of a United States Senator – but he was acutely self-conscious. And his speeches reflect his writerly disposition. They are full of clever, elegant sentences, but he rarely indulged in bursts of high-flown rhetoric. Along with his speeches, his letters are as delightful to read as anything produced in the Senate of that talented era. But he was never a popular orator. A colleague, speaking on the floor of the Senate, once said that Howe "brings...all that profound wisdom, all that dignity of character, all that quiet demeanor which I have sometimes thought characterized a women's sewing society. [Laughter]."<sup>34</sup>

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<sup>33</sup> Cited in an unpublished biography of James Doolittle. Doolittle Papers, Wisconsin Historical Society.

<sup>34</sup> The speaker was Senator James Nesmith. *Congressional Globe*, 38<sup>th</sup> Congress, 1<sup>st</sup> Session, 1774.

Howe, unlike Doolittle, referred to himself as a “conservative,” even though his position on Reconstruction placed him squarely within the radical ranks. The label is an accurate, if somewhat misleading, description of someone who is acutely aware of the limits of politics. But the willingness to accept political imperfections also allowed Howe to distinguish between the venial and mortal sins of power – between mercenary self-dealing and corruption, on the one hand, and unspeakable cruelty and oppression on the other. Howe had no illusions about what Reconstruction would accomplish; he avoided the jaw-dropping naiveté of radicals who sincerely believed that a vicious slave regime could be quickly converted into a liberal democracy by means of a socially catastrophic war. But he also recognized the horrors that would follow if the Federal government disavowed the solemn obligations it had incurred during that war. “I do not deny that I would like even a purer political atmosphere than this,” Howe wrote in 1876, perhaps the most corrupt era in American politics, “but I don’t expect to find it in the democratic camp.”<sup>35</sup>

Howe’s attitude toward Carl Schurz exemplified his attitude toward ideological zeal in politics. Schurz was a States’ rights radical in the late 1850s, claiming John Calhoun as an intellectual hero, a civil rights radical in the late 1860s, and then abandoned the Republican party altogether over civil service reform in the early 1870s. Anyone who reads the rhetoric surrounding civil service reform will be struck by the moral fervor of its supporters for such a mundane cause. The reason was simple. Civil service reform was the cause of political idealists who had seen their earlier ideals exploited by mercenary party hacks. There is no logical reason why this should have tainted the ideals themselves, but it does not require a particularly deep grasp of human nature to see how it would have that effect. And so the moral commitments of the war were transferred, intensity undiminished, to the great cause of driving the party hacks

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<sup>35</sup> Howe to Grace, March 8, 1876.

from politics. Schurz exemplified the transition. “This morning I called on the Great Reformer, Carl Schurz, at the Interior Department,” Howe wrote to his niece in a characteristically wry tone. “His mission, as you know, is to uproot the love of office – to eradicate it from the human heart.”<sup>36</sup>

Doolittle’s outlook, by contrast, was much closer to that of the Radicals he opposed. Because he could not reconcile a sustained federal commitment to the civil rights of blacks with his belief that local self-government was the essence of political liberty, he dismissed the problem altogether. But his radical opponents committed the opposite error. The purity of their ideals was certain to crash against the sordid realities of the postwar era, disillusioning them from the cause as they turned in disgust from compromises they did not expect and could not accept.

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An early and effective leader of the antebellum Wisconsin Republic party, Howe recoiled in dismay as the State party endorsed nullification in the late 1850’s, a doctrine he could not support, even tacitly. “It cuts me to the quick to reflect that I have served the party so long, and so well,” Howe wrote bitterly, “that I have asked so little from it and asked that little so modestly – to see the party wantonly plant themselves in a position which they know I could not and would not occupy.”<sup>37</sup> Even the most ardent antebellum nationalist, including Howe, agreed that State governments were preeminent in all matters that fell under their exclusive jurisdiction, and that this strict division of federal and state power was fundamental both to the Constitution and to liberty itself. The controversial question, however, was over how to resolve a dispute in which the prerogatives of the general and state governments conflicted. Nullification theories came in

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<sup>36</sup> Howe to Grace, March 15, 1877.

<sup>37</sup> Howe to Horace Rublee, March 27, 1859.

many subtle varieties, but the essential point was that individual states could unilaterally abrogate or “nullify” a federal law that usurped power constitutionally reserved to the States. When Republicans took control of the state government in Wisconsin, they were determined to nullify the Fugitive Slave Act.

By insisting upon the supremacy of federal law, Howe placed himself in the awkward position of indirectly defending a wildly unpopular law that he sincerely detested. Constitutional questions can only arouse so much passion among voters, but a dramatic rescue inflamed Wisconsin’s hatred of the Fugitive Slave Act to a fever pitch. In 1854, as the sectional conflict escalated over the repeal of the Missouri Compromise, several slave catchers and a federal marshal captured Joshua Glover, a fugitive slave living in Racine, Wisconsin. Under the provisions of the Fugitive Slave Act, Glover’s status would be determined by a Federal judge, not by a state court and certainly not by a jury. While awaiting his fate, Sherman Booth, a white abolitionist, organized a 5,000 man mob, sprung Glover from jail and spirited him off to Canada.

Two days later, Booth was arrested and placed under federal custody for violating the fugitive slave law. In response, Booth declared the law unconstitutional, insisted that he was defending the liberty and honor of Wisconsin, and claimed that all federal officers enforcing the law in the Badger State ought to be hung. Soon enough, the Wisconsin Supreme Court agreed with Booth on everything except the hanging part, issued a writ of habeas corpus setting him free from federal custody, and declared that the State Supreme Court could nullify an unconstitutional federal law within its borders. There were, of course, many Constitutional objections to the Fugitive Slave Act, and virtually every Republican in Wisconsin, Howe included, accepted these objections as decisive: The Constitution stated that persons held to labor in one state could not be released from that obligation by the laws of another state, and that such persons “shall be

delivered up on claim of the party to whom such service or labor may be due.” Antislavery Northerners insisted that this clause clearly designated slavery as a creature of local law only; the Federal government did not recognize its existence and therefore could not enforce laws that treated persons as property. The States, and only the States, had a Constitutional obligation to return persons held to labor by the laws of other states.

This much was uncontroversial among Republicans in Wisconsin. The key question was whether the States would have to obey an unconstitutional federal law until it was repealed. On this point, Abram Smith, in writing the opinion of the Wisconsin Supreme Court, declared unequivocally in favor of the supremacy of state law. “The power to guard and protect the liberty of the individual citizen,” he wrote in a key passage, “is inherent in every government – one which it cannot relinquish; which was never granted to the Federal Government; has never been claimed by it or for it. But has always been conceded to the States, without which they could not exist.”<sup>38</sup> There is no mistaking the implications of this passage. The powers of the federal government were strictly limited, and the responsibility of protecting citizens’ liberty rested with the states alone. As Smith went on to say, this was the *sine quo non* of any legitimate government, the ultimate power for which citizens owed their allegiance and support. The government that protects a citizen’s rights is, *ipso facto*, the government to which he owes his allegiance.

The theoretical point, though the most crucial and contested in American political thought, was less relevant to Wisconsin voters than the immediate practical issue of defying federal slave catchers. And on the strength of that issue, Republicans took control of the state house and senate in 1856. As the legislature began to decide upon whom to elect as Senator,

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<sup>38</sup> Wisconsin Reports (1854).

Timothy Howe, the foremost Republican leader in Wisconsin, found his dearest ambition in stark conflict with one of his most fixed convictions.

As Howe and his supporters recognized, all that stood between him and the United States Senate was his suddenly heretical attitude toward nullification. An important faction was adamant in its refusal to nominate anyone who would not endorse the decision of the Wisconsin Supreme Court. Howe must have been sorely tempted to concede the point. Even many of his former Whig allies abandoned him on that issue, for it meant, as one wrote, “We must...acquiesce in federal usurpation and passively yield our rights to the dictation of the slave power...”<sup>39</sup>

To create a semi-official test of Howe and the other Senate candidates, the state legislature adopted resolutions on the issue with the understanding that the candidates would reply to them. The first resolution quoted and endorsed the Virginia and Kentucky Resolutions of 1798. The second resolution, affirmed the duty “to stand firmly by the Supreme Court [of Wisconsin] in asserting the right of the state tribunals to pronounce final judgment in all cases involving the reserved rights of the states; in declaring the Fugitive Slave law unconstitutional and in shielding the inhabitants of the state from the operation of unconstitutional enactments without right of review by any federal tribunal.”<sup>40</sup>

Howe’s response to this catechism is a miniature case study of an honest but ambitious politician struggling to reconcile obvious career imperatives with his principles. He equivocated desperately, disguising his actual opinions without saying anything flatly untrue. The theory propounded by the Resolutions of 1798, he wrote, had helped “arrest a flagrant usurpation by the General Government of the rights reserved to the States,” though he did not say whether the

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<sup>39</sup> Cited in Michael McManus, *Political Abolitionism in Wisconsin, 1840-1861* (Kent, 1998), 141.

<sup>40</sup> Cited in James L. Sellers, “Republicanism and State Rights in Wisconsin” *The Mississippi Valley Historical Review*, Sept. 1930), 213-229.

theory itself was correct. And he declared that “recent aggressions of the General Government by all its departments” on behalf of the slave-power “upon the rights of the free states and all the citizens thereof, demand a reassertion on our part of every right and power, which is reserved to the sovereign states, for the protection of its citizens and the preservation of liberty.”<sup>41</sup>

A harsh observer would say that Howe had completely misrepresented himself. What he really believed was that the Republicans in all states should work to repeal the Fugitive Slave Act in Congress, not nullify it at the state level. But his response expressly endorsed state efforts to protect citizens from the “operation of the Fugitive Slave act and all other unconstitutional laws.” Having gone so far, however, Howe refused to go any further. He rather lamely avoided answering whether the Supreme Court could review state decisions on the grounds that he had not studied the question enough. And he insisted that states could not issue writs of habeas corpus for detainees accused of federal crimes.

As is often the case, Howe’s ambitions made him compromise a sincere principle while his conscience prevented him from going far enough to actually realize those ambitions. His refusal to embrace party orthodoxy killed his chances for the Senate even as his partial embrace of State’s rights doctrine made him seem inconsistent. He was, as a Democratic paper cheerfully reported, as “dead as Julius Caesar!”<sup>42</sup>

Howe’s position on the Constitutional relationship between the States and the general government only became more unpopular, if that were possible, after the Dred Scott decision discredited the Supreme Court’s authority as a trustworthy arbiter of vexed Constitutional questions involving the reserved powers of the States. “Do you think, if I could command any of Jove’s lightning, I would hesitate to blast the bloodless (and shameless) dotards who made the

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<sup>41</sup> Ibid.

<sup>42</sup> Cited in, Sellers, *Republicanism and States Rights*.

decision in that case?” Howe asked a friend in despair, “a decision which makes humanity blush and the Constitution bleed?”<sup>43</sup> The claim that the States were the exclusive guardian of individual rights could hardly receive a better vindication than Taney’s ruling that blacks could not have any rights at all under federal jurisdiction. Howe, however, continued to insist that both claims rested on the same distortion of the Constitution. “Do you not recognize in that abortion another pup from the litter known as ‘States Rights?’” he asked his friend Horace Rublee.<sup>44</sup> But few indeed were willing to equate a doctrine that protected blacks from slavecatchers with one that denied them any protection at all. Howe continued to adhere to his old creed, though it made him, as he put it, “a heretic” among his old allies.<sup>45</sup> “Two things are settled,” Howe wrote as he looked to the future. “I will never become the apologist for slavery – I will never become the apologist for nullification.”<sup>46</sup> In Wisconsin, that made him a man without a party.

Perhaps the best measure of the popular support for State rights theories was a speech by Carl Schurz, the brilliant, ambitious German leader, who had risen quickly to prominence in Wisconsin politics since arriving in the United States after the failed Revolutions of 1848. Schurz delivered one of the most cogent defenses of States’ Rights doctrines since John Calhoun, and he did not hesitate to invoke the authority of the South Carolina philosopher, whom Schurz characterized as a “high democratic authority.” The Constitution, Schurz declared, “is not worth the paper on which it is printed, if the authority to construe it, is exclusively and absolutely vested in the central government.”<sup>47</sup> People have a weakness for delighting in the greatness of their leaders, Schurz warned. “Take care not to make them forget that the principal guaranty of their rights, their liberties, their security, their welfare, and their greatness does not consist in a

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<sup>43</sup> Howe to Rublee, April 5, 1857. Howe Papers.

<sup>44</sup> Ibid.

<sup>45</sup> Howe to Grace, February 23, 1860. Howe Papers.

<sup>46</sup> Howe to Horace Rublee, April 3, 1859.

<sup>47</sup> Milwaukie *Sentinel*, March 24, 1859.

splendid representation, but in that dismemberment of political authority which keeps the power near the original source of sovereignty; a system which is modest in its outward appearance, but renders governments weak in doing mischief and the people strong in doing good...”<sup>48</sup>

It was only by means of a centralized government that the aristocratic slave power could “rule the free States as it rules its own,” Schurz observed. “Do you not see the general government surrounding itself with all the paraphernalia of centralized authority? Do you not hear the incessant cry of more soldiers, more ships, more money, more discretionary power?” he asked two years before the Republicans took power and found themselves woefully deficient in all these elements of State authority. In 1859, however, Schurz concluded with the hope that he would never see the day “when the people of this country, sitting on the ruins of their greatness,” sorrowfully lamenting, “we ought to have stemmed the current of centralizing power, and all would be well now!”<sup>49</sup>

The secession crisis and the Civil War quickly brought Schurz around to a different point-of-view. And so it is hardly surprising that he omitted this speech from his collected works. He recalled, however, that this somewhat misguided speech was the most enthusiastically received that he ever delivered. Howe, who knew Schurz and respected his abilities, thought his speech on States’ rights was “splendid” and, for that very reason, “struck the cause of Republicanism the hardest blow it has ever received.”<sup>50</sup> Schurz was not a mere party hack and could not be dismissed as one. But Howe still believed his clever defense of an extreme State Rights position was an opportunistic pander to prevailing passions, not a sincere statement of principle.

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<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> Howe to Rublee, March 27, 1859.

Perhaps sensing this suspicion, Schurz privately wrote to assure Howe of his sincerity. “The abstract theory of government set forth in that speech has been a subject of meditation with me for many years,” he insisted. Both his experience with the despotisms of the Old World and his life in America had confirmed and settled into convictions that went far beyond the immediate issue in Wisconsin, Schurz wrote privately to Howe. “The question of state-rights is in my opinion not a mere question of temporary expediency” – not, that is, merely an emergency response to the unconstitutional provocations of the slave oligarchy, but a permanent feature of free government. “A government of consolidated powers is dangerous to Liberty in the hands of whatever party it may lie. Party despotisms, the unavoidable consequence of consolidated government, is no less oppressive than the despotism of monarchs.”<sup>51</sup>

Schurz’s antebellum writings did indeed consistently reflect this belief. “Every glance into the political life of America strengthens my convictions that the aim of a revolution can be nothing else than to make room for the will of the people – in other words, to break every authority which has its organization in the life of the state, and, as far as possible, to overturn the barriers to individual liberty,” Schurz wrote in 1852, repeating an insight that had become standard among liberals in that era.<sup>52</sup> The contrast between Europe and America lent this obvious truism an exaggerated importance, as though it were the whole formula for liberty rather than a part. Not only the failed Revolutions of 1848, but the nature of federal overreach in the following decade, equating centralized government with actual slavery, made the importance of local self-government shine so brightly that it blinded intellectuals to any other considerations. And the Dred Scott decision further discredited the idea that the Constitutional Rights of the States could be safely entrusted with the least democratic, most elitist branch of the Federal Government.

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<sup>51</sup> Carl Schurz to Howe, April 2, 1859.

<sup>52</sup> Carl Schurz to Malwida von Meysenbug, 1852. Frederick Bancroft, ed. *Speeches Correspondence and Political Papers of Carl Schurz* (New York, 1913), 1:5-8.

The crucial error in Schurz's "settled" political philosophy would, of course, become no less blindingly obvious in a few short years. That the state is a check on the "will of the people" is true by definition – it is a crucial part of what makes a "state" a state. But Schurz was wrong to believe that breaking the authority of the state was compatible with overturning "the barriers to individual liberty." For the only way to protect the liberty of individuals is to limit the political rights of the people. Schurz's failure to grasp this dilemma fueled his inconsistencies in the years ahead, and his States' Rights position in 1859 was not the last time he brilliantly defended an advanced position from which he would hastily retreat.

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James Rood Doolittle, the man elected to the Senate seat Howe coveted in 1857, was a States' Rights Democrat who readily exploited the issue that turned his rival into a heretic. For an ambitious Democrat, Doolittle had a distinguished record of hostility toward the proslavery wing of his party. As a rising politician in western New York, Doolittle had belonged to the radical faction of the Democratic party – known as "Barnburners" after the fabled Dutch farmer who burned down his barn to get rid of the rats. At the Democratic Convention at Syracuse in 1847, he wrote the resolution, known as the "Cornerstone Resolution," that declared "their uncompromising hostility to the extension of slavery into territory now free, which may be hereafter acquired by any action of the government of the United States."<sup>53</sup>

Party elites, fearing a rupture in the national organization, defeated the resolution, but it split New York Democrats and ensured the victory of the Whigs in 1848. As a delegate to the national Democratic convention that year, Doolittle gave a speech boldly defending the "barnburners" from the charge of disloyalty to the party. The people of New York were

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<sup>53</sup> The Resolution was introduced by David Dudley Field. A report of the Convention with Doolittle's resolution is included in his personal papers. Doolittle Papers. Wisconsin Historical Society.

unanimous in their opposition to the extension of slavery, Doolittle insisted, and no man from that State, “whatever doctrines gentlemen may advocate, and whatever pledges they may make here, for the purposes of gaining their admission to, and our exclusion from, this body, dare stand up there, and say that he is in favor of the extension of slavery into territory now free...”<sup>54</sup> Any party that set itself against free soil, he predicted, would be smashed to pieces.

When Doolittle moved to Racine, Wisconsin in 1851, he returned to the Democratic party, only to break with it again in 1854. No one considered him a leading contender for the Senate seat in 1856, and there was even some question as to whether he was eligible under the State constitution. The State Rights issue, however, gave him his opportunity. He wisely insisted that the question should not be used as a litmus test against Republicans. Nothing should be allowed to divide Republicans from remaining “firmly planted, shoulder to shoulder, upon an uncompromising hostility against the extension of slavery,” Doolittle wrote, echoing his own “Cornerstone Resolution” from nearly a decade earlier. Noble sentiment! But in case anyone happened to be curious, Doolittle was quite willing to advertise his belief that “the Supreme Court of this state has placed the matter [the fugitive slave law] in its true light.”<sup>55</sup> When the legislature passed its resolutions endorsing the Supreme Court decision and soliciting a response from Senate candidates, Doolittle penned a ringing statement of his principles (after cleverly insisting that the Legislature first decide whether he was, in fact, eligible.)

An ardent State Rights nationalist and a talented Constitutional lawyer, Doolittle did not defend the reasoning of the Wisconsin Supreme Court even though he endorsed it. He did not believe, and he did not say, that the States alone were the sovereign protectors of individual rights. Doolittle understood the razor-thin line that separated State rights from nullification and

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<sup>54</sup> Cited in an unpublished biography of James Doolittle. Doolittle Papers, Wisconsin Historical Society.

<sup>55</sup> Doolittle to Runals, Dec. 25, 1856. Doolittle Papers.

his own argument faithfully abided the difference. The sovereign people, in creating the Constitution, retained ultimate authority while delegating strictly limited powers to both state and federal governments. When state and federal law conflicted, neither had the power to overrule the rights claimed by the other. Instead, Doolittle argued, “the only appeal is to the Bar of Public Opinion.” Far better to have the people’s government perennially gridlocked than to clothe any delegated power with the authority to augment itself in order to overcome the paralysis of a divided government.

As promised, Doolittle delivered an elaborate defense of the Wisconsin supreme court soon after taking his seat in the Senate. The true strength of the American system, he argued, was the creative tension between national and local jurisdiction. “It is to these two enduring and apparently opposing forces in our system that we owe its true harmony, its real glory.”

The power which moves the planets in our system is the resultant or effect of the combined action of centripetal and centrifugal forces. The former unaffected by the latter would draw them all to the sun at the center; while the latter, unaffected by the former, would hurl them from their spheres, to wander at random through the universe, until destroyed by collisions, or bound by superior force to some other system. So these two tendencies, the one to enlarge the powers of the General Government, which is called Federalism, and the other, if not to enlarge, sturdily to maintain the reserved powers of the States, which is called Republicanism, are to be looked upon rather as political blessings than as political evils.<sup>56</sup>

No competent politician can avoid fashioning his principles without a little elastic, for the sake of personal ambitions as well as public necessities (and that distinction is usually invisible in one’s own case, however glaring it may be in the case of others). Timothy Howe had stretched his principles a bit farther in this particular controversy, though he had the disadvantage of being tethered to a wildly unpopular opinion. For Howe, State Rights was a dangerous chimera. The Constitutional limits on federal power were sacrosanct, but any dispute over those limits

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<sup>56</sup> *Congressional Globe*, 36<sup>th</sup> Congress, 1<sup>st</sup> Session, Appendix, 127.

must be resolved at the national level, i.e. through the federal government, or the nation would never be able to hold itself together. The risk of disunion or civil war was greater than the risk of consolidation. Doolittle believed the opposite. The threat of consolidation was gravest of all, and State rights a necessary defense against it.

Events in the late 1850s, especially the Dred Scott decision, powerfully vindicated Doolittle's antislavery republicanism and stretched Howe's outlook to the breaking point. But 1860 brought the inevitable backlash. Abraham Lincoln's election instantly cured many Wisconsin Republicans of their State rights notions, and the long agony of the secession crisis converted virtually everyone else. Overnight, Timothy Howe went from pariah to prophet. And the Wisconsin legislature, duly chastened, sent him to the Senate just in time for the Civil War.

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"Upon a question of doubtful construction," Doolittle had written in 1857, "the Federal Government will never undertake to coerce a sovereign state by force of arms against the judgment of its Supreme Court." Secession, however, was not a doubtful issue in Doolittle's mind. It was simple treason. But it also revealed that the ambiguity he had celebrated as a sublime strength of the Union was actually a fatal weakness. President Buchanan's position was that no state had a right to secede but that the general government could not use force to coerce a state into loyalty. To Doolittle, this position now seemed worse than treason. It was treachery compounded by stupidity. "The great and burning shame of our country now is that treason and imbecility preside in the Whitehouse," he wrote in early December. Not only Buchanan but many other leaders in the North, including Horace Greeley, had allowed the secession frenzy to grow by maintaining the absurd pretense that government would not maintain its authority by

force. “It is the idea that it is to be a mere holiday affair that strengthens the traitors,” he wrote to his wife.<sup>57</sup>

As the secession crisis dragged on and on for the next several months, the emotion Doolittle felt most keenly was humiliation at the impotence of the government he revered as the greatest in history. “The anxiety pressing upon us here is very heavy and in my soul I try and lean upon the Almighty,” he wrote in the early stages of the crisis. “O how I blush for my country in the face of the Civilized world! Cowed by traitors, playing into the hands of traitors, treating with rebels with arms in their hands!”<sup>58</sup>

This long humiliation, however, had the advantage of crystalizing Doolittle’s resolve. For his entire political life, he had considered “consolidation” to be the greatest threat to the American Republic. The next four years was an immense trial for his political philosophy, but his relentless sense of purpose overwhelmed any philosophical ambivalence he might have felt. The glorious harmony of the Union had been disrupted and the festering source of discord must be settled once and for all. If the secessionists pushed “matters to a bloody issue,” he wrote three months before the shooting started, “the disunion question and the slavery question may all find their solution and their end together.”<sup>59</sup>

Doolittle was far from becoming an abolitionist. Indeed, the consistency with which he supported President Lincoln against attacks from all sides gradually established him as the *de facto* spokesman for the Administration in the Senate. He despised those who used Constitutional scruples to hobble the war effort, but he was equally hostile toward those who went beyond wartime expediencies in seeking to transform the Union as an end in itself. The Republican party, he wrote to his wife in 1862, was in danger of being hijacked by fanatics just as it

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<sup>57</sup> Doolittle to Mary, Dec. 2 and 9, 1860.

<sup>58</sup> Doolittle to Mary, Dec. 9, 1860.

<sup>59</sup> Doolittle to Henry, January 7, 1861.

“accomplished its mission. It has thrown off the shackles of the slave aristocracy from the government. But our fanatical people would blot out the states and all their rights and make over Consolidated Empire.”<sup>60</sup>

Doolittle’s understanding of the Republican “mission” helps explain the apparent inconsistencies of his position. Like Lincoln, he was absolutely inflexible when it came to any question of slavery’s influence over the federal government. But this uncompromising hostility toward slavery was perfectly compatible with a sincere devotion to the Constitutional prerogatives of the States. Indeed, hatred of the “slavepower” stemmed from the perception that it posed the gravest threat to local self-government. What Doolittle and most other Republicans failed to see was that their position *was* revolutionary to Southerners, who therefore compelled them to choose between consolidation or disintegration.

Doolittle had no illusions about the relationship between slavery and the rebellion. And from the very beginning, he professed himself willing to see Union armies march through every square inch of Southern territory, destroying slavery as they went, and killing or exiling every traitor, even if that meant leaving not one white man in the South. If that proved necessary, if there really was no significant Union sentiment in the rebelling states, then blacks would become the sole possessors of land abandoned by the traitors. But that was only one possibility he was willing to consider. Another was that beneath the treasonous slaveholder aristocracy there was a much larger class of loyal whites, who had been temporarily overawed by powerful oligarchs. “When the reaction does come,” Doolittle hopefully speculated, “when the Union men of those States can get the power into their hands, O, what a day of vengeance for traitors then!”<sup>61</sup>

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<sup>60</sup> Doolittle to Mary, March 17, 1862.

<sup>61</sup> *Congressional Globe*, 37, 2<sup>nd</sup> Session, Appendix, 83.

Both these outcomes offered the common hope of avoiding a permanent departure from the principles Doolittle believed essential to free government. He supported any temporary measure necessary to win the war. He believed the war would lead to the destruction of slavery and welcomed that momentous event. But the moment his mind speculated beyond the defeat of the Confederacy to the problems of Reconstruction, his Constitutional scruples reasserted themselves like iron fetters, shackling him to the world the war was leaving behind. He accepted as a possible outcome of the war the complete desolation of all white inhabitants in the South. But the possibility of the Federal government becoming the preeminent authority over individual citizen's rights, effectively nullifying the reserved sovereignty of the States – that idea remained anathema to him. As a result, he was unable to imagine a future for the South as an interracial democracy.

“[I]n spite of all we have heard here or elsewhere about the alleged incapacity of the negro race, I believe that all the races of mankind are capable of enjoying and maintaining civil and religious freedom, under the influence of Christianity and in harmony with the laws of nature,” Doolittle declared in the Senate in March, 1862.<sup>62</sup> But if freedom for the former slaves was to become more than an empty promise, he continued, “He must be free not only from the control of a single master; he must be free from the presence and domination of a stronger race.” It is worth stressing that Doolittle was correctly identifying a problem that most Republicans refused to face honestly, namely, that legal freedom, by itself, would prove a farce in the South. The only alternatives were a massive transformation in the relationship between citizens and the central government, which was incompatible with Doolittle's understanding of freedom. The other option was to separate the races into different political communities, in one way or another.

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<sup>62</sup> Ibid.

Doolittle enthusiastically supported President Lincoln's colonization proposals in 1862. No single policy of the Republican party during the Civil War has received more condemnation than colonization. Even Lincoln's warmest admirers generally regard it as the foulest stain on his Presidency. Since virtually nothing came of this policy, the crime is more symbolic than actual. But the symbolism imputed to colonization is indeed odious: It reifies the racial logic that justified slavery and implies that blacks were somehow a foreign element in the country that they had made with their labor. But as James Oakes, one of the few scholars to provide a dispassionate analysis of Republican colonization efforts, has pointed out, historians tend to conflate two very different policies when discussing colonization: compulsory removal, which is more aptly described as "ethnic cleansing" than colonization, and voluntary emigration financed by the federal government.<sup>63</sup>

It is impossible to exaggerate the moral difference between these two positions. And it is telling that historians have persisted in referring to both as "colonization" even though the label is grossly misleading as a description of compulsory deportation, or emancipation combined with ethnic cleansing. Those who supported compulsory deportation, i.e. ethnic cleansing, were, with few exceptions, unwilling to support emancipation on any other terms. Voluntary colonization, however, amounted to little more than an offer of restitution to those who did not wish to remain in the society that had exploited them as slaves; it alone rested on the premise that blacks themselves, not whites, would ultimately have to choose whether they wished to accept their former oppressors as fellow citizens, and that the choice was by no means a foregone conclusion.

Perhaps this characterization seems tendentious. It is certainly true that voluntarily colonization, like everything else in this era, reflected a society that rested on extreme racial injustice. And it would be absurd to present colonization as uniquely uncorrupted by this

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<sup>63</sup> Oakes, *Freedom National*, 277-282.

historical context. But that is precisely how white abolitionists are too often presented. The dogmatic insistence that the slaves were eager to become citizens of the United States— based on no real first-hand knowledge – was far more patronizing than agnosticism on that question. When Moses said, “Let my people go,” he did not add, “and then hire them to build the pyramids on a wage-labor basis.”

Both the *Congressional Globe* and the diaries of Lincoln’s cabinet members are clear in showing that the distinction between voluntary colonization and deportation was not ambiguous in the minds of leaders – it was the crucial point. White Southerners, such as Senator Garret Davis of Kentucky, shouted that Doolittle “will never find one slave in a hundred that will consent to be colonized, when liberated.”<sup>64</sup> Those who insisted that colonization be voluntary had no reason to believe that such predictions were wrong. And their opposition to deportation was the only inflexible conviction implicit in their position. No one could know what the post-emancipation future of the South would look like in 1862, and the horrific possibilities were perhaps the most readily apparent. Indeed, Doolittle’s speech opposing deportation in favor of voluntary colonization also included a passage in which he suggested that the war might ultimately involve the compulsory expulsion of all *whites* from the South. Those who insisted that any colonization program must be voluntary did so in the face of screeching demands for deportation and sinister threats of extermination.

That some blacks were prepared to struggle, even at the cost of their lives, for their rightful place in American society was obvious in 1862. But it was no less obvious that others would be happy to escape the relentless, unreasoning hatred of their neighbors if given a decent opportunity to do so. Federal funding for voluntary colonization was the only policy that reflected both these manifest realities.

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<sup>64</sup> *Congressional Globe*, 37<sup>th</sup> 2<sup>nd</sup> Session, 1191.

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Despite the complexity of his position – an ardent States’ rights Democrat opposed to secession and consolidation – Doolittle supported Lincoln’s Administration absolutely, so much so that Senate colleagues accused him of being a lapdog for the President. The paradox involved in waging war against states in order to make them equal partners in the Union never troubled him, as he could not imagine that so righteous a cause could be in conflict with itself. “I will neither bow my neck at the dictation of fanaticism, North or South,” Doolittle wrote to his wife in a tone that was entirely characteristic. “I will stand for the Constitution and will sustain the President and strengthen and not weaken his hands, while holding the sword to fight the great battle of God Almighty.”<sup>65</sup>

The most striking test of Doolittle’s support for the Republican war policy came over the Legal Tender Act, which authorized the Treasury to print \$150 million in notes, backed only by the authority of the United States, as legal tender for all debts, public and private. A government can claim no greater power for itself than the ability to print money at will. Throughout the antebellum era, federal influence on the economy had been jealously circumscribed; this act gave Washington more control over the national economy than was ever imagined in the controversies over centralization that had roiled the Republic in the past.

Next to this, emancipation was easy. Both were unconstitutional, according to Doolittle, and arguments of necessity applied equally to each. But the destruction of slavery was, in his mind, a military issue, which Congress could properly support by supporting the Commander-in-Chief. A Revolution in the financial structure of the United States was not a revolution that anyone could pretend would be confined to the South. And it was, undeniably, a matter for which Congress was ultimately responsible. He therefore supported the measure as a “war

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<sup>65</sup> Doolittle to Mary, March 13, 1862.

necessity, with more misgivings as to its effect at home and abroad than of any other measure for which I have given my vote in this body.”<sup>66</sup>Doolittle’s objection to paper currency was that it “keeps the standard of value in constant fluctuation, expanding and contracting like an India-rubber yardstick, two feet long today, and four feet long to-morrow.” Speculators and other savvy capitalist could learn to exploit these fluctuations, and honest, unsophisticated working people were inevitably cheated as a result. In justifying his vote, Doolittle blamed the proliferation of paper currency by state-chartered banks, in violation of the Constitution, before the war. Like a good-Jacksonian, Doolittle’s attitude toward banks had nothing to do with federalism – he hated them under any jurisdiction.

Doolittle’s speech on the Legal Tender Act drew criticism from his son, Henry, who went beyond finance to question the most fundamental premises of his father’s political philosophy. Henry was a bright, charming boy who had graduated from Harvard the previous year. And like most other bright young men to emerge from Harvard, Henry took up the solemn duty of enlightening the well-meaning, ignorant parent who sent him there. “Men in power in times like these must think on their legs, must work under fire,” the college graduate sternly informed the Senator, after lamenting that “hardly one man in the whole Congress has grasped and comprehended” the financial issues before the country. Outworn party dogmas prevented them from looking at their situation with fresh eyes. “[T]here are prejudices formed in the times of Adams and Jackson which influence men who were learning their first lessons in political economy then; and as the contest was ended then, as the policy of the country settled until some stronger and fiercer commotion should shake the convictions of men, our public men have come

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<sup>66</sup> *Congressional Globe*, 37<sup>th</sup> Congress, 2<sup>nd</sup> Session, Appendix, 58. (February 13, 1862).

to view the settlement not as a triumphant issue of a party struggle, but as the reading of the law which underlies and governs the currency of the country.”<sup>67</sup>

This criticism clearly went beyond the issue of finance. Henry served as an aide to General Charles Smith Hamilton, fighting under McClellan during the Peninsula Campaign before being transferred to the Army of the Mississippi . And Henry’s experiences in the army quickly radicalized him. “Deal with the rebels as rebels. Burn their corn and grain, destroy everything that cannot support mankind. Starve them out,” he wrote in a rage after the failure of McClellan’s Peninsula Campaign. “I never felt so as I do now,” he admitted. “Only for one thing can I understand why the war is protracted, i.e. that we may destroy slavery forever.”<sup>68</sup>

Though Henry expressed these sentiments to his brother, with whom he could be more outspoken, he continued to lecture his father on the importance of new ideas, in earnest, charming letters and, no doubt, in many breathless monologues whenever the two were together in person. In one letter he begged his father to buy several books on finance and political economy for the family, including Adam Smith, Ricardo, Malthus and Frederic Bastiat. “We might find great profit by their perusal,” he wrote to his father, before crossing out “perusal” and adding “careful study” in its place.<sup>69</sup> He then moved on to Constitutional issues and assigned his father another formidable stack of books. As for Doolittle’s upcoming speech on confiscation, Henry enjoined his father to “write it out carefully, trim it of all repetitions, make it as compact as you can and right to the point.”<sup>70</sup> And finally, Henry concluded his lengthy lecture on political

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<sup>67</sup> Henry Doolittle to James Doolittle, March 2, 1862. Doolittle Papers.

<sup>68</sup> Henry Doolittle to Anson, July 9, 1862.

<sup>69</sup> Henry to James Doolittle, March 16, 1862.

<sup>70</sup> Henry to James Doolittle, March 16, 1862.

economy, Constitutional law and military strategy, “Don’t forget to write me a long letter on the matters I have alluded to.”<sup>71</sup>

Doolittle accepted this instruction with the condescending pride of a father who knows that talented young people are usually far more wrongheaded than their dullest peers. It was obvious the boy showed brilliant promise. In his second message to Congress, President Lincoln echoed Henry’s point about outworn party prejudices. “The dogmas of the quiet past, are inadequate to the stormy present.” But if James Doolittle thought of Henry as the clerk read those words, the recollection was unspeakably painful, for by then his son was dead, another brilliant future consumed in the stormy present.

Doolittle’s second son, Anson, also served in the war, enlisting as a private in the Wisconsin volunteers. He fought at the First Battle of Bull Run under General Sherman, and commanded a battalion at Chickamauga. He ended the war in the final campaign against Lee’s army in Virginia, and was brevetted a Colonel for gallantry during the siege of Petersburg. Four years of army life evidently took a severe toll on Anson, whose drinking and other bad habits mortified his father soon after the war. The “dreadful anxiety” over Anson, Doolittle wrote to his wife in 1866, “does put bitterness in the cup of life. May God grant him a spirit to repent and ask sincerely to be forgiven for all his backsliding.”<sup>72</sup> It’s impossible to know whether Doolittle was overreacting to youthful drift or whether Anson was indeed a lost soul. But the tension between father and son led to an estrangement, and Anson’s name disappeared from his father’s letters.

Death and crippling disabilities, moral and physical, are the unavoidable costs of war, and the personal toll never led Doolittle to question the cause he regarded as sacred. But his own

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<sup>71</sup> Ibid.

<sup>72</sup> Doolittle to Mary, May 13, 1866.

personal griefs likely calcified even further his commitment to the antebellum Constitutional order, and deepened his hostility to those who recognized that the war had swept it away.

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“Don’t anchor yourself to any policy,” Howe advised his nephew in December of 1861. “Don’t tie up to any platform. The very foundations of the Government are cracking. And the signs portend a rupture. God only knows what sort of landscape will be exhibited when the convulsion is over. No mere platform or policy can outlive this storm.”<sup>73</sup> In the vast country between the capital and Canada, Howe continued, “lay 20 millions of the most resolute but discordant people” and it was Congress’s job to direct that immense force toward some end it but vaguely apprehended. A Congress of the greatest statesmen ever assembled would be humbled by such an immense task. “Instead of that we are an assembly of pettifoggers and sonorous scolds, as wayward as children, as full of spleen as an old woman,” Howe wrote in disgust. (“My wife,” he added sheepishly at the end of the letter, “is offended by my reference to old women but I did not mean anything.”)<sup>74</sup>

In both his private letters and speeches, Howe showed an acute awareness of the uncertainties involved in almost any important question of the war. His service on the Finance Committee obligated him to grapple with the immense technical challenges of paying for the war, and it also familiarized him with the cheap trick of using a bold statement of principle to disguise basic ignorance of a complex problem. During the debate over what became the Second Confiscation Act, Howe lamented that his work on the Finance Committee prevented him from

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<sup>73</sup> Howe to James Henry Howe, December 30, 1861.

<sup>74</sup> Howe to James Henry Howe, December 30, 1861.

studying the question carefully. “I therefore felt I was liable to be wrong as to be right, and yet I knew that to be wrong upon that subject was to be terribly wrong.”<sup>75</sup>

In the final years of the war, however, the nature of a Northern victory became obvious, and Howe’s political outlook hardened into the convictions he upheld throughout the postwar era. Interestingly, Howe’s understanding of the problems involved in securing blacks their freedom were similar to Doolittle’s, though he took a very different position. “Cruel as you and I know slavery to be,” he wrote in a long, candid letter to William Pitt Fessenden, “it does nevertheless supply to its victims that sort of protection which is prompted by ownership. Of that, emancipation deprives them.” If the slaves could be left alone upon being set free, isolated from their former oppressors, “I do not doubt they would rise to the necessities of their position as readily as other people. But such is not the case,” he continued.

On the contrary, they are cast out upon the very bosom of a huge society – inflamed with every kind of animosity – from unmanly prejudice to an inhuman hate – with far less culture than had that tribe which the May flower flung upon New England. They encounter antagonisms vastly more malignant if not more savage than any with which the forests of New England confronted the puritans.<sup>76</sup>

Without some protection from these vicious hatreds, freedom was likely to be the beginning of horrors even more unspeakable than slavery. Meanwhile, the government had enlisted the former slaves in order to save itself. “I do not know what penalties God has in store for that Government which wrenches a race from the womb of that horrid despotism which we know the chattelization of man to be and cast it out raw and bleeding to perish of inaction.”<sup>77</sup>

Howe recognized several immense difficulties involved in properly discharging the moral obligations the Government had assumed. In protecting the former slaves from the relentless hostility of their neighbors, the Federal Government had to avoid reducing them to a more

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<sup>75</sup> Howe to Grace, May 1862.

<sup>76</sup> Howe to Fessenden, August 28, 1864.

<sup>77</sup> Ibid.

benevolent but no less crippling dependency. “Hence the mission of the Government is that very delicate one of the nurse who must not hold up her charge nor let it fall,” he wrote. Even this difficulty, however, was nothing next to the challenge of finding men who could be entrusted with the necessary authority without abusing it. “There is no trust under the Government more tempting to bad faith or more liable to abuse. The archives of the Indian Bureau will furnish you abundant evidence of the difficulty in enforcing such a trust honestly.”

And finally, Howe noted two grave tendencies that the Federal government must guard against. “One is a tendency to perpetuate the care of the Government over the efforts of the class and the other a tendency to fasten the class to the culture of the very estates on which they have been reared and the crops to which they have been accustomed.” Both alternatives amounted to a diluted form of oppression, a less rapacious form of dependency, imposed either by the Federal government or by the planters.<sup>78</sup>

One difficulty Howe did not acknowledge, or recognize, was the supposed rights of the States. It was obvious that the war had dramatically increased the federal government’s authority and practical responsibility over individual rights. These rights would have to be enforced in defiance of hostile local majorities. Though the practical challenges were staggering, Howe viewed the philosophical change as a welcome correction to antebellum theories that had been carried to dangerous extremes.

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The surrender of Southern armies ended the rebellion, as far as Doolittle was concerned, and with the rebellion defeated the general government had absolutely no right to impose terms of re-admission on the states in which the rebellion had occurred. Traitors, of course, could be punished, and Doolittle felt that they should be tried by civil courts rather than military tribunals.

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<sup>78</sup> Ibid.

But if the Republicans were correct to insist that a state could not secede from the Union, how could they turn around and prevent a state from resuming its Constitutional rights and duties?

Republicans had a witty reply to this question. Murder is illegal, therefore Abraham Lincoln could not have been killed. To pretend that eleven states had not seceded, formed a hostile Confederacy and waged four years of desperate warfare against the United States, simply because they had no legal right to do so, was to insist upon an insane fantasy. And to allow those same eleven states to return as full and equal partners in the Government they had just struggled so viciously to overthrow, without extracting any guarantees of loyalty, was virtually certain to transform victory into defeat.

But Doolittle's objections to Radical theories of Reconstruction were also powerful. Doolittle still adhered to the States' rights principles he had expressed in the controversy over the Fugitive Slave Act. Ultimately, the states were sovereign over all that pertained to themselves. The general government could defeat treason but it could never enforce loyalty. Whenever the states and the federal governments differed over their Constitutional obligations, the difference could only be resolved by reason and moral suasion, not by force. If South Carolina, Alabama and the rest could not be trusted to belong to this Union, then why had the Republicans fought to keep them in it? Why had Henry Doolittle sacrificed his life to preserve a Union that was not worth preserving? And make no mistake, any "guarantees" extracted at the point of a bayonet were pure illusions unless the Republicans were committed to transforming the Union permanently into a consolidated nation-state.

State rights, the slogan that got Doolittle elected to the Senate, was now anathema in Wisconsin. And so Doolittle prudently dropped that phrase in favor of "maintaining the Constitution," which made him sound more like an antebellum Whig. It is perhaps hardly

surprising that four years of civil war – and Republican rule – had effected a sea-change in public opinion. Even Doolittle’s support of the 13<sup>th</sup> Amendment as the only Constitutional means of abolishing slavery was attacked for reasoning that rested on “the Calhoun platform of States Rights.”<sup>79</sup> Radicals claimed that the Federal government already possessed the power to abolish slavery, both under Lincoln’s Emancipation Proclamation and the Constitutional guarantee of a republican form of government to each state. Doolittle, by contrast, argued that without the 13<sup>th</sup> Amendment, which he supported, there would be no Constitutional way to prevent a state from reinstituting slavery within its jurisdiction in the future.

Underlying this dispute was a more substantive problem that became manifest soon enough. The States, in Doolittle’s philosophy, had a moral and legal obligation to obey the Constitution, in letter and spirit, but no superior government power existed to compel them to do so. Open rebellion must be suppressed, of course, but good faith cooperation was what the Union required of its members, and that could not be imposed by force. Doolittle was simply adhering to a belief that had once made him an antislavery radical, and it was a common one among those old enough to remember living under a general government dominated by slaveholders.<sup>80</sup> But this logic put a hard limit on the meaning of the promises the national government had made to black southerners in order to win the war.

Doolittle was not oblivious to this problem, though his willingness to face it honestly proved short-lived. In the fall of 1865, he wrote a long letter to President Johnson advocating a plan to make West Texas and other lands west of the Native American territory into settlements for the freedmen. The government should settle black soldiers and their families there first, “and we could thus found such a kind of armed colony as Rome, in her conquering progress in the

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<sup>79</sup> Press Clipping, October 1865. Doolittle Papers.

<sup>80</sup> William Lloyd Garrison, for example, also believed that the rights of the freedmen would ultimately depend on the states.

days of the Republic, always established upon her boundaries.” Once these colonies were established by black soldiers, Doolittle continued, there would be ample room for all other African-Americans who wished to emigrate “to receive the full benefits of the Homestead system of which you are the author.”<sup>81</sup> Doolittle expected these territories to become self-governing republics, but he was curiously silent about whether or not they would become states within the Union. The most likely inference from his silence on that point is that he himself was uncertain. Doolittle also thought some of Florida could also be set aside for the same purpose, along with territories outside the United States, including Haiti.

Doolittle’s premise, that blacks would have little chance of enjoying real freedom in the South, was virtually inescapable given his understanding of the Union. But anyone familiar with the history of Native Americans in the West must recognize that his solution was not a solution at all. If the federal government could not protect black civil rights in the South, the West amounted to a leap from the frying pan into the fire. But the bleakest pages in the history of western expansion were only then being written. And Doolittle’s attitude toward Native Americans shows that his understanding of the Union cannot be dismissed as one that categorically dismissed oppressed minorities, just as it reveals the moral blind-spot in the theory espoused by his opponents.

#### *IV: The Sand Creek Massacre*

In early January, 1865, Doolittle introduced a bill to investigate an incident that soon became one of the most notorious crimes in American history – the Sand Creek Massacre. Visibly distressed by the letter he had recently received from a trusted friend and government

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<sup>81</sup> Doolittle to Andrew Johnson, September 9, 1865.

agent in the Colorado territory, Doolittle told the Senate that the story recounted in that letter, if true, “makes one’s blood almost chill and freeze with horror.”<sup>82</sup> The details of the massacre were indeed harrowing, and they profoundly influenced Doolittle’s distrust of the army as an instrument of social policy.

Violent uprisings had erupted throughout the Northwest during the Civil War, as Native American tribes seized the opportunity to resist Western expansion while Federal armies were preoccupied with an even more dangerous rebellion. Panicked frontier settlers reacted viciously, enflaming the conflict. But the Cheyenne and Arapaho under Black Kettle and White Antelope wanted no part of this war. In September, 1864, they surrendered their arms at Fort Lyon and then settled North of Denver at Sand Creek. There, on November 29, 1864, the First Colorado Cavalry, commanded by Colonel John Chivington, attacked them without warning, murdering 150 men, women and children, mutilating their corpses and stealing all they could carry.<sup>83</sup> Soldiers returned from this unprovoked attack on a defenseless village were welcomed in Denver as conquering heroes.

Before the Sand Creek Massacre, Doolittle was no more critical toward the severity of the military in pacifying Native Americans than he had been toward the conduct of the war against the Confederacy. But never again would he uncritically trust the military as a benign instrument defending civilization from savagery. In addition to an investigation of the Sand Creek Massacre specifically, Doolittle authored a resolution creating a commission, which he chaired, to investigate “the condition of Indian tribes and their treatment by the civil and military authorities.” He also favored a resolution suspending the pay of all soldiers who were involved in

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<sup>82</sup> *Congressional Globe*, 38<sup>th</sup> Congress, 2<sup>nd</sup> Session, 158. Also cited in David A. Nichols, *Lincoln and the Indians: Civil War Policy and Politics* (St. Paul, 1978), although Nichols cites the wrong session of Congress.

<sup>83</sup> In addition to Nichols, the best accounts of federal policy toward Native Americans in this era are, Francis Paul Prucha, *American Indian Policy in Crisis: Christian Reformers and the Indian, 1865-1900* (Norman, OK, 1976), and Prucha, *The Great Father: The United States Government and the American Indians* (Nebraska, 1984).

the Sand Creek incident until a proper investigation uncovered the facts of what had occurred. Senator Henry Wilson of Massachusetts, who chaired the powerful Military Affairs committee, objected that the resolution should not include privates, who were duty-bound to obey their officers. “Our laws on that subject are very severe indeed,” Wilson insisted. Doolittle’s response was scathing. The argument, he said, “that the private soldier is bound to execute the orders of his superior officer, whatever they may be; that if the officer directs him to seize little children and bash their brains out, or shoot down defenseless women, he must obey; if he does not, he is guilty of insubordination. Sir, I do not believe in that doctrine...For my part, under circumstances like those, I think the soldier, and even the private soldier, should choose to be insubordinate rather than be guilty, and have the blood of murder on his hands in the destruction of the lives of women and children.”<sup>84</sup>

The scope of the so-called Doolittle Committee, as its eponymous Chairman noted in his final report, “was immense, covering a continent.”<sup>85</sup> They were tasked with investigating the condition of Native American tribes throughout the West, along with the treatment they had received from both government agents and the military. No subject of investigation could have been better calculated to shake one’s faith in the capacity of the general government to meet its expanding responsibilities honestly, decently or even unmaliciously. Many agents of the Indian Bureau, Doolittle’s final report of the investigation acknowledged, “are inefficient, faithless, and even guilty of peculations and fraudulent practices upon both the government and upon the Indians.” But he acknowledged this deplorable reality while arguing for the continued authority of this same bureau. Politically-appointed bureau agents may have been frauds and thieves, but at least they were not spoiling for a fight. The same could not be said of military officers who were

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<sup>84</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 2<sup>nd</sup> Session, 253.

<sup>85</sup> Report of the Joint Special Committee on the Condition of the Indian Tribes (Washington, 1867), 3.

clamoring to assume ultimate authority over Indian Affairs. Though far less likely to be honest, the military officers were temperamentally unsuited for this humanitarian task, Doolittle insisted. Even a shamelessly corrupt civil official was likely to do less harm to Native American relations than an ambitious soldier eager to make a name for himself.

It is possible to exaggerate the extent to which Doolittle's investigation on Native American affairs informed his view of Reconstruction; he opposed radical theories on Reconstruction long before the Sand Creek Massacre darkened his attitude toward the conduct of the military. But then, so did most Republicans who ultimately supported military Reconstruction. And the two issues did not unfold in isolation from one another. Doolittle, and all other political leaders, confronted them simultaneously. And Doolittle's criticism of the government's Indian policies precisely echo his objections to military Reconstruction.

When Senator John Sherman, early in 1866, sneered that the idea of making treaties with Indians was "ridiculous," Doolittle replied that it "has been the uniform practice of our Government from the beginning, and from before the beginning." When the colonies were weak and the Indians were strong, Doolittle continued, the colonists were eager to treat the Indians as independent nations with whom they could establish terms of peace and amity. Only now that the United States had become powerful enough to bully the Indians with impunity had it become ridiculous to treat them as an independent people. "I believe that if we kept our treaties now in all respects as faithfully with the Indians as the Indians kept their treaties with us, we should have little complaint," Doolittle insisted. "I believe the difficulty has been more on our part."<sup>86</sup>

The Union, as Doolittle understood it, was perfectly compatible with the idea of sovereign Indian nations living within the jurisdiction of the United States. But the Republicans were moving toward the idea of a territorially sovereign nation-state. By 1871, all Indians were

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<sup>86</sup> *Congressional Globe*, 39, 1<sup>st</sup> Session, 2010; 2014.

treated as individual wards of the national government; the government would protect them as individuals, for whatever that was worth, but it would no longer recognize them as belonging to autonomous political communities.

Even worse than this philosophical departure, Doolittle believed, was the vicious militarism with which the Government was beginning to treat the Indians. He denounced unequivocally the proposal to place Native American tribes under the control of the War Department, a scheme favored by Edwin Stanton, the darling of the Radicals. The question, Doolittle insisted, involves “the character of our Government.” The country’s sense of humanity and justice was already “shocked from year to year in the administration of Indian Affairs.” But to place the Native Americans under the authority of the War Department, to be administered by every “blundering lieutenant” eager to provoke a fight and make a name for himself, was, Doolittle said, “to deliver them over to the shortest road to extermination.”<sup>87</sup> Doolittle’s report summarizing his Committee’s investigation of government policy toward Native Americans, with its scathing assessment of the military’s capacity to assume governing responsibilities over them, appeared just as Congress began debating military Reconstruction.

The same government, the same army, the same officers responsible for creating a just social order in the South were simultaneously waging war against the “inferior races” who inhabited the West. Both efforts were expressly defined as conflicts between a superior Civilization and barbarism. Doolittle’s theory of the Union was certainly incompatible with the modern nation-state America was becoming. But too often, “backward looking” is a historical euphemism for “loser” – a point that would be obvious if any scholar tried to dismiss the Sioux as “extremely backward looking” in its opposition to the policies of the federal government. The

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<sup>87</sup> *Congressional Globe*, 39 Cong. 2<sup>nd</sup> Session, 1714. “Blundering lieutenant” quoted from a letter Doolittle wrote to his wife, though he made the same point in Congress. Doolittle to Mary, July 2, 1865.

modern state emerging in the Civil War era wore a Janus face, and it is a mistake to consider these sinister and smiling visages separately. They were integral in the new federal leviathan that deprived subordinate political communities of any effective resistance to the sovereign nation-state.

*V: "I Cannot Forget That Ideas Rule the World"*

At the close of the war, Doolittle expected to remain firmly within the fold of the Republican party, defending a moderate administration against both "Radicals" and "Copperheads." President Lincoln had made this a winning position, but it quickly became obvious that Johnson would not be as adept at holding the center of the party together. When the 39<sup>th</sup> Congress convened in December of 1865, Johnson was already under heavy criticism from the Republicans, but it was not clear that his position was any worse than Lincoln's had been. Responsible leaders realized that an open breach risked dissolving the party, and that was not a risk they were willing to take lightly. This same pattern existed under Lincoln, with intemperate congressmen and senators denouncing him as either feckless or despotic, while sober leaders, who invariably shared these objections, quietly worked toward a compromise. Dissatisfaction with Lincoln was almost universal in Congress, and that was the secret to his success. Since he did not commit himself to any faction, responsible leaders on all sides recognized that an open breach would make a bad situation worse.

As the closest party ally of both Lincoln and Johnson in the Senate, Doolittle was acutely familiar with the dynamics involved in keeping the administration and a fractious Congress within the same party. And the situation when the 39<sup>th</sup> Congress convened was not new. An

effective response to the situation in the South – especially the imposition of grotesquely illiberal black codes by state legislatures – required yet another departure from established Constitutional norms. An aggressive federal response might antagonize Southern whites, re-energize the conflict, and further delay the process of peace and reunion. But a conciliatory response might re-embolden Southerners so recently chastened by defeat, and it would certainly mean accepting a social order that made a mockery of the meaning of emancipation. This dilemma had recurred in countless forms throughout the war, and Doolittle was eager for Johnson to continue Lincoln’s policy of disappointing everyone.

The first test came with the Freedmen’s Bureau Bill. Doolittle urged Johnson to support a modified version of the bill, arguing that public opinion demanded a legislative response to the outrages in the South. Johnson flatly vetoed it, stubbornly refusing to offer anything that might have allowed the bill’s authors to compromise while saving face. Doolittle, embarrassed, gave a negative defense of the veto, denying the worst interpretations of President’s position without supporting the veto itself. He insisted that Johnson did not, in fact, believe that he alone had sole authority over matters concerning Reconstruction. After that much, Doolittle spoke mostly about Abraham Lincoln.

This created the first open rupture between the President and Republicans. But there was still reason to hope that the party could hold itself together. No sensible Republican in Congress relished the prospect of three years of open conflict with the executive branch. Partisan calculations aside, the conflict was certain to be catastrophic for the country.

The crucial turning point came with the Civil Rights Act. Once again, Doolittle was desperate to avoid a rupture with Congressional Republicans. At this point, Doolittle’s position became strikingly similar to that of Timothy Howe a decade earlier. Events had temporarily

discredited his most basic political beliefs. To insist on State rights in the face of the egregious conduct of the Southern states in 1866 was politically indefensible, and Doolittle knew it. Worse, it was, temporarily at least, morally indefensible, just as a defense of the supremacy of federal law had been in the face of the Fugitive Slave Act. “While I yield to none in the desire to secure practical good and avoid practical evil,” Doolittle acknowledged, “I cannot forget that ideas rule the world. They are the spiritual forces which bring on wars, lead to revolutions, and underlie every great movement in the scientific, religious, and political world.”<sup>88</sup> The idea of political liberty, enshrined in the Union, was the idea Doolittle had defended at a personal price more precious than his own life. The war had altered his thinking as it had everyone else’s, but the essential principle it had been fought to preserve was as immutable as the death of his son.

Public opinion in Wisconsin, however, was as unequivocal as it had been in the days of the Fugitive Slave Act – only now in the opposite direction. The State legislature passed a resolution demanding that Doolittle vote for the Civil Rights Act, and when he failed to comply, passed another demanding that he resign. It passed overwhelmingly, 73-21.<sup>89</sup> Johnson’s veto, once again on terms that left no room for any compromise, placed Doolittle in an unwinnable position. And like Howe a decade earlier, he bent his political principles as far as he possibly could – but it wasn’t nearly far enough.

The first paragraph of Doolittle’s speech on the Civil Rights Act was an almost verbatim restatement of what he had said about Wisconsin’s nullification of the Fugitive Slave Act, though with significant changes that registered the experiences of the war. Once again, however, he declared that the animating struggle in the American Union was between “Federalism” and “Republicanism.” The Constitution itself “is the child of compromise between these great forces

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<sup>88</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup>, Session, 267.

<sup>89</sup> Sellers, James R. Doolittle” *The Wisconsin Magazine of History* (Sept., 1934), 27.

– the great centripetal force which tends to bring all power here, and the great centrifugal force which if left to itself would drive the States from their orbits into anarchy, confusion, secession.”<sup>90</sup> Rhetorically, at least, the centrifugal force had become the more dangerous one for Doolittle. He then warmly praised the 13<sup>th</sup> Amendment as a necessary addition to the Constitution, and he rejoiced that it expressly included a clause giving Congress the power to enforce the abolition of slavery by appropriate legislation. This established a useful framework for debating Congressional authority, but it did not eliminate the ambiguity inherent in the American Constitutional system.

Arriving at the crucial question – was the Civil Rights Bill unconstitutional – Doolittle refused to commit himself. Wise Constitutional scholars said yes; others said no, and Doolittle professed himself unable to choose between them. Desperate to find a middle-ground, Doolittle proposed an alternative bill, which was almost identical to the one the President had vetoed. “His bill is, perhaps, somewhat less offensive than the one which has been passed by both houses, but the whole thing is wrong and his plan has the same objectionable machinery as the other,” Gideon Welles noted in his diary of Doolittle’s proposal. The legislation, in whatever form, was “sapping the foundation of the government and must be calamitous in its results.”<sup>91</sup>

Doolittle’s bill, like the vetoed alternative, made slaveholding a crime under federal law, punishable by \$1,000 fine and/or a year in prison, and this law superseded or nullified any local or state law to the contrary. His bill expressly denied state legislatures the power to protect citizens from prosecution under federal law. It also provided that any freedman denied his freedom could prosecute those responsible in federal court, and that state courts would thereafter have no jurisdiction in the case. The bill further authorized federal courts to supersede state

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<sup>90</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 1804.

<sup>91</sup> Welles, *Diary*, 2:463.

courts whenever they failed to enforce the 13<sup>th</sup> Amendment. And it instructed federal courts to appoint marshals and commissioners to investigate cases and bring them before the proper court or officer at federal expense, and provided punishments for appointed officials who failed to do so. And finally, the bill provided a penalty, more severe than that of the vetoed Civil Rights bill, of \$5,000 and/or 5 years in prison for anyone found guilty of attempting to kidnap blacks and transport them to foreign jurisdictions, where they might be sold into slavery.

This amounted to a complete reversal of argument that had made Doolittle a Senator. And it is worth stressing that the reversal was not on an incidental political issue but on what he had always regarded as the defining principle of the American Republic. Ten years earlier, he had insisted that the states were the surest protectors of individual rights, and that ultimate authority, in cases of conflict, belonged to neither the federal government nor state governments but to the people. His bill flatly contradicted his understanding of the Union.

Just as Howe had done a decade earlier, Doolittle bent his principles in a desperate attempt to appease the emphatic demands of public opinion. And like Howe, he could abandon those inconvenient principles altogether. So his effort earned him charges of inconsistency and nothing more. Doolittle's proposed bill, unlike the actual Civil Rights Act, avoided availing itself of the exact same machinery as the Fugitive Slave Act. The actual Civil Rights Bill authorized commissioners to decide cases, depriving the accused of a right to a trial by jury, and empowered federal marshals to summon local citizens and the United States military and navy to enforce the law. The Act even paid commissioners \$10 for each case, the same sum stipulated in the Fugitive Slave Act.

Doolittle's proposed alternative to the Civil Rights Bill also omitted a national definition of citizenship that included the former slaves. Since President Johnson had attacked that

provision in his veto message, Doolittle had no choice but to exclude it or give up all hope of compromise between the President and Congress. Still, the omission made no practical difference, since the Bill did not confer any of the political rights that distinguish a citizen from a non-citizen. And the Republicans, including Doolittle, had long held that color itself was not a bar to citizenship. Doolittle voted for the 14<sup>th</sup> Amendment in the same session, which included the same definition. Indeed, Doolittle seized the moral high ground during the framing of that amendment.<sup>92</sup>

Ultimately, however, Doolittle's continued support of the President doomed him in Wisconsin and within the Republican party. This raises the obvious question of why he remained loyal to a President whose bullheaded stubbornness destroyed the center of the Republican party. Doolittle watched the President's course with "anxiety and sorrow," realizing that he was giving the Radicals every advantage. And he bitterly lamented the loss of prudence that had allowed a pro-Union party to survive the combined attacks of Doolittle's enemies – copperheads and radicals – under Lincoln. But these objections were confined to political tactics; on the Constitutional principles he cherished most, Doolittle and President Johnson were in essential agreement. Between the President's inept blunders and the Radical attempt to subvert the Constitution and create a consolidated state, Doolittle did not hesitate to make his choice, even though it meant the likely end of his political career.

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<sup>92</sup> As we have seen, the 14<sup>th</sup> Amendment was designed to force Southern states to choose between enfranchising blacks or forfeiting representation proportional to the number disenfranchised. But the authors of the Amendment also deliberately framed it to avoid forcing the same choice on Northern states with regard to foreign immigrants. Doolittle challenged this inconsistency by offering an amendment that would have made representation proportional to the number of qualified male voters. If all voters have an equal right to representation in Congress, then a disenfranchised immigrant in Massachusetts had no more right to be counted for purposes of representation than a disenfranchised black man in South Carolina. "[T]he purpose or object, or at any rate the legitimate result" of Doolittle's proposal, Senator Grimes, who helped frame the 14<sup>th</sup> Amendment complained, "would be to degrade the elective franchise" by punishing states for not allowing ignorant foreigners to vote. One wonders if any Southern racist had a stroke or aneurism upon reading that sentence.

Ten years of revolutionary upheaval intervened between the Constitutional issue that elevated Doolittle to the Senate and the one that doomed his political career. In both cases, abstract ideas about federalism intersected with an urgent need to protect the civil rights of black Americans. Indeed, the Civil Rights Act that Doolittle opposed in 1866 used the same enforcement mechanisms as the Fugitive Slave Act, which he helped nullify in Wisconsin a decade earlier. The Constitutional principles Doolittle upheld in those controversies are now so remote that it is hard to imagine they ever really mattered. And yet Doolittle was not the only Republican to sacrifice his own career and the rights of black Americans to his idea of the Union. Timothy Howe represented a mirror image of Doolittle's Constitutional philosophy during the same two controversies, his principles reversed but his priorities the same.

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“We do with our lips very generally assent to the doctrines of the Declaration of Independence, and yet when the American auto-de-fe kindles its hottest fires it is to roast some reckless radical who dares to assert the political equality of men,” Howe observed, aligning himself with the radicals during his first important speech on Reconstruction.<sup>93</sup> In substance and style, the sentence perfectly expressed Howe's outlook. He was not himself a “reckless radical,” but he preferred them to their hypocritical adversaries. Uncomfortable with flowery rhetoric, he preferred to advance an idealistic point negatively, by sarcastically attacking the objections to it. But in switching to the Constitutional controversies involved in Reconstruction, Howe spoke with the full force of one vindicating the principles of a lifetime. “We cannot well deny that the Constitution is the supreme law of the land, because the Constitution says so, and we have sworn to support it; but practically we do seem to treat it much as if every law was supreme but that,” he said.

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<sup>93</sup> *Congressional Globe*, 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 163.

In my judgment, Mr. President, it is time the American people adopted the Constitution. We have, indeed, been taking the tincture for nearly a century. I am sure it has done us great good. I believe now we should try the sublimate, and I am confident it would cure the nation. Hitherto we have taken the Constitution in a solution of the spirit of State rights. Let us now take it as it is sublimated and crystalized in the flames of the most gigantic war in history.<sup>94</sup>

Howe's speech, and his outlook more generally, was remarkable for honestly and correctly identifying the real dangers and difficulties involved in Reconstruction. Most Republicans emphasized, occasionally to the point of hysteria, the ongoing threat of the Southern planter oligarchy to the security of the Republic. As Cato the Elder said of Carthage, defeating this threat in battle was not enough. The Republic would never be secure until the social class that had fomented such a costly war was totally and irrevocably destroyed. Simple fear of ever repeating such a calamity was one reason for this sentiment, and a natural but nevertheless vindictive desire to punish those responsible was another. Howe avoided this dire demagoguery. "I am not clamoring for scaffolds or prisons, or penalties, or forfeitures for the authors of these crimes," he said. "Fling them pardons if you choose. If repentance will not come in quest of pardon, send pardon in search of repentance."

The South might become an ungovernable hell, but there was no longer the slightest danger of it reasserting itself as a formidable enemy. The Southern ruling class could never restore slavery and the sinister power it had conferred on them, whatever terrors they might inflict instead. The problem was not how to protect the government from the South but how to protect the South from itself. After wisely dismissing the fear of a reborn Confederacy, however, Howe also avoided echoing the absurd optimism that a particular panacea could remake Georgia into Massachusetts. "Our past history has demonstrated that absolute homogeneity is not necessary to the success of republican institutions, if existing differences of opinion do not

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<sup>94</sup> *Congressional Globe* 39<sup>th</sup> Congress, 1<sup>st</sup> Session, 163.

prevent the exercise of reasonable toleration. But the history of the world has demonstrated that when great malignant antagonisms exist between the members of a State, republicanism must fail of its mission in that State.”

The national authority was all that prevented Southern society from collapsing into an internal civil war more horrible than that which had beset the nation as a whole. “Withdraw the national authority, surrender the protection of the emancipated to the men who formerly owned them, dictate to them what constitutions and what laws you please to-day, so that you give them full authority to repeal them tomorrow, and you know what will happen,” Howe warned. He did not suggest that the States would reintroduce slavery. But the barbarous social impulses inherent in slavery would not disappear with the institution that had organized – and also restrained – the underlying racialized violence on which it rested; these impulses would find new ways to impose themselves on free men with newly won rights to defend.

I asked a friend of mine, a sagacious chronicler of political results, what would happen if the freedmen were driven to a revolt. He answered with the quiet appearance of one who, looking upon a clouded sunset, says, it will rain tomorrow, ‘They will be exterminated.’

Yes, Mr. President. But when the nation has returned from exterminating the emancipated, with what judgments will they visit the emancipators? Who of us, who are responsible for emancipation, will care to wait for his share of the execration that is sure to follow the act, when we have nothing to show for it but a maddening revolt and a relentless massacre?<sup>95</sup>

Military power is inherently negative; it can destroy a social order and it can prevent chaos in the absence of any organic structure of authority, but it cannot create a civil society or the rights it affords. There was no good reason to prolong a catastrophic military conflict in order to advance political rights by means of the very arbitrary power that denied those rights.

Howe avoided that sophistry and offered the most honest, unflinching reason for holding the South as “conquered provinces”: That is precisely what they were. The old social order of the

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<sup>95</sup> Ibid.

South had been swept away by Union armies. The national government could not necessarily replace the slave regime with liberal democracies – ultimately that would depend on Southerners, black and white, on their willingness and capacity to move beyond a toxic history of oppression. Whatever positive influence the general government contributed to this difficult process could not be imposed by conquest; only reforms established under an enduring Constitutional framework were likely to endure. But enduring reform was secondary to the immediate, absolute obligation, even at the cost of more war and more lost young lives, to ensure that the future of those conquered provinces was not even more gruesome than its past.

Going backward was morally indefensible; standing still was impossible. The Republicans had no choice but to go forward.

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Throughout Reconstruction, Howe reflected on the sharp contrast between the noble, even heroic, cause for which Congress was struggling and the meanness, vanity and selfish posturing of so many who were leading the charge. Feeling the great significance of the moment, too many Congressmen were only eager to glorify themselves, to strut and preen for posterity, heedless of practical consequences, while others retreated from the enormity of the moment into the shells of old, outworn dogmas. “It is grand and exciting to feel that you are struggling for the life of a nation and for the very Soul of Civilization,” Howe wrote in February 1866.<sup>96</sup> At that moment the crisis was acute, and he was proud to be among those “few who never falter.”<sup>97</sup> A year later, however, the triumph over President Johnson was absolute and Congress had “achieved a whole revolution.” Reflecting privately on results, Howe described their significance.

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<sup>96</sup> Howe to Grace, February 21, 1866.

<sup>97</sup> Howe to Grace, May 19, 1866.

We have cut loose from the whole dead past and have cast our anchor out a hundred years ahead and have now to pull our civilization up to it. We have indicted, tried, and condemned ten great State governments. We have provided provisional Governments for ten great communities claiming the prerogative of States. We have clothed three millions of ex-chattels with the elective franchise. We have taken the ballot from a multitude who were lately masters and have given it to those who were lately their slaves... We have breathed the breath of life into the Nation anew.

His sense that the legislative vision of Congress would take a century to fulfill proved prophetic. Yet his sense of accomplishment was undiminished by the realization that it only laid a foundation for work yet to be done. And his enthusiasm for this great work did not distort his judgment of the men who achieved it. "Does it not seem wonderful?" he immediately asked after giving this effusive account. "Why it is wonderful. But does it not seem grand? Alas! There was nothing grand about it. Congress never seemed to me more querulous, distracted, incoherent, and ignoble than when undergoing this very transformation."<sup>98</sup>

During the battle over impeachment Howe returned to his familiar theme. That the representatives of the Nation were "preparing to pass judgment upon its Chief Magistrate," was, itself, "surpassingly grand," Howe wrote. "But there is so much that is ignoble in it that it takes the heroism out of me." He then dwelled upon the analogy, which had become a common cultural reference point, between the Republican Congress and Parliament during the English Civil War. "I never could read the story of that revolution which deposed Charles First without a feeling of disgust at those who seemed the chief actors in it. Prynne, Elliot, Cromwell, Coke and others – and I could not understand why I felt so little sympathy with those for whose labors I sympathized so heartily. But I understand it now."

He then offered two suggestive metaphors to account for the strange contrast between his reverence for the cause and his disgust with the men who scrambled to be its foremost champions. "*They were not the Great Captains of the revolution,*" he wrote. "They were the

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<sup>98</sup> Howe to Grace, February, 26, 1867.

scouts. When the pot boils the scum rises to the top. It is always offensive. The upper sails upon a ship are small and light and comparatively unimportant. But as the ship approaches you see them first and as she recedes you see them longest. But the great square sheets which drive the hull through the water, are lower down. You don't see them at all until the ship gets near you and then you can scarcely distinguish their outline in the wilderness of rigging with which they are massed.”<sup>99</sup>

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As Doolittle became a pariah within the Republican party, he abandoned any sense of responsibility for the freedmen. They presented him with a problem his political philosophy was not equipped to solve. Instead of acknowledging that fact honestly, he simply pretended the problem didn't exist. An immense augmentation of Federal power was the only way to protect individual rights consistently and equitably in (to give just one example) the State of Alabama. But Doolittle did not live in Alabama. He lived in Wisconsin. It was from his lived experience in that State and in Western New York that he learned the political principles he reverentially imputed to the Union. His outlook had so little to do with social relations in the South that he had been willing to see that entire region turned into a blood-soaked wilderness in defense of his sacred ideal of the Union. And it did not take long at all for the Federal Government, and the Supreme Court, to fully vindicate every belief he had ever uttered about the nature of centralized power – that, by its very nature, it would be the instrument of “the rich and powerful,” whether these took the form of slaveholders or railroad corporations, at the expense of labor.

Quite fittingly, then, Doolittle's final speech in the Senate was entirely about State rights and not at all about Reconstruction, at least not directly. “The purpose of that great war through

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<sup>99</sup> Howe to Grace, May 9, 1868.

which we have just passed was to maintain [the] Constitution,” Doolittle declared during his final speech in the Senate, in early 1869.

It was not enough that we ourselves should obey it. We resolved to compel every other man in the United States and in every State of the Union to obey it also. To maintain its supremacy over every man and over every foot of the soil of this Republic we entered upon that great struggle of arms... If now in words or in acts we are to admit that purpose to be false, that the Constitution is no longer supreme and binding upon our consciences and our oaths, then it follows that this war which we waged and carried at an expenditure of half a millions of lives and more than five thousand million dollars was in all its progress a huge and monstrous lie.<sup>100</sup>

The occasion of Doolittle’s final speech was not related to the Fifteenth Amendment or any other measure related to Reconstruction. Instead, he denounced a bill to exempt nationally chartered railroad corporations from State jurisdiction. The bill would deny states the power to reject federal assertions of eminent domain on behalf of national railroad corporations, and prevent states from taxing the property of railroad corporations within their borders. The largest, most powerful corporations would thus be totally exempt from any control by the local political communities in which they operated and earned a profit.

“[T]he exercise by Congress of these tremendous powers will, if once entered upon, revolutionize the Government,” Doolittle declared.

If Congress once begin, of necessity all railway corporations will seek to be chartered by national authority. I believe if Congress shall bring to itself here, and under its control, all the railway corporations of the United States, it will in the end subject the control of this Government to an aristocracy of concentrated wealth, not an aristocracy of men which may have some redeeming qualities, but an aristocracy of mammoth corporations, which, as has been said in strong Anglo-Saxon, have neither bodies to be kicked nor souls to be damned.” In the hands of these great mammoth railway corporations representing thousands of millions, Congresses and Presidents will be but playthings... The plea for a strong government will be set up by these moneyed monopolies, and they will not plead in vain. Capital seeks strong governments. Capital seeks to concentrate itself; and concentrated capital, wherever it exists and in whatever form, has a tendency to concentrated despotism. If we would not see the just powers of the States destroyed, if we would not have them broken down and an imperialism established here in Washington,

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<sup>100</sup> *Congressional Globe*, 40<sup>th</sup> Congress, 3<sup>rd</sup> Session, Appendix, 121.

an imperialism not represented by monarch or potentate or aristocracy of birth, but represented by an aristocracy of concentrated wealth held by railway and banking corporations, we must resist this bill.<sup>101</sup>

Timothy Howe never had a kind word to say about Doolittle in all the years they had served together in Senate, and in private letters he often described his colleague in tones of undisguised contempt. But he was moved by Doolittle's final effort. "Today, if we will hear his voice we must not harden our hearts," Howe wrote privately to his niece as his colleague's booming voice reverberated for the last time through the Senate. "He has reminded us once more that he has sacrificed his political hopes to his love for and fidelity to the Constitution. That is a good thing for a boy to do."<sup>102</sup>

#### *VI: The Party Machine Takes Control*

The man who replaced Doolittle in the Senate was Matthew H. Carpenter, a lifelong Democrat who proudly accepted the label "machine politician."<sup>103</sup> In 1848, he supported Lewis Cass for President and specifically attacked those, like Doolittle, who broke with the party over slavery. Neither the Fugitive Slave Act nor the repeal of the Missouri Compromise tested his loyalty to the party. In 1860, he supported Stephen Douglas and called on the Republicans to "moderate their madness."<sup>104</sup> Like every other intelligent Northern politician desiring a future in public life, Carpenter supported the war against the rebellion. He recognized, as a simple fact, that the war made the South the enemy of the North, and any public argument should operate on that premise.

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<sup>101</sup> *Congressional Globe*, 40<sup>th</sup> Congress, 3<sup>rd</sup> Session, Appendix, 121.

<sup>102</sup> Timothy Howe to Grace, January 22, 1869.

<sup>103</sup> Frank A. Flower, *Life of Matthew Hale Carpenter* (Madison, 1884), 183.

<sup>104</sup> Edwin Bruce Thompson, *Matthew Hale Carpenter: Webster of the West* (Madison, 1954), 63.

Despite his full throated support of the war, Carpenter remained an avowed Democrat throughout the conflict. “The great Democratic party,” he wrote in 1863, “although at present in a false position, blind with rage, and led by blind guides madder still, *is the last and only hope for our country.*”<sup>105</sup> The reasoning was odd, but the personal political calculation was astute. The Republican party in Wisconsin did not need to reward the support of men like Carpenter in 1863, so he would not gain anything by joining the party. And as Lincoln himself recognized, if the Democratic party had merely opposed him, rather than the war, they could have won in a walk in 1864. This is precisely what Carpenter had hoped to accomplish. “The party once more erect, its face to the foe, no right-minded man could fail to choose correctly between the republican party, born of sectional hate, reigning only with civil war, and the old hereditary party of the constitution, its brow adorned with trophies of peace, and covered all over with martial glory.”<sup>106</sup> Carpenter’s political instincts were astute, but he was no match for the antiwar wing of the party.

Doolittle eagerly courted Carpenter’s support as a leader of the so-called “Loyal Democracy.” If they fused together under a “Union” party in 1864, they would strengthen the position of former democrats within the new coalition. But the leader of that party would be Doolittle, not Carpenter. So Carpenter continued to hope for some means of defeating Lincoln’s party rather than joining it. Though professing himself eager to destroy slavery as a means of crushing the rebellion, Carpenter attacked Lincoln in 1864 for making abolition an end in itself. This was a formula that terrified politically-astute Republicans, combining unequivocal support of the war with an attack on the Lincoln’s stubborn commitment to emancipation, which could, quite plausibly, be charged with prolonging the rebellion rather than weakening it. But Northern victories late in 1864, and the equally stubborn zeal of anti-war Democrats, who clearly hated

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<sup>105</sup> Ibid., 227.

<sup>106</sup> Ibid.

Lincoln more than any rebel, doomed the party to defeat. Realizing as much, Carpenter eventually supported Lincoln's re-election, but he did so far too late to earn any share of the spoils of victory.

But the split between President Johnson and the Radical Republicans gave Carpenter his best opportunity, and he seized it with both hands. As public opinion turned overwhelmingly against President Johnson in the fall of 1866, Carpenter became the foremost critic of Doolittle's support of the President, accusing him of betraying "the loyal Union men of Wisconsin", who elected him. Only a few months earlier, Carpenter had been plotting to attack Senator Howe from the exact opposite direction. But after initially supporting Johnson's National Union party, Carpenter reversed course, explaining to a friend that there was "a *popular furore* on the other side."<sup>107</sup>

Carpenter's opportunism was practical rather than cynical. A brilliant speaker, he regarded the ideas he expressed as tools to persuade, not platonic ideals to be obeyed at all costs. *The Nation* described him well. "He has shown himself capable of making a brilliant speech, then voting against his own argument, and having a good laugh over it," the paper observed.<sup>108</sup> Political or constitutional opinions should be adopted and discarded based on their practical consequences, both partisan and patriotic. This quality made him the exact opposite of Doolittle, who cherished his political creed above all else. Carpenter was not someone who would become emotionally overwhelmed while saying, "liberty is liberty." Words and ideas were the mere ornaments of party organizations; the contest for place and power was dramatic enough without the unwelcome earnestness of men who confused it for a battle between good and evil. This confusion inevitably turned the dishonesty inherent in politics into murderous hypocrisy. Like

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<sup>107</sup> This story comes from Doolittle, but Carpenter's (admiring) biographer finds it credible, and it fits the facts. Thompson, *Carpenter*, 107.

<sup>108</sup> Cited in, Thompson, *Carpenter*, 182.

his old idol, Stephen Douglas, Carpenter considered the sectional crisis a triumph of murderous fanaticism over calm common sense. And also like Douglas, once the shooting started he was practical enough to recognize that there were but two paths to peace, victory or defeat. As a Senator, Carpenter usually identified the right side of most questions. And all things being he equal, he preferred to advocate that side whenever it was convenient. Talented, practical and kind, Carpenter was not one to rush the barricades in the nation's most fraught and furious crisis, but in the Grant years he almost qualified as noble.

## Part Three

### The New Regime and its Critics

#### 10

##### *Most Respectable Whigs: John Pendleton Kennedy and Robert Winthrop*

###### *I: An Extraordinary Friendship*

The intimate friendship between John Pendleton Kennedy and Robert Winthrop produced one of the most illuminating and neglected political correspondences of the mid-nineteenth century. If the Whig party died of “too much respectability,” as a Republican newspaper editor suggested shortly after the Civil War, Kennedy and Winthrop stubbornly exemplified the fatal malady long after their party had succumbed to it.<sup>1</sup> As the country reached mid-century, and the generation of Webster and Clay gradually passed from the scene, Winthrop and Kennedy were two of the most prominent and promising figures poised to carry on their eminent legacy as the champions of the Union, of material prosperity and progress, and of broad-minded gentlemanly compromise. Instead, they watched in frustration and then horror as the national political culture to which they belonged disintegrated and finally collapsed in civil war. The hundreds of long, intimate letters Kennedy and Winthrop exchanged over three decades, from the 1840s to 1870,

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<sup>1</sup> Cited in Michael Holt, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* (Oxford, 1999), 951. Holt structures the final chapter of his great study around this diagnosis, initially dismissing the explanation in favor of all the larger forces undermining party cohesion. But he circles back to observe that “in this broader context...’too much respectability’” really was a cause of the Whigs demise: Whig leaders “were frequently too conservative, too cautious, too disdainful of political infighting, too slow to recognize the need to alter course in the face of public pressure for the party’s benefit.” Holt, *Rise and Fall*, 958.

form a fascinating record of two stubborn adherents of the old order, struggling to come to terms with the new.<sup>2</sup>

Winthrop and Kennedy were not the only prominent Whigs to find themselves marginalized by the sectional conflict, bitterly deploring the mounting radicalism of both sections and pining impotently for the return of a departing era. But an added wrinkle in their relationship lends it an extraordinary interest. Kennedy, a resident of Baltimore, belonged to an old and distinguished Virginia family. As the author of *Swallow Barn*, he wrote the first and arguably the most influential of the plantation novels that presented a sentimental picture of the Southern social order. And Robert Winthrop, a direct descendant of the most famous embodiment of New England Puritanism, exemplified the fastidious political culture of the Boston Brahmins. Both men were scholars of their respective section's colonial and revolutionary past. Winthrop wrote the first significant biography of his illustrious ancestor and served for several decades as the president of the Massachusetts Historical Society. Much of what scholars know of seventeenth century New England they owe to documents that Winthrop collected and preserved. Kennedy, too, was an accomplished scholar of his section's history, which he vividly in countless lectures, a biography of William Wirt, and in historical romances modeled on the works of Sir Walter Scott.

Unlike most conservative Unionists, however, Kennedy and Winthrop did not abandon their position once the shooting started. Instead, the even-handed moderation with which they criticized radicals on both sides quickly became, in the fury of the war years, a much more

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<sup>2</sup> It is very rare that one finds primary sources related to the Civil War that are at once almost completely neglected and manifestly significant. Winthrop has had no biographer other than his son. Robert Winthrop, Jr. *A Memoir of Robert C. Winthrop* (Boston: 1897). Kennedy has attracted attention from literary scholars, along with two modern biographies that emphasize his political career. Andrew Black, *John Pendleton Kennedy: Early American Novelist, Whig Statesman and Ardent Nationalist* (Baton Rouge, 2016), and Charles H. Bohner, *John P. Kennedy: Gentleman from Baltimore* (Baltimore, 1961). Both are fine studies but their treatments of the last phase of Kennedy's life, from 1854 to 1870, are quite cursory, though this was, in many ways, the most dramatic and significant period of Kennedy's life.

embittered attack assigning responsibility for the calamity almost exclusively on those closest to home. Alienated, as a result, from many friends and neighbors in their own communities, Winthrop and Kennedy also found themselves, to their mutual dismay, at odds with one another as well. The twisted paths by which both men emerged from the common associations of their Whig past into the unlikely alliances of the war years makes for a revealing journey, especially in light of the criticisms and reservations each friend expressed about the new associations of the other.

Winthrop may have been the most unlikely democrat in the Western hemisphere, and his antislavery views earned him considerable abuse during his early career. Yet in 1864 he was New England's most distinguished supporter of the Democratic party's doomed attempt to end the war and defeat the party of Lincoln. The sharpest letter Kennedy ever sent his friend concerned Winthrop's support of George McClellan, though the vice president on that ticket was Kennedy's own cousin, George Pendleton. "I could be a Republican almost anywhere except Massachusetts," Winthrop had explained to his friend, almost apologetically.<sup>3</sup> Meanwhile, that very same November, the author of *Swallow Barn* found himself attending and applauding a lecture by Frederick Douglass, whose seminal contribution to America literature has endured as the tradition diametrically opposed to the one pioneered by Kennedy.<sup>4</sup>

Despite the stark political divide that separated them throughout the 1860s, the same conservative instincts propelled Kennedy and Winthrop as they scrambled to find an effective role for themselves during the national political crisis. The abstract principles and impulses animating their worldview were almost identical, but their perception of the national conflict was

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<sup>3</sup> Winthrop to Kennedy, 3 November, 1863. John Pendleton Kennedy Papers. Microfilm edition. University of Indiana. The original Kennedy papers are supposedly at the Peabody Library at Baltimore – though I was unable to find the originals or anyone who know where they might be. The library seems to be devoted almost exclusively to hosting wedding receptions.

<sup>4</sup> Kennedy, Diary, November 26, 1864. John Pendleton Kennedy Papers.

inescapably colored by the local world they knew most intimately. And so the local prism through which they interpreted national politics led them in strikingly different directions.

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Of the two friends, Kennedy possessed the more interesting mind and the more attractive personality. But the cheerful affability that made him such a charming figure, imbuing his art, his politics and his friendships, also ensured that his considerable abilities never acquired the sharp edge of genius. His talents as a novelist were most fully realized as a playful but astute observer of manners. He was friends with William Makepeace Thackeray, who solicited and received Kennedy's help in writing *The Virginians*. But Kennedy was incapable of the scathing wit that Thackeray brought to his social satires; his social mockery was always gentle, laced with unmistakable affection. "We should judge the intellect of Mr. Kennedy," William Gilmore Simms, a fellow Southern novelist, wrote, "to be a strict and exacting one; perpetually at war with his sympathies and perpetually counselling distrust when his affections would counsel confidence."<sup>5</sup>

Kennedy's sympathies in *Swallow Barn* are obvious, but they have often led readers to exaggerate the extent to which his portrait romanticizes the plantation. His refusal to depict the horrors of slavery was a deliberate omission, rather than an ideological bias.<sup>6</sup> All the petty vices of Virginia society – the lazy anti-intellectualism, the dogmatic and parochial political opinions, the fatuous pretensions of feudal grandeur – all these aspects of the plantation gentry Kennedy faithfully rendered. But his genial temperament softened portraits that might have been scathing, turning the social pretensions he identified with a withering eye into charming foibles. For example, of Frank Merriweather, the master of Swallow Barn, Kennedy writes:

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<sup>5</sup> Cited in Bohner, 225.

<sup>6</sup> The distinction is somewhat slippery, of course, but, in Kennedy's case, significant.

I sometimes think he exaggerates a little, when descanting upon the prodigies of genius that have been reared in the Old Dominion; and he manifestly seems to consider that a young man who has astonished a whole village in Virginia by the splendor of his talents, must, of course, be known throughout the United States; – for he frequently opens his eyes at me with an air of astonishment when I happen to ask who is the marvel he is speaking of.<sup>7</sup>

Part of the difficulty in characterizing *Swallow Barn* is that Kennedy himself did not seem to have a coherent vision or purpose for the work. It is not a fully realized work of fiction but a series of sketches of Virginia society modelled on Washington Irving’s portraits of Bracebridge Hall, an English country manor. And the most effective passages of *Swallow Barn*, feel much closer to the comic style of satirizing an English manor – even to the artificial world of P.G. Wodehouse’s Blandings Castle – than to the romantic world of Rhett Butler and Scarlet O’Hara.<sup>8</sup>

At its best, *Swallow Barn* is less a nostalgic misrepresentation of a social world than a recreation that artfully omits the possibility of suffering. Absurdities abound but never cruelties, and thus the weaknesses and pretentious vanities of the Virginia gentry are displayed as a source of mirth rather than outrage. Though never biting in its criticisms, the novel is playfully subversive, inverting the relative dignity conferred by the Southern social order to make those with the loftiest pretensions seem the most ridiculous.<sup>9</sup> There are no heroes in *Swallow Barn*, no

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<sup>7</sup> Kennedy, *Swallow Barn* (New York, 1851), 71-72. Compare Kennedy’s affectionate mockery of Frank Merriweather to Thackeray’s treatment of Mr. Osborn in *Vanity Fair*: “The old gentleman pronounced these aristocratic names with the greatest gusto. Whenever he met a great man he groveled before him and my-lorded him as only a free-born Briton can do. He came home and looked out his history in the Peerage; he bragged about his Lordship to his daughters. He fell down prostrate and basked in him as a Neapolitan beggar does in the sun.” *Vanity Fair* (London, 1906), 133.

<sup>8</sup> To be sure, Kennedy is nowhere close to Wodehouse’s equal as a comic writer. But his instincts are similar, and so is the effect.

<sup>9</sup> Frank Merriweather’s habit of spending long hours in his imposing library, for example, comes to an abrupt end when his guest discovers him passing the time there in a drunken slumber. And one of the best anecdotes in the novel recalls how Mr. Chubb, the renowned local scholar, drunkenly fell asleep with his pipe in his mouth and a weighty tome in his lap, spilling the ashes onto his ruffled shirt and setting it on fire. Mr. Chubb jumped up and began to strip. “I don’t know how far he exposed himself, but the negro women, who ran to his relief, made a fine story of it.” *Swallow Barn*, 69.

great virtues to make the reader sigh in admiration. Instead there is the charm of harmless affectation; of cheerful, indolent friendliness formalized by good-natured delusions.

Readers who did not share Kennedy's genial affection for his characters could nevertheless praise his skill at holding them up for contempt. "His characters are humorously conceited, pompous, ignorant and dogmatic," the *New England Magazine* noted in a favorable review that undoubtedly made Kennedy squirm. "He has succeeded admirably in showing them in a ridiculous light...The gentlemen of Swallow Barn are the most ordinary, trifling, useless generation the world ever saw."<sup>10</sup>

In 1851, Kennedy published a revised version of his novel, expressly hoping that it might help offset the influence of abolitionist literature. Ironically, it is only when Kennedy attempted a didactic defense of the Southern social order that its actual horrors slip into view. At that point Kennedy, speaking through Frank Merriweather, cannot omit to except that which he cannot defend: "We owe it to humanity and to the sacred obligation of Christian ordinances, to respect and secure the bonds of husband and wife, and parent and child. I am ashamed to acknowledge that I have no answer to make, in the way of justification of this neglect."<sup>11</sup> This passage was added to the revised addition, not a part of the original. His attempt to meet abolitionist "propaganda" amounted to little more than acknowledging the most frequent and damaging points of attack as at once true and totally indefensible. Kennedy could present the Virginia social order with playful affection, but when he attempted to defend it against its critics he virtually admitted that he could not defend it at all.<sup>12</sup>

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<sup>10</sup> *New England Magazine*, (July, 1832). Cited in Boehner, *Kennedy*, 88.

<sup>11</sup> Kennedy, *Swallow Barn*, 459.

<sup>12</sup> The passage comes in the only chapter devoted to a serious consideration of slavery. In both versions, Kennedy maintains the "evil without an immediate remedy" line common since Jefferson. His inclusion of an indictment of the interstate slave trade – just getting started when the original version was published – was the only significant revision of the chapter.

*Swallow Barn* was Kennedy's first novel, and, as Edgar Allan Poe observed of Kennedy, "it is by the first effort of an author that we form the truest idea of his mental bias."<sup>13</sup> The key to understanding the relationship between *Swallow Barn* and the mind of its author lies in the fact that Kennedy, though he wrote the novel in his mid-thirties, was describing a world he had encountered most intimately during the summers of his childhood and adolescence. Kennedy's family tree had lopsided roots in America. His mother's family had been in Virginia since the seventeenth century, but his father had emigrated from Northern Ireland. And any snobby preference for the maternal branch of his family was reinforced by the substantive qualities of both his parents. Kennedy's father, John Sr., was genial, witty and kind but possessed little energy or ability. Established as a copper merchant by his elder brothers, Kennedy Sr. was a failure in business and spent lavishly beyond his means even during the few brief years of booming prosperity. Only his brother's intervention, settling debts of over \$40,000, saved the family from bankruptcy and complete ruin. Kennedy Jr. was 15 at the time of his father's failure.

Under these unhappy circumstances, one can readily imagine how fondly Kennedy cherished his summers with his mother's family, distinguished members of the Tidewater aristocracy who had been in Virginia since the seventeenth century. Next to the exploding port city of Baltimore, and the fickle fortunes of his merchant father, the world of the plantation gentry must have seemed reassuringly changeless. Kennedy's mother, Nancy Pendleton possessed a formidable intellect that quietly commanded the deference of her husband. Her brother, Philip Pendleton, was, according to Kennedy, "the first man in point of talents, acquirements and manners that I have ever been acquainted with." Kennedy's entire youth coincided with the long "Reign of Virginia." He was five when Jefferson entered the White House and nearly 30 before the Old Dominion surrendered the Presidency to an outsider. There

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<sup>13</sup> Edgar Allan Poe, "A Chapter on Autography" *The Works of Edgar Allan Poe*, 8 vols (New York, 1856), 7:10.

is a moment in everyone's life when the world seems to crystalize into an indelible pattern – the first, sharpest experiences of a maturing consciousness fuses a lasting sense of oneself and of the world – and every subsequent departure from that reality seems like a strange deviation, an unwelcome, endless departure from youth and fresh experiences of youth.<sup>14</sup>

*Swallow Barn*, Kennedy wrote in a revised preface in 1851, “exhibits a picture of country life as it existed in the first quarter of the present century. Between that period and the present day, time and what is called ‘the progress’ have made many innovations there, as they have done every where else.

The mellow, bland and sunny luxuriance of her old-time society – its good fellowship, its hearty and constitutional *companionableness*, the thriftless gayety of the people, their dogged but amiable invincibility of opinion, and that overflowing hospitality which knew no ebb, – these traits, though far from being impaired, are modified at the present day by circumstances which have been gradually attaining a marked influence over social life as well as political relation. An observer cannot fail to note that the manners of our country have been tending towards a uniformity which is visibly effacing all local differences... There is much good sense in that opinion which ascribes a wholesome influence to those homebread customs, which are said to strengthen local attachments and expand them into a love of country. What belonged to us as characteristically American, seems already to be dissolving into a mixture which affects us unpleasantly as a tame and cosmopolitan substitute for the old warmth and salient vivacity of our ancestors... Looking myself somewhat hopelessly upon this onward gliding of the stream, I am not willing to allow these sketches of mine entirely to pass away.<sup>15</sup>

One could hardly ask for a better definition of antebellum nationalism than is contained in that passage – “homebread customs which...strengthen local attachment and expand them into a love of country.” It was a nationalism in which every parochial folkway was flattered with delusions of imperial grandeur, and it was grossly offended whenever the federal system failed to

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<sup>14</sup> “Everyone has a moment in history which belongs particularly to him. It is the moment when his emotions achieve their most powerful sway over him, and afterward when you say to this person ‘the world today’ or ‘life’ or ‘reality’ he will assume that you mean this moment, even if it is fifty years past. The world, through his unleashed emotions, imprinted itself upon him, and he carries the stamp of that passing moment forever.” John Knowles, *A Separate Peace* (1959), 40. This psychological observation – and I’ve never seen it put better – clarifies a lot of history in a country where social and material realities have changed so drastically.

<sup>15</sup> Kennedy, *Swallow Barn*, 8-9.

keep these local delusions from bumping into one another. No one understood the dangers of consolidation better than Kennedy. But when he put the same sentiments into the mouth of Frank Merriweather, he does so in his usual spirit of gentle mockery:

‘I don’t deny that the steamboat is destined to produce valuable results – but after all, I much question – (and here he [Merriweather] bit his upper lip, and paused an instant) – if we are not better off without it. ‘I declare, I think it strikes deeper at the supremacy of the states than most persons are willing to allow. This annihilation of space, sir, is not to be desired. Our protection against the evils of consolidation consist in the very obstacles to our intercourse. Splatterthwaite Dubbs of Dinwiddie – (or some such name, – Frank is famous for quoting the opinions of contemporaries...) made a good remark – that the home material of Virginia was never so good as when her roads were at their worst.’ And so Frank went on with quite a harangue, to which none of the company replied one word, for fear we might get into a dispute. Every body seems to understand the advantage of silence when Meriwether is inclined to be expatiatory.<sup>16</sup>

However much Kennedy might have lamented “the progress,” no Whig of that era championed it more ardently or effectively than he. As Secretary of the Navy – in the same year he published the revised edition of *Swallow Barn* – Kennedy called for several reforms to modernize the U.S. fleet and organized Commodore Matthew Perry’s famous expedition to Japan. If Merriweather feared the annihilation of space threatened by the steamship, he presumably shrieked in horror at the arrival of the telegraph. Yet it was Kennedy who secured the Congressional funding that made the startling new technology possible. Congress would have “consigned it to oblivion,” Samuel Morse recalled of his project, were it not for “the perseverance and foresight of the distinguished member from Maryland, Hon. J.P. Kennedy...”<sup>17</sup>

In a lecture delivered in 1854, Kennedy attempted to distinguish between what he called “false and true progress.” He celebrated the inventive genius of the nineteenth century, which

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<sup>16</sup> Kennedy, *Swallow Barn*, 72-73. Kennedy left the passage unchanged in the second edition of the novel. Novelists are an uncommonly self-aware tribe, and an author’s best satire is often directed against himself. In one of the most famous passages of *The Great Gatsby*, for example, Fitzgerald depicts Tom Buchanan as a boorish idiot bemoaning the demise of the white race. Fitzgerald shared those sentiments, in the same self-aware way Kennedy lamented ‘the progress.’

<sup>17</sup> Cited in Bohner, 157.

accelerated the pace of travel and communication more in a single generation than had been accomplished since the beginning of recorded history.

The introduction of these means of intercommunication among nations, have in a remarkable degree destroyed the peculiarity of character belonging to tribe and race which have heretofore resisted improvement, and...they have cooperated with singular efficiency, to bring the civilized world into better acquaintanceship with each other, and are awaking to the happy conviction of a universal humanity in which our affections, cares and duties all vibrate to the touch of a common nature which is mistress over all...Ours is an era and a position which culminate in the history of the world. This century makes or mars the grandest fabric of human prosperity ever yet erected.<sup>18</sup>

The tension in Kennedy's attitude toward progress was not unique; indeed, he expressed more fully than anyone the ambivalence that defined Whig political culture as a whole. Arthur Schlesinger Jr. famously characterized the social philosophy of the American Whigs as "a miscellaneous collection of stock political appeals, consistent only in a steady but muted enmity to change."<sup>19</sup> Other eminent historians, such as Daniel Walker Howe, have not merely challenged this assessment but turned it directly on its head. The Whigs were the party of modernity – champions of the nineteenth century's advances in science, industry and commerce. And if they were not quite critical of the racial and gender hierarchies of their era, they were at least more willing to question them than their ostensibly more democratic opponents. Indeed, Andrew Jackson "and his Democratic party were primarily defending a society of independent yeomen and artisans, who were threatened by the kind of modernization the Whigs envisioned."<sup>20</sup> All political activity is aimed at either preservation or change, and party coalitions will inevitably reflect both impulses in different ways. "Progress" inevitably wears a Janus face, and so do the political parties who selectively embrace and oppose it.

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<sup>18</sup> John P. Kennedy, "The Spirit of the Age" *Occasional Addresses* (New York, 1872), 303.

<sup>19</sup> Arthur Schlesinger, *The Age of Jackson* (New York, 1945), 282.

<sup>20</sup> Howe, *Political Culture*, 183.

Kennedy, however, understood the connection between the progress he championed and the cultural changes he deplored. And that insight is the defining characteristic of a principled moderate – that our aspirations for the future are tethered inextricably to our inherited devotions. If he affectionately mocked the hopeless impulse to arrest the “onward gliding stream,” he frankly despised the reckless impatience of those driven by some combination of utopian illusions and criminal greed. “Starting with the postulate of man’s capability to be ripened into absolute perfection,” he wrote of the philosophical enthusiasms percolating in the 1850s, “they have adopted a hot-bed system of culture for the purpose of forcing his growth and productiveness.” Excesses of every variety, Kennedy observed, were the defining feature of the era, from the feverish Constitutional theories of Charleston to the visionary social experiment of Brook Farm, from the Mormon reassertion of polygamy to the insistence that women, too, ought to wear trousers. But even here, Kennedy was of two minds, admiring the boundless energy of the general trend while scorning its many peculiar manifestations. “I recognize in these numerous theories, fashions of opinion, forms of speech and apparent eccentricities of conduct a singular vivacity of intellect, boiling up in the caldron of human thought and imparting to its conduct an unusual spiciness and pungency of flavor.” All were part of “a determined resistance to stagnation in any kind of knowledge either physical or intellectual.”

His attack on territorial expansion as a particularly sinister aspect of this general excess, however, is especially worth quoting as a compact, powerful statement of principled Whiggish conservatism.

They [the exponents of Manifest Destiny and “Universal Annexation”] address themselves to the imagination, in the dangerous illusion of a vision of illimitable country and homogenous fellowship of the whole human race, brought to the enjoyment of our free institutions by a benevolent compulsion, which is thought to excuse any act of rapine or cupidity that may be perpetuated in its career. They seem to be illuminated by the rays of a new morality, in the blaze of which all our ancient lights ‘pale their ineffectual fires’

and shrink into vulgar tapers. The laws, the policy, the ethics, the cautions and monitions of our fathers, they regard as no better than old bricks and mortar tumbled in heaps across the highway of progress, to be swiftly removed with pick-axe and spade, that the road may be made smooth for every crotchet and conceit of the day to ride upon it, with full team, at high speed, unobstructed by such nuisances as the old-fashioned conscience, with its trumpery of the faith in treaties, the rights of our neighbors, the duties of place and good-will to man. These wonderfully energetic persons think they have a right in their own phrase – ‘to pitch into everybody and take a hand in everything’ by virtue of a charter derived from race; holding that their tribe of mankind is master of all other tribes, by a law of nature. They boast that the Anglo-Saxon is, by instinct, a land stealer, and, by pre-eminent right, Lord paramount of every thing he can take; as if these were his inherited virtues... When, therefore, they are seen upon one of their benevolent expeditions in pursuit of manifest destiny, the world is apt to be favored with a pretty startling adventure.<sup>21</sup>

To observe the Republic through Kennedy’s eyes is to be acutely aware that the furious energies unleashed by the American experiment were rushing erratically toward an inherently uncertain destination. “While we have seen one portion of mankind heroically pursuing the good, we have also seen others by no means feebly assailing the bulwarks which protect the morals, manners and opinions that have been the truest lights to our national prosperity,” he wrote. The human family was being drawn into ever closer circles of mutual dependence and familiarity, even as filibusterers used a spurious universality as an excuse for chauvinism, fraud and murder. Though “the spirit of the age does run riot in these...irregular and errant fancies” of human perfectibility, Kennedy also acknowledged, “There are great epochs in human history, in which mankind seem to ascend not by gradual progression, but by an impulsive upward step from one stage of existence to a higher one, as if some secret force, long slumbering in the centre, suddenly breaks out and lifts the whole mass of organized societies into an upper sphere.” Here, in brief, was the dexterous wisdom of a moderate, warily watching the accelerating current of the nineteenth century and refusing the false security of fixed and final opinions. “As for me,”

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<sup>21</sup> “The Spirit of the Age,” *Occasional Addresses and Essays*, 280-281.

Kennedy wrote to Winthrop in 1850, “being a perfect cork – a fishing float – I am ready to bob in any water that runs briskly and sparkles.”<sup>22</sup>

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Like his amiable friend, Robert Winthrop gravitated instinctively toward the *Juste Milieu*, but without the charismatic affability or cunning opportunism that usually allows a political trimmer to contend successfully against the more insistent convictions of others. “As a politician, he is simply noble,” a critic of his published works once noted, while implying that this nobility manifested itself by conspicuous dullness. “His style is a trifle too even and ‘faultily faultless’...eloquent we cannot call him, because he is always in hand and no man can be truly eloquent without *abandon*.”<sup>23</sup> When a critic compared his speeches to a dose of chloroform, Winthrop proudly repeated the insult as compliment.<sup>24</sup> He spoke to inform his audience, not to entertain or inflame them. He possessed a sense of humor, but he kept it shackled under an iron sense of propriety. Throughout his correspondence with Kennedy, frequent puns, often enthusiastically underlined, marked his only effort to amuse his genuinely funny friend. “Your city seems likely to be as famous for its *rebels* as it used to be for its *belles*,” would be a characteristic example if Winthrop hadn’t been so pleased with the joke that he repeated it two years later.<sup>25</sup> Though never scintillating, Winthrop’s intellectual and scholarly efforts earned him a high reputation in Boston, where such attainments were impossible to fake. Yet even Daniel Webster possessed more of a common touch. “He was cold and unpopular in his bearing,” Alexander Stephens recalled, “and generally deemed aristocratic. But then he was a

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<sup>22</sup> Kennedy to Winthrop, January 3, 1850. Winthrop Papers.

<sup>23</sup> 1867 press clipping in Winthrop’s papers. Winthrop noted that this particular review was “very clever and very complimentary...Some passages of it amused me not a little. Few better things have been written about me.” Winthrop claimed not to know the writer, but he clearly included the review in his papers because he wanted it to influence how he was remembered. The impression this reviewer gave was of a man at once decent, intelligent and honest, but never brilliant or eloquent and often comically dull and parochial.

<sup>24</sup> Winthrop, *Addresses and Speeches* (Boston, 1867), 295.

<sup>25</sup> Winthrop to Kennedy, February 1, 1862 and April 18, 1864.

scholar and a gentleman.”<sup>26</sup> Even within his own rarified social circle, among the interconnected merchant families of Beacon Street, Winthrop was conspicuous as “a man of decencies, decorums and proprieties.”<sup>27</sup>

Elite Boston, clustered together on Beacon Hill and in Cambridge, still wielded a cultural influence in the Jacksonian era that local elites elsewhere could only envy, and Winthrop was his class’s up-and-coming spokesman. Inheriting a famous name and a considerable fortune, Winthrop’s early career was an effortless climb to distinction. He moved from private studies to public eminence without ever pausing to earn a living, becoming Speaker of the State House of Representatives before he was 30 and Speaker of the national House before turning 40. “No citizen of Boston in all its annals has combined so many points for attracting the support of its ruling classes,” Edward Pierce, the friend and biographer of Charles Sumner, recalled.<sup>28</sup>

Winthrop so internalized the Whig values and social characteristics of elite Boston, who raised him as a favorite son, that his own personality almost seemed to dissolve into the generic virtues and limitations of his class. The worldview he inherited had already grown old when Winthrop was still quite young. He represented the future only to the elderly men he hoped to replace. And so the bright eminence of his early career quickly faded as his contemporaries, animated by new ideas and eager to champion new causes, left him behind.

Beacon Hill’s devotion to the Union was an outgrowth of their devotion to their own great commonwealth; it was a partnership of mutual interests, and they respected the autonomy of other states because they cherished their own. All American communities had a local orientation in the early nineteenth century. As Kennedy observed, nationalism was an imaginary

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<sup>26</sup> Cited in Richard Johnson and William Browne, *Life of Alexander Stephens* (Philadelphia, 1878), 220. Stephens observations are taken from a private reminiscence Stephens wrote in 1869.

<sup>27</sup> Cited in David Herbert Donald, *Charles Sumner and the Coming of the Civil War* (New York, 1960), 143.

<sup>28</sup> Edward Pierce, *Memoir and Letters of Charles Sumner* 4 vols. (London, 1893), 3:110.

extension of many regional localisms. And New England, with Boston at its core, was as insular as any other. Rarely, if ever, has a ruling class held themselves to a more exacting standard of civic responsibility at the price of so little social privilege, but their public conscience was limited to the society over which they presided.<sup>29</sup> The Union as a whole was an aggregate of communities bound together – *E Pluribus Unum* – by affection, law and interest. The logic of these obligations added up to a sincere nationalism, but it was a nationalism bracketed by sacred limits.

These limits amounted, ultimately, to cultural and ideological divisions that grew with the growth of the country as a whole. And the parochial patriotism exemplified by Winthrop became untenable as a result. And yet it was not the insularity of Boston's conservative political establishment that came under attack at midcentury; it was their pliable willingness to accommodate the slaveholding South as partners in a corrupt form of nationality. The attack combined an uncompromising nationalism with an even more insular regional separatism. Abolitionism was the rejuvenated spirit of Puritan separatism, a chauvinistic attack on parochial nationalism. The abolitionists were, unequivocally, secessionists. And like good Calvinists, they attacked the political and religious associations with slaveholders as sinful, but not commerce in slave produce. One's associates must be pure but trade cannot be confined to the righteous. William Lloyd Garrison, the great scourge of political moderates, actually mocked and despised the small minority of abolitionists who were too fastidious to eat or wear slave-grown sugar or cotton.<sup>30</sup> Sectional hostility toward the South thus came together with a nationalist fear of the

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<sup>29</sup> If this seems like too rosy a view, try to think of a plausible alternative.

<sup>30</sup> See, for example, *The Liberator*, "The Free Produce Question" March 1, 1850. In her influential recent study of abolitionism, Manisha Sinha insists that Garrison's "anticapitalism is vastly underestimated." But Garrison was a doctrinaire free-trader who insisted that "slave labor is not a profitable system" and the motive of the slaveholder "was not love of gain but the possession of absolute power, unlimited sovereignty." Garrison's "anticapitalism" was the same as that other great scourge of the bourgeoisie, Charles Dickens. He was opposed to greediness and general wickedness, but it such sentiments are not equivalent to "a heartfelt critique of financial capitalism." One gets a fair

slavepower. It was an unlikely and somewhat contradictory alliance. If Charles Sumner best exemplified how these two strains converged, Robert Winthrop reveals how this new coalition looked to one overthrown by it.

“Down to 1850, and even later,” Henry Adams recalled, “New England society was still directed by the professions. Lawyers, physicians, professors, merchants were classes, and acted not as individuals, but as though they were clergymen and each profession were a church. In politics the system required competent expression; it was the old Ciceronian idea of government by *the best* that produced the long line of New England Statesman. Thus Boston chose Daniel Webster and... Edward Everett held the rank in regular succession to Webster. Robert C. Winthrop claimed succession to Everett. Charles Sumner aspired to break the succession but not the system.”<sup>31</sup> Sumner was hardly the first, or even the most distinguished, moral agitator to rattle the authority of the Bay State establishment. But unlike Garrison or Wendell Phillips, Sumner was an ambitious and skillful politician, hungry for the worldly power idealist tend to despise. He possessed a relentless Puritan conscience, but it only operated in one direction – outward. Unlike the prominent members of the Adams clan, who were constantly hobbled in politics by acute self-awareness, Sumner was wholly unconscious of his own ambitions, allowing him to maneuver for political power without tripping over his own conscience. He was perfectly suited to lead the overthrow of Boston’s conservative aristocracy.

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sense of Sinha’s approach in her introductory characterization of abolitionism as a movement “which addressed the entrenched problems of exploitation and disfranchisement in a liberal democracy and anticipated debates over race, labor and empire.” Note the timelessness. Sinha debunks all interpretations that stress the historical particulars of class, place and time as a gross libel on people who obviously thought and believed almost exactly what Manisha Sinha thinks and believes. Sinha, *The Slave’s Cause: A History of Abolition* (New Haven, 2016). I’ve singled out her book but it’s merely the most recent example of an unfortunate tendency in the historiography of slavery and abolition. 40 years ago, C. Vann Woodward wrote that Dwight Drumond’s “treatment of slavery and abolitionists admits of no complexities or ambiguities beyond the fixed categories of right and wrong...All of his abolitionists are...moral giants among the pygmies who cross their will or fail to share their views...The trouble with Mr. Drumond as historian of the antislavery movement is his total involvement.” Woodward, “The Antislavery Myth,” *The American Scholar* (Spring, 1962).

<sup>31</sup> Henry Adams, *The Education of Henry Adams* (Boston, 1918), 32.

The first public dispute between Sumner and Winthrop, though of little importance in itself, perfectly captured the differences that divided them for decades. In 1845, Sumner was chosen to deliver the Fourth of July sermon at Faneuil Hall, an honor the city traditionally conferred on one of its most promising young citizens. These orations were usually bland, pious expressions of patriotism, a ceremonial commemoration of the great legacy bequeathed by the Fathers. But Sumner was not content to eulogize the great men of the past. “The glory of the Fathers is doubtless to their children a most precious treasure; but to enjoy it without transmitting it to the next generation, and without adding to it yourselves, this is the height of imbecility,” Sumner declared. The best way to honor the fathers would be to excel them in virtue, remembering that the fathers would regard their defeat in the contest as a triumph. “To do this we must not fold our hands in slumber, nor abide content with the past. To each generation is committed its peculiar task; nor does the heart, which responds to the call of duty, find rest except in the world to come.”<sup>32</sup>

These sentiments no longer seem particularly striking, but their effect was electric among a generation acutely conscious of itself as living in a post-heroic age. “We can win no laurels in a war for Independence,” Daniel Webster said on a similar occasion. “Earlier and worthier hands have gathered them all...But there remains to us a great duty of defense and preservation.” The sons could not excel their fathers and faithfully maintain their great work at the same time. “It is for us to *preserve*,” Charles Francis Adams wrote, “and not to create.”<sup>33</sup> As a young Whig in Illinois, Abraham Lincoln expressed these same pious sentiments while predicting that the greatest threat to American liberty would come from those seeking to exceed the glory of the Fathers. “Towering genius disdains a beaten path. It seeks regions hitherto unexplored,” he said

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<sup>32</sup> Charles Sumner, *Works*, “The True Grandeur of Nations,” (Boston, 1870), 1:6-7.

<sup>33</sup> Webster and Adams quotes cited in Forgie, *Patricide in the House Divided* (New York, 1979), 67-68.

in 1838. “It seeks no *distinction* in adding story to story, upon the monuments of fame, erected to the memory of others.”<sup>34</sup> Denied the chance to equal the great work of the Founders, such an ambitious soul “would set boldly to the task of pulling down.” In Lincoln, one detects the same hot fires that burned in Sumner, albeit with an element of critical self-awareness that the Massachusetts leader wholly lacked. Winthrop, by contrast, was perfectly content to remain the pious steward of a legacy inherited from greater men. “If we are but faithful to that great bond and bulwark of our Union, the *Constitution*,” he said in one of his own speeches commemorating the Fourth of July, “critical periods may come and go...but the country, the Country, will survive them all – will survive us all – and will stand before the world an imperishable monument of the patriotism of the sons, as well as the wisdom and virtue of their sires.”<sup>35</sup>

The great project Sumner identified in his oration was international peace – which was then the cause he identified as the next great leap in the progress of the age. Sumner’s ablest biographer has noted that the “oration was the earliest public demonstration of Sumner’s propensity for what might be called illogical logicality, his tendency to extend a principle to its utmost limits.”<sup>36</sup> In a blink, he took a commonplace observation to an absurd conclusion. Since war is bad, Sumner informed his audience, “There can be no peace that is not honorable; There can be no war that is not dishonorable.” This was a rather strange sentiment with which to eulogize the patriots of 1776.<sup>37</sup> Indeed, the Massachusetts militia, who occupied the front row as the group traditionally eulogized on this occasion, instead found themselves ridiculed. Sumner spoke of their “inanity” and “farcical preparations;” the militia were not even competent to

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<sup>34</sup> Lincoln, *Collected Works*, 1:114. Lyceum Speech, January 27, 1838.

<sup>35</sup> Winthrop, *Addresses and Speeches on Various Occasions* (Boston, 1852), 736.

<sup>36</sup> Donald, *Sumner*, 1:116.

<sup>37</sup> In the printed version, Sumner added a footnote qualifying the statement as only relevant “to our age.” And, in the 1870 edition of his works, Sumner quietly changed the statement into a question: “Can there be in our age any peace that is not honorable, any war that is not dishonorable?” Sumner, *Works*, 1:9.

prevent local disorders, let alone protect the country from outside invaders. “No one who has seen them in an actual riot, can hesitate in this judgment,” Sumner told his baffled audience, who had gathered to commemorate the gallant militiamen who fought at Bunker Hill and Lexington and Concord.<sup>38</sup>

The reaction to the speech was generally harsh. But the most significant rebuke came from Winthrop, an enthusiastic militiaman who was then reaching the peak of his prestige. In a toast following the address, Winthrop said, “Our Country, whether bounded by Sabine or Del Norte – still our Country – to be cherished in all our hearts – to be defended by all our hands.”<sup>39</sup> The reference to the border with Mexico was not an accident. Within a year, a war over that border had begun, with results that, along with their portentous significance for the nation as a whole, doomed Winthrop’s career and secured Sumner’s triumph.

Winthrop was hardly a jingo. He hotly denounced the war with Mexico in Congress. “We believe that this war ought never to have been begun,” Winthrop declared in Congress, “and we do not wish to have it made the pretext for plundering Mexico of one foot of her lands.”<sup>40</sup> The controversy concerned Winthrop’s vote in favor of appropriations supporting the Army while it was in the field. “Rather than lend your hand to this wickedness,” Sumner wrote, “you should have suffered the army of the United States to pass submissively through the Caudine Forks of Mexican power – to perish, it might be, like the legions of Varus.” In a private letter to Winthrop, Sumner insisted that his public criticisms were motivated only by a sense of public duty, not personal animosity. “I hope in doing what I have done, I have not in any way been disloyal to those pleasant relations, which I have always had the happiness of cherishing with you, and which I trust may always continue.” Three days later, in another scathing editorial, he

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<sup>38</sup> Ibid. 56-57. Later editions got rid of the word “farcical.”

<sup>39</sup> Winthrop, *Memoir*, 45.

<sup>40</sup> Ibid, 61.

compared Winthrop to Pontius Pilate. “Blood! Blood! Is on the hands of the representative from Boston. Not all great Neptune’s ocean can wash them clean.”<sup>41</sup>

No one ever lost a seat in Congress for refusing to let American troops be slaughtered “like the legions of Varus”; this was not the occasion of Sumner’s triumph. But his ferocious attacks on Winthrop created a lasting rupture between the two men, and began a conflict over political etiquette, over the proprieties governing the style of public dispute, in which Winthrop’s fastidious manner was no match for the clamor of willful absolutes. Down in Maryland, Winthrop’s friend Kennedy was succumbing even more quickly to the same fate.

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Like all Whigs of any national prominence in the late 1840s, Winthrop and Kennedy disdained extreme sectional views as hopelessly provincial and narrow-minded. Small men, who had never left their local communities, were radicalized by their inability to imagine places where everyone did not share their views. Kennedy’s judgment of proslavery fanatics hardly needs justification. But even in Massachusetts, the dispute between Sumner and Winthrop lent some credibility to this self-flattering opinion. The two men did not actually disagree on any important substantive point – except in how to advance the beliefs they held in common among those who did not share them. And in their dispute over method, Sumner’s idealism could plausibly be seen – as Winthrop did see it – as narrow-minded bigotry of a demagogue disguised in the high-minded prose of a moralist and scholar.

Consider Winthrop’s position on slavery in the territories, the issue on which moderation ultimately proved impossible. For all the criticisms it inspired, Winthrop’s “moderation” amounted to nothing more than temperate language and realistic tactics; his position was unambiguous and identical to that of the Free Soilers. “So far as we have the power –

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<sup>41</sup> Donald, *Charles Sumner*, 1:144-146.

constitutional or moral power – to control political events, we are resolved that there shall be no further extension of the territory of this Union subject to the institution of slavery,” he said in Congress. “This is not a matter to argue about with us.”<sup>42</sup> Southerners considered Winthrop their most effective adversary precisely because he concerned himself with the national House rather than opinion in his own state. As a result, he was attacked by a combination of proslavery extremists and antislavery idealists.

When the crisis over California came, Winthrop saw that the wisest course was to admit California as a free state, a tremendous defeat for the South, without making any proslavery concessions and without demanding any additional antislavery victories. It was an imperfect solution, he admitted privately in early 1850, “but it is certain that we can do nothing better.”<sup>43</sup> The Free Soil attempt to ban slavery in all territories at that critical moment would only divide Northern allies and snatch an antislavery defeat from the jaws of victory. “Fools rush in where angels fear to tread,” he wrote irritably of his Free Soil colleagues. As a matter of political tactics, Winthrop’s judgment was undeniably astute. Instead of admitting California without any proslavery concessions, a realistic goal, the North got the popular sovereignty doctrine in the territories and the Fugitive Slave Act.

The same dynamic thwarted Winthrop personally. As Speaker of the House during the Mexican-American War, Winthrop’s performance had infuriated pro-slavery Southerners and a small number of Free Soilers. These unlikely allies then collaborated to block Winthrop’s re-election in the next Congress. “Giddings and Allen at one end of the Union and Toombs and Stephens at the other, all united in opposition to me!”<sup>44</sup> With the Free Soilers help, Southerners succeeded in blocking Winthrop’s election. Howell Cobb, a proslavery Democrat from Georgia

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<sup>42</sup> Winthrop, *Memoir*, 61.

<sup>43</sup> Winthrop to Clifford, February 10 and February 19, 1850.

<sup>44</sup> Winthrop to Nathan Clifford, December 3, 1849.

took up the Speaker's gavel instead. One need not be a Machiavellian to think the Free Soilers' preference perverse.

Kennedy, meanwhile, had already fallen victim to the vengeance of sectional partisans. His open-letter denouncing the annexation of Texas – John Quincy Adams thought it the most brilliant essay written on the subject – had supplied his opponents with an effective cudgel to use against his re-election. “It has grown into fashion of late to talk about slavery as ‘a blessing,’” Kennedy wrote, “which is affirmed to be essential to a prosperous Democracy. The corollary from this is, in a few men's minds – happily but few – that visible advantage would come from a Confederacy founded on this *essential blessing* as a fundamental element. I trust there are not many States in this Union which will acquiesce in this logic, or place their title to democratic government upon such a concession.”<sup>45</sup> Kennedy's trust proved unfounded, as these antislavery heresies earned him an overwhelming defeat when he stood for reelection to preside over the House in the next Congress.

In the summer of 1850, Winthrop replaced Daniel Webster in the Senate, where he hoped his friend Kennedy would be elected to join him. The only obstacle, Winthrop reported, “was a great fear that you were not altogether *safe* on the slavery question.” Winthrop predicted this temporary obstacle would fall away soon enough. “It will one day or other be the glory of us both that we were not altogether *safe* on the slavery question – notwithstanding the efforts of [Joshua] Giddings and co. to deprive me of this glory.”<sup>46</sup> In the meantime, however, Maryland appointed Thomas Pratt to the Senate. “I would as soon entrust one vote on the slave question to Calhoun as to Pratt, who is as ultra on that subject as any man of Mississippi,” Kennedy wrote

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<sup>45</sup> Kennedy, *Political Papers*, 608-609.

<sup>46</sup> Winthrop to Kennedy, January 1850. Kennedy Papers.

dejectedly to Winthrop. “Besides this disqualification, P. is a man of very inferior abilities for public service, utterly without studies or accomplishments of a statesman.”<sup>47</sup>

Although both friends resisted and lamented the polarizing pull of their respective sections on the slavery question, they themselves did not agree on the subject. Both men were politically ambitious; each felt that the other did not appreciate the intensity of local opinions prevailing in his own section. “I am afraid you are not moving the House of Representatives with as much effect as the country expects,” Kennedy wrote to Winthrop in March of 1850, a few weeks after Webster’s famous speech. “Upon yourself, especially, there is a particular obligation to take the lead. I want you to come out as soon as possible with a bold, vigorous, repudiation of the Wilmot proviso in the best speech you can make.”<sup>48</sup> Winthrop, however, was not about to do that. In fact, he was even unwilling to follow his mentor, Webster, in supporting Clay’s Compromise proposals. “I cannot do it,” Winthrop replied to his friend. “Here is a point of honor at both ends of the Union. We are committed up to the heels on both sides. The true way is to admit California and let the Territories alone. Any other course will kill Whiggery at our end of the Union.”<sup>49</sup>

Later in the summer of 1850, when Winthrop moved into the Senate, Kennedy observed his friend’s course with a critical eye that dipped occasionally into scorn. “I see that Winthrop has taken his seat in the Senate and his first vote is to defeat the Compromise,” Kennedy wrote to his wife. “This forever confines his popularity to New England...Is it not strange that New England be so assiduously set upon the task of defeating the generous purpose of pacification in which Webster and Clay, the two greatest men in the country, are engaged? It cannot come to a

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<sup>47</sup> Kennedy to Winthrop, June 9, 1849.

<sup>48</sup> Kennedy to Winthrop, Winthrop Papers. March 24, 1850.

<sup>49</sup> Winthrop to Kennedy, March 1850. Kennedy Papers. To another friend, Winthrop noted that Webster’s speech “would have killed any New England man but Daniel Webster.” Winthrop to Clifford, March 10, 1850.

good end and the men who are employed in it are preparing for themselves an ignoble fall. I am truly sorry that Winthrop is among them.” A few days later, Kennedy excused his friend for what he now decided were inherent weaknesses of character: Winthrop “could not help his own share in it, considering his timidity and his reverence for consistency.”<sup>50</sup>

In writing directly to Winthrop, Kennedy was more diplomatic. He congratulated Winthrop on his “promotion to the peerage and a seat in the House of Lords...sincerely, profoundly and Withropically – which means gravely.”<sup>51</sup> He couched his criticisms in friendly advice, rather than the outright disapproval he expressed to his wife. Kennedy noted that some expected Winthrop to support the Compromise, “that you were too national, too wise, and too statesmanly not to vote for it.” But, Kennedy noted that he tried to correct this false impressions, “affirming what I knew of your attachment to the Wilmot proviso and your aversion to the omnibus.”<sup>52</sup>

Kennedy also offered his friend advice that was prescient in one respect and utterly wrong in another. He pointed out that old basis for party allegiances was disappearing. The country was dividing into conservative Unionists, “which will ultimately embody the best Men North and South,” against “the ultraism at both ends of the Union” constantly trying to embroil the country into a quarrel over slavery.<sup>53</sup> Anyone might have seen that. But Kennedy’s most astute judgment concerned Winthrop’s own position, which, he observed, was becoming untenable. Winthrop identified fully with New England antislavery principles, but he was a national conservative in temperament, in manners, and in practical instincts. As a Whig, he could

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<sup>50</sup> Kennedy to Elizabeth, July 30, 1850 and August 5, 1850.

<sup>51</sup> Kennedy to Winthrop, August 7, 1850. Kennedy’s elaborate congratulations are worth quoting more fully as a good example of his charm as a letter-writer: Kennedy wrote that he was pleased to see Winthrop lifted “above the dirt of that House of Representatives and especially from that outer row in back seat thereof, where to the speaker’s eye, you looked like a far off light floating on a head sea, or sea of heads, -- not a wicked light, but rather of that starry kind that burns without wicks – I congratulate you that you are out of that unpacific ocean.”

<sup>52</sup> Kennedy to Winthrop, August 7, 1850.

<sup>53</sup> Kennedy to Winthrop, August 2, 1850.

have it both ways, but those days were coming to an end. Winthrop believed his lonely position, standing stubbornly by the plan to admit California and leave all other questions alone, was a bold adherence to principle, but Kennedy was correct to see an element of timidity in his friend's position. He refused to move boldly in either direction, and thus forfeited his power to influence men and events.

In 1851, Winthrop was expected to be elected to Webster's Senate seat for a full term. But he had lost the enthusiasm of Webster's old friends when he failed to follow their hero, and he never had the support of the Free Soilers. Many conservative cotton Whigs, who recognized that Winthrop differed only in style from the Free Soilers, actually wanted one of the latter to prevail, "on the desperate grounds of the worse, the better." Whether circumstances might have been different if Winthrop had taken a different course is impossible to say, but the breach that had opened among Massachusetts conservatives left enough room for Charles Sumner to take his seat in the United States Senate.

Kennedy and Winthrop, once the brightest young ornaments of national politics, were both in the wilderness.

## *II: "That Anomalous Conceit, the Sanctity of Compromises"*

The controversy over the Kansas Nebraska presented Winthrop with a new opportunity to reassert himself politically. As new coalitions struggled to form out of the ruins of old party organizations, Winthrop's prestigious name was eagerly courted by all sides. First to solicit him were the Know-Nothings. Though Winthrop realized the movement was likely to be a powerful force in the political vacuum left by the two major parties, he immediately declined these

“flattering overtures,” explaining that he would have nothing to do with secret societies. He also suggested that the nativist group was “destined to do as much for Catholicism as the free soilers had for slavery” – i.e., antagonize the very people they hoped to reform.<sup>54</sup> At the same time, antislavery leaders combining under a new party banner eagerly courted Winthrop in the hopes of winning moderate and conservative Whigs. “I may be mistaken,” John G. Whittier wrote to Ralph Waldo Emerson in the summer of 1854, “but I fully believe that Robert C. Winthrop holds in his hands the destiny of the North. By throwing himself on the side of this movement he could carry with him the Whig strength of New England.”<sup>55</sup>

A year later, Winthrop was once again eagerly courted by the Republicans, which had effectively consolidated enough antislavery elements of all the other parties, including the Know-Nothings, to become the most obvious option for former Whigs looking for a new home. Winthrop’s attitude toward slavery cannot explain his coldness toward the new party, as he was an unqualified supporter of the one issue that defined the Republican coalition – opposition to the extension of slavery in all territories. To Kennedy, who favored the doctrine of non-intervention in the territories as the best means of putting the controversy to rest, Winthrop wrote, “We must do to them [new territories] as we would be done by. If I thank God that Massachusetts is not a Slave State, how can I turn round and let Nebraska or Kansas become one by refusing to interpose for their protection?”<sup>56</sup> And his public statements at the time make the same point as forcefully as almost any Republican. So what prevented him from joining their ranks? Though to the antislavery radicals, Winthrop seemed a spineless conservative, too ready

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<sup>54</sup> Winthrop to J.G. Wittier, June 16, 1854. Winthrop papers.

<sup>55</sup> Winthrop, *Memoir*, 171-172.

<sup>56</sup> Winthrop to Kennedy, February 27, 1854.

to compromise principle in the name of expediency, he refused to join the Republicans, ironically enough, out of a purists' aversion to its corrupter elements in Massachusetts.<sup>57</sup>

He was for the party which “abominates all political trading and huckstering, whether for the promotion of measures or of men; and which looks with common aversion upon the congenial corruption which purchased a coalition triumph in the Legislature of Massachusetts, or a Nebraska triumph in the Congress of the United States.” One overwhelming issue, Winthrop wrote, seemed more alarming than all others, even the Kansas Nebraska Act. “I mean the condition of our own State of Massachusetts, and its rescue from a corruption and a misgovernment which have had no parallel since the state itself had an existence...the greatest evils which the people of Massachusetts are at this moment called upon to redress and remedy, are those within their own immediate limits.”<sup>58</sup>

Since everyone in Massachusetts already opposed slavery in the territories, to one degree or another, organizing a party around that issue, and that issue alone, struck Winthrop as a clever ploy of opportunistic politicians. Quoting Edmund Burke, Winthrop attributed the origins of the Republican party to the restless ambition of men who preferred to tear down that which they lacked the capacity or opportunity to build. “A species of men to whom a state of order would become a sentence of obscurity are nourished into a dangerous magnitude by the heat of intestine disturbances, and it is no wonder that by a sort of sinister piety they cherish in their turn the disorders which are the parents of all their consequences.”<sup>59</sup>

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<sup>57</sup> This is a point that Michael Holt makes convincingly of Winthrop and many other Whigs in his *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* (Oxford, 1999). “Repelled by the hurly-burly of politics and grass-roots popular enthusiasms, many former Whig leaders simply could not or would not confront or adjust to political conversions after 1853,” Holt writes. *American Whig Party*, 959.

<sup>58</sup> Winthrop, “The Fusion of Parties in Massachusetts,” Oct. 15, 1855. In *Occasional Speeches and Essays*, 225-237.

<sup>59</sup> Winthrop, “The Presidential Question” Oct. 24, 1856.

For Winthrop, the national political crisis was the Massachusetts ordeal *writ large*. The problem was harsh, insulting language and cynical, opportunistic demagoguery. If leaders North and South would only stand by their principles like gentlemen, calmly and unostentatiously affirming their beliefs without questioning the honor and integrity of those who differed with them, all quarrels might be easily resolved. The objections to this line of reasoning are obvious, but Winthrop's position was not altogether groundless. An experienced parliamentarian in the National House, he was likely correct in arguing that the furious antislavery response to the repeal of the Missouri Compromise, by alienating potential Southern allies, helped pass what a more temperate opposition might have defeated. "The North has got its back up on this point [i.e. the repeal of the Missouri Compromise] and I am afraid that it is going to stay up even after the question is settled," Winthrop wrote to Kennedy.<sup>60</sup> He could not share his friend's support for the doctrine of non-intervention, but he did not think honorable men in both sections needed to agree on that point in order to work together. They could all agree on the blighted faith of the Missouri Compromise. "It is upon this point that a chivalrous Southerner might make a stand which would cover him with honor," Winthrop wrote.<sup>61</sup>

Kennedy had a clearer grasp of the national situation throughout the 1850s. If a national conservative party was to have any hope of mastering the double pull of sectional parties, they would have to agree on a positive answer to the divisive question of slavery. They could no longer agree to disagree as gentlemen. The repeal of the Missouri Compromise, Kennedy wrote to Winthrop, had destroyed "that anomalous conceit, the *sanctity of compromises*." There was some hope for peace under the illusion that a legislative compromise was a final settlement of opposing interests, to be upheld with strict fidelity by all parties. But once that convenient fiction

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<sup>60</sup> Winthrop to Kennedy, Kennedy Papers, February 27, 1854.

<sup>61</sup> Ibid.

had been shattered, it could never be restored. The true policy, therefore, was to accept non-intervention in the territories, “not as a *Constitutional* obligation,” he explained, but simply as a practical way of checking extremism on both sides.<sup>62</sup> In conflicts over immediate material interests, sensible men tended to prevail, Kennedy astutely observed, because the stakes were tangible and all men could calculate them rationally. But partisan hacks could always inflame an issue raised merely as “a fretful abstraction to quarrel upon.” Non-intervention allowed those with an immediate stake in the issue to settle it rationally, and in the case of Nebraska, there was little doubt as to how they would do so.

Winthrop could not agree with this. How could any honest man pretend to be indifferent about the extension of slavery into new territories? Kennedy knew he had no direct answer to that question, but Winthrop never seemed to grasp Kennedy’s key insight: He could not hope to defeat the Republican party in Massachusetts while wholeheartedly endorsing their defining issue. The space between Kennedy and Winthrop on the slavery issue was precisely where agitators in both sections had inserted themselves in order to keep up a perpetual controversy.

A pro-Union Southerner, Kennedy objected to radicals in his section on principle – he did not hesitate to call them traitors – and to the Republicans for the cudgels they supplied his local enemies in beating down the common sense of the South.<sup>63</sup> He shrewdly observed that the demand for “equal rights” in the territories served no purpose except as a clever plot to dissolve the Union. Credulous Southerners might be swept up in rhetoric of rights and honor but the cunning minds who dreamed up the issue intended it only as a crude snare with which to bait Northerners into a position justifying Southern disunion. “And yet shrewd Yankeedom does not

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<sup>62</sup> Kennedy to Winthrop, February 14, 1854. Winthrop Papers.

<sup>63</sup> Kennedy’s pamphlet denouncing the annexation of Texas was praised by John Quincy Adams as the best thing written on the subject – though this high praise only contributed to the backlash that ended Kennedy’s Congressional career.

see it – but must go on beating its head against this abstraction until its brains are driven into its shoes.”<sup>64</sup> Kennedy accepted that his own section was fatally susceptible to such “an obvious bit of moonshine,” but he was sincerely dismayed to see so many sober Northerners taken in by it as well. Why could intelligent, responsible Northern men like Winthrop not see that they were being baited, and avoid the trap being set for them? In organizing themselves against a spurious threat, Republicans were playing directly into the hands of the only real threat menacing the Union – the threat of Southern secession. Winthrop was sufficiently persuaded of this to avoid the Republican party, but even he would not follow Kennedy in denouncing the territorial issue as a mere humbug.

Despite his ever-mounting dismay over politics, Kennedy remained an optimist at heart. Every cranky letter he wrote in the 1850s seemed to end with the happy prediction that the political humbugs had finally discredited themselves, and the people were now sure to return to their senses. And so when the calamity he had long warned against finally arrived, he reacted with the shock and horror of one who never really believed his own worst suspicions.

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Kennedy had been as prescient as anyone about the danger posed by Southern secessionists, but his deep affection for the very people prone to this insane folly had always restrained his judgment. Visiting South Carolina in 1851, he had written to his wife that the residents “are generally rabid and intractable seceders – women as well as men. It is the strangest mania that has ever broke out in this country.” And yet, he continued, “They are good, clever people, too, in all things else, amiable and gay – making their present rebellious position all the more unaccountable. I hope they will get right without having the government put them right.”<sup>65</sup>

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<sup>64</sup> Kennedy to Winthrop, January 9, 1861.

<sup>65</sup> Kennedy to Elizabeth, August, 1851.

Ten years later that hope was shattered, and in its place came a bitter rage at the horrors these fools had called down not only upon themselves but upon the whole country – above all the nation’s young men, innocent, brave and credulous. And what had driven the South to such a mad act? Kennedy traced the roots of Southern fanaticism back to the aristocratic pride of the colonial era.

“In those days when West India nabobs and Carolina gentleman lived in voluptuous ease upon their plantations and nursed the idea of a peculiar grandeur, in the profuse returns of a semi tropical agriculture,” Kennedy wrote to George Bryan, a close friend in South Carolina, soon after that state seceded, “nothing struck them as so base a comparison as that of their own state with the close, thrifty and sour artisan who fought the sharp battle of life upon the barren rocks and bleak hills of Plymouth. Before the Revolution and ever since, the most familiar and popular subject of southern derision was and still is, the shrewd and cunning Yankees.” But the nineteenth century had visited a cruel revenge on those self-styled nabobs, and now it was the Yankees’ turn to swagger and sneer at the expense of their Southern neighbors.

There is mighty energy in that head and hand of his. He makes his desert bloom like the rose, his invention is a lamp of Aladdin. Untold wealth is showered from his palm; art, science, wit, eloquence and poetry grow up around him like a garden of flowers. He has outlived his period of suffering and has come to manhood fraught with a power that actually astounds the world. And now, in his time, finding that he can move the levers of society, he makes his power felt. Don’t you think that much of your trouble grows out of the difficulty of bringing the Carolina mind to the patient recognition of this fact?<sup>66</sup>

As for the many grievances secessionists held up to justify separation, Kennedy denied not only these complaints but also the sincerity of those who made them. The secessions were not merely wrong but false.

Bad as the conduct of the north actually is; insolent in the perception of its power, insulting to us; and discordant as it is in its machinations against us – I am not at all so

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<sup>66</sup> Kennedy to George S. Bryan, January 25, 1861.

moved by the passions of the day nor so disturbed in my cool judgment, as not to see that what we call our wrongs are a great way off from being the real cause of this commotion. I don't believe a word of it, that we have fallen into revolution because the north is going to abolish slavery in our states; nor because they have passed personal liberty laws; nor because we can't get equal rights in the territories. Not a word of it. Many good people may believe we ought to rebel on these grounds – simple and agreeable men and women who have had that idea hammered into their head by sledge-hammer logic. But the chief seceders don't believe it. They know that slavery can't be abolished by all the North's fanatics...They know that the personal liberty laws are a humbug; that not one person in five hundred even heard of them until five months ago...No, no – it is not any of these phantasms that has brought us into this imbroglio. It has a simpler and I will say much more natural origin than that. It is because Cavalier and Round head have not yet got enough of it and Roundhead vilifies, insults, denounces the Cavalier with impudent venom and at last beats him at the polls. Very provoking I admit!...I strive to regulate my emotions...but every now and then I find my temper rising and I confess to letting off a – or two, *sotto voce*. But what has this got to do with driving me or you out of the Union?...The Union is large enough for a thousand humbugs to play upon it.<sup>67</sup>

But out of the Union the South went. “Never was so much ruin inflicted upon the country with so little ground to justify it,” Kennedy wrote despairingly in his journal upon learning of South Carolina's secession. “It is the mock heroism of men who do not comprehend their own incapacity, who mistake passion for a just sentiment of honor, and who cannot perceive the desperate extremes of their own folly. They will live to repent the wickedness of this act which is destined to be visited upon them in the ruin of their county and in the detestable fame it is to confer upon them.”<sup>68</sup>

Unlike Winthrop, Kennedy never confused timidity for moderation. In a political crisis, hesitation and ambivalence of those baffled by uncertainty will merely cede the initiative to those with the will to act. Kennedy's bitterest criticism of everyone in Washington who wanted to save the Union without knowing how to do it, was that they let their uncertainty prevent them from moving boldly in one direction or another. And the impending result of their aimless policies,

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<sup>67</sup> Kennedy to Bryan, January 25, 1861.

<sup>68</sup> Kennedy, Diary, December 21, 1861.

Lincoln's no less than Buchanan's, was painfully obvious. Kennedy, for his part, proposed an ingenious solution in a widely circulated pamphlet.

"My object," Kennedy explained to Winthrop, "is to isolate the seceders and leave them to work out this problem alone."<sup>69</sup> The resentment he hoped to exploit, and the tendency he hoped thereby to reverse, was the impotence of the border states in registering their own paramount interest in the controversy dividing the two sections. Their very centrality within the Union marginalized them in the drama of its dissolution; their indignation at radicalism in both sections effectively nullified their moderating influence over either. Kennedy recognized that conservative indignation tended to bounce, ping-pong like, between each "outrage," committed by partisans in one section, and its inevitable response in the other. As a result, the border states, instead of restraining radicals in both sections, alternatively emboldened each. Border state indignation at Lincoln's election would embolden Southern secessionists, provoking another round of indignation that would then hearten the Radical Republicans. And so on, as, step by step, the Border States blindly encouraged a conflict in which their own ruin was the only ruin that was certain.

Kennedy's lament was commonplace, but his pamphlet hit upon an ingenious solution. He proposed that the border states should convene a congress of their own to declare, first: their absolute opposition to the secession of South Carolina and their unwillingness to join the cotton states in a separate confederacy under any circumstances. If, however, the Deep South should persist in its separation, the border states should also secede from the Union, forming a polity apart from both sections and becoming, as a result, the predominant power among the states "which, in any new combination of the fragments of our once happy Union, broken by the

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<sup>69</sup> Kennedy to Winthrop, Dec. 19, 1860.

madness of faction, may hereafter be gathered from the wreck.”<sup>70</sup> Only by acting decisively – the precise details were less important – could the moderate core of the Union break the gravitational force pulling it toward opposite extremes.

Kennedy’s proposal earned widespread praise for its author but ultimately came to nothing. It is worth noting, however, for two reasons: The most striking aspect of the pamphlet was Kennedy’s unique combination of boldness and moderation. All the Union shibboleths that inspired such dogmatic, destructive devotion during the secession crisis deserved respect, but they were unavoidably in conflict with one another. If ambivalence led to paralysis, intelligent men would be overwhelmed by fools emboldened by their very inability to hold more than one idea in their heads at a time. An ardent Unionist, Kennedy advocated secession in his own section in order to defeat it elsewhere. This creative boldness in defense of the status quo had virtually disappeared among Unionists in 1861.<sup>71</sup> Kennedy disdained all abstract principles, all sacred legalisms, that supplied such attractive certainties to men seeking a refuge from the bewildering pace of events. He was able to keep up with the unravelling situation, and to alter his preferred course accordingly. Secession was treason, until it became an unalterable reality. Then it became the useful means, if properly channeled, of avoiding war. And once the shooting started, Kennedy again did not hesitate to make his choice.

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<sup>70</sup> Kennedy, “The Border States: Their Power and Duty in the Present Crisis,” (Baltimore, 1860), 24.

<sup>71</sup> Appraising Seward’s famous speech in January, 1861, Kennedy noted in his journal: “It is conciliatory, temperate, and encouraging as a step towards peace; remarkably well-written and really grand in its exposition of the value of the Union. But as proclamation for the settlement of the dispute, it is a sad and lamentable failure. It was in his power to have spread a jubilee over the whole country which would have given him a grateful renown in our history. This he had not the courage or the wisdom to do. He avows himself the advocate of concessions, is perfectly satisfactory on all subordinate points but coming at last to the main question, the adjustment of the territorial condition, he shrinks from his task, falls back into the narrow views of his party whom he fears to offend, and ends in a trifling equivocation. He thinks that question may be settled two or three years hence! – not now. It is obvious that his inclination is towards a satisfactory settlement, but he cannot arrive at the magnanimity of proposing it himself, lest he might offend his party. This is quite characteristic of him. He fails in the quality of a statesman, while he indulges in the vanity of a rhetorician. Some other man must win the fame which it is not in his nature to achieve.” Kennedy, Journal, January 13, 1861.

“Here we are in Maryland,” Kennedy wrote in “The Great Drama,” an essay he published early in the summer of 1861, “involved in a dreadful revolution, which has already convulsed society to the centre, torn up its prosperity by the roots, sown discord in families, alienated old and familiar friends, and spread consternation throughout the whole community.” Kennedy felt the disruption of his own community acutely. Disagreements that had always been friendly now flamed into bitter hatreds. Lifelong intimacies were shattered; his church, his neighbors, and his family all divided into patriots and traitors. And these sorrows, Kennedy darkly warned, were only “the ravages of the first act of the Great Drama.” As for act two: “Read, at random, any page that records the rage, the demonism, the hellish passion of civil war, and fancy the sack of cities, the brutal and indiscriminate murder of old and young of either sex, the rape and rapine, the conflagration, the shriek of surprised families, the midnight flight of mothers and children tracking their way with bleeding feet, the mourning, the desolation, the despair which are all painted in such horrid colors in that history –fancy all these pictures converted into the realities of our own experience, and we shall then come to the perception of the second act of this portentous drama.”<sup>72</sup>

Like most Unionists who opposed to the Republican party in 1860, Kennedy had blamed the secession crisis on both sides. Writing Winthrop soon after Lincoln’s election, Kennedy had observed that Maryland was united in a universal feeling of indignation “against the spirit which has impelled the North in forcing this crisis upon us.”<sup>73</sup> That indignation grew as the crisis deepened. Southern Unionists, fighting tooth and claw against the secessionist frenzy, felt their efforts were betrayed by Republican moderates, who refused to help them save the South from destroying itself. Until the shooting started, Kennedy believed that “an attempt to bring them

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<sup>72</sup> Kennedy, “The Great Drama” (Baltimore, 1861), 2-3.

<sup>73</sup> Kennedy to Winthrop, Nov. Dec. 3, 1860.

back by force would be the greatest of blunders. Five years of independence would do more for their instruction on the path of duty than all the physical force of the country.”<sup>74</sup> He correctly noted that no one was more eager for war than the secessionists themselves. And his first reaction upon hearing of the bombardment upon Fort Sumter, recorded privately in his journal, was to curse Lincoln’s administration for blindly drifting into the catastrophe. “Too weak for a war measure, too strong for a peaceful one. They have been discomfited by their indecision,” he wrote. “I fear the effect of this event upon the Boarder States. It strengthens the secession movement and may end in driving us all out of the Union.”<sup>75</sup>

A majority in Maryland remained loyal, Kennedy estimated, but the passionate zeal of those supporting the rebellion would easily overwhelm them if it weren’t for the external pressure of Federal troops. The temporary violence provoked by the Union army presence was, Kennedy believed, nothing compared to the horrors that would erupt in its absence. Now that the conflict was to be settled by war, Kennedy abandoned all earlier hopes for defeating the secessionists, and there was no point in blaming all sides for the catastrophe. The South’s worst enemy, the secessionists, had finally triumphed and that meant that the region’s second worst enemy, the Republicans, had become its saviors. “There is but one issue now before us: Union or Disunion.” Maryland must fight to save the country from the ruinous contagion of the Confederacy or join it. Every sober, intelligent consideration commanded Maryland to stand by the Union as the only partial refuge from the coming storm. “There is a contemptible cant about Lincoln’s government and Lincoln’s soldiers,” he noted in a private letter. “That is a trick to deceive the vulgar and drive from their minds the gross fact that the Government – the

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<sup>74</sup> Kennedy, Letter book, February 10, 1861.

<sup>75</sup> Kennedy, Journal, April 14, 1861.

sovereignty of the people, is the subject of attack and that the people who defend that government are the soldiers of the republic.”<sup>76</sup>

Nevertheless, when the conflict began, Kennedy’s convictions were at war with his affections. He loathed the cynical demagogues who drove the South into secession, but this hatred was itself a measure of his affection for those ensnared by that delusional cause. He readily admitted that many of the best elements of his own society had flocked to the Confederate standard, and in doing so they had imbued a criminal conspiracy with real romantic grandeur – the noble, self-sacrificing spectacle of courageous young men rallying to the battle cry of their elders. “In doing this,” Kennedy wrote of the young men taking up arms for the Confederacy, “they have only demonstrated a noble and mistaken ardor proper to their age and temper, and which only needs a good cause to win all the applause to which they aspire. They prove to us how much we may depend upon their manhood when the country really requires their arm. But they, like many of their elders, are acting under a delusion.”<sup>77</sup>

To a beloved nephew who was eager to enlist in the Confederate army – Kennedy himself had no children – he was more blunt. “You are young, inexperienced, uninformed on these great questions of political right and duty, easily carried away by the sentiments of good nature and therefore – I do not say it disparagingly– easily duped.”<sup>78</sup> Ultimately, however, the bullying zeal of the secessionists severely tried and ultimately severed Kennedy’s affection for his erring friends, neighbors and family. He was willing to give all the indulgence “which is due to persons merely misled through want of reflection, or incapable of going right through weakness of mind, or easily imposed upon through ignorance, or hurried away by temperament and force of imagination.” But he could not forgive the cruel bullying, the “furious intolerance”

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<sup>76</sup> Kennedy to Edmund Pendleton, March 23, 1862.

<sup>77</sup> Kennedy, “The Great Drama,” 591.

<sup>78</sup> Kennedy to Edmund Pendleton, March 23, 1862.

of anyone who refused to surrender his judgment to the mad passion of the South. Kennedy was forced to leave his church, which was overwhelmingly secessionists. When Winthrop's daughter planned to visit him, Kennedy worried that he could not entertain her, as all the young and charming acquaintances he had once known in Baltimore now regarded him as an enemy. Though he never expressed any pain or mortification at losing so many warm friendships, the best treasure of a kind and genial man in his elderly years, there is no doubt that the wound went deeper than he could say. When Kennedy approached an old friend and neighbor in the street one morning, the friend waved him away curtly and said sternly, "No-sir, No-sir," as if he were a leper. "I replied, 'just as you please,'" Kennedy noted in his diary. "And passed on without a moment's pause."<sup>79</sup>

As the first year of the war drew to a close, Kennedy wrote to Winthrop that he longed to see his old friend, if only to show that "however these terrible discords may narrow the circle of friendly affection, the best, the wisest, and the truest are on our side." But he candidly admitted that his own social circle had diminished considerably. A few close friends, and the occasional army officer, were all he could rely upon for a dinner party. "The secessionists engross pretty nearly the whole of what is called the fashionable world here" he wrote, "and they seem to exult so much in the idea of their supremacy that they have voted our old fashioned loyalty to be absolutely vulgar and fancy themselves to be the true lineal descendants of the Cavaliers who claimed to be on the gentlemanly side of the English civil war. This assumption has had a curious effect of throwing a very considerable amount of snobbery into the rebellion, to grace its other virtues."<sup>80</sup> Throughout the sectional crisis and even during the early part of the war, Kennedy had been quick to notice and resent Northern arrogance and chauvinism. But after the

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<sup>79</sup> Kennedy, Diary, January 7, 1863.

<sup>80</sup> Kennedy to Winthrop, January 21, 1862.

first six months of the war these criticism almost entirely disappeared from his letters and journal. Indeed, the degree of forbearance in the North, the relative absence of personal hostilities that went beyond the political necessity of winning the war, seemed to Kennedy a remarkable contrast to his own section. The South had seemingly surrendered its one great virtue, the quality that had most endeared Kennedy to the land of his birth: Its genial good manners.

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Like everyone else in the North, Winthrop did not know what to make of the uproar from the South immediately following Lincoln's election. "For myself," he wrote to Kennedy in mid-November, "I am sometimes disposed to be very grave and then to laugh outright at these Carolina manifestations."<sup>81</sup> As Carolina prepared to secede from the Union, Boston society, as insular as ever, was roiled by a social feud "in which politics has been only a secondary element," according to Winthrop. Just before Lincoln's election, Prince Albert of Great Britain visited Boston on his tour of the United States. The Committee hosting a Ball for the Prince was accused of snubbing Governor Banks, a Republican, and the perceived insult had been "magnified and distorted by personal malice and party malignity until the Newspapers have teemed with imputations on the committee," Winthrop wrote.<sup>82</sup> That was the controversy preoccupying rarified circles in Boston at the outset of the greatest political crisis in the nation's history.

By mid-December, however, no one, least of all Winthrop, was inclined to laugh at the behavior of South Carolina and the other cotton states. But as the secession crisis took hold of the public mind, there was surprisingly little disagreement among the elite in Boston. "You

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<sup>81</sup> Winthrop to Kennedy, November 14, 1861.

<sup>82</sup> Winthrop to Kennedy, November 14, 1861.

would be surprised to see the indifference with which Boston Merchants, the worst conservative men in the community, look upon the question of the secession of the ‘cotton states,’” Henry Doolittle, a student at Harvard and the son of Wisconsin Senator James Doolittle, wrote to his father on November 28, 1860.<sup>83</sup> Charles Francis Adams and Charles Sumner, who were about to divide bitterly and personally in their strategies for meeting the crisis, both initially responded to the secession of the Deep South with the belief that the separation might be a blessing. Hardly anyone was inclined to defend the South’s latest outburst over the outcome of an election whose fairness no one contested. Instead, Bostonians divided over whether to sneer at the South’s oft-repeated bluff or whether to take them at their word and say “Good riddance!” Real alarm only began with a financial panic over Southern debt repudiations, provoking the first outspoken demands for compromise, and the timing only made the motives of conservative Unionists in Massachusetts seem even more cravenly venal than usual.<sup>84</sup>

Winthrop’s course in the secession crisis was a fitting climax to the ineffectual ambivalence that had plagued him throughout the decade, as his once towering influence diminished into helpless insignificance. “I dare not speculate on the future,” he wrote to Kennedy a few days before the new year of 1861. “We are drifting, drifting, drifting towards a gulf into which it is fearful to look down.”<sup>85</sup> As disunion became a reality, however, popular opinion in the North turned heavily against the Republicans, even in many strongly anti-slavery districts. In Boston, a city of 19,000 voters, 14,000 residents signed a petition demanding a compromise.<sup>86</sup> Working class mobs in the city became more unruly than ever before, breaking up abolitionist meetings, harassing African Americans and threatening Wendell Philips’s life. All honest

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<sup>83</sup> Henry Doolittle to James Doolittle, Doolittle Papers, Wisconsin Historical Society. November 28, 1860.

<sup>84</sup> See also, Thomas O’Connor, *Lords of the Loom: Cotton Whigs and the Coming of the Civil War* (New York, 1968), 143-153.

<sup>85</sup> Winthrop to Kennedy, Dec. 27, 1860.

<sup>86</sup> Donald, *Charles Sumner*, 1:369.

Republican politicians admitted that the public overwhelmingly favored compromise. But Winthrop was the last man in the world to rally this diffuse sentiment into a formidable attack on the newly triumphant party. He was temperamentally incapable of appealing to the popular passions that confer real power in politics. With public opinion temporarily behind him, Winthrop continued to lament the pernicious influence of that same public.

Avoiding all public statements, he and other Boston conservatives, like Edward Everett, met privately to discuss a possible strategy. Winthrop concluded that the best course was to do nothing at all. “Our little meeting at Everett’s left me with the impression that Bell and Everett Conservative men should for the present originate nothing,” he wrote to a friend in late December. “We should wait for the Republicans and should urge them to take the lead – reserving our action for a later day.”<sup>87</sup> He did not want to exploit the popular backlash against the Republicans, who had unanimously dismissed secession as a bluff before the election only to have the crisis erupt in earnest immediately afterward. What Winthrop wanted was to settle the question in the way all grave controversies ought to be settled, quietly and carefully, away from the intemperate roar of public opinion. “We refer all legal questions to eight or nine gentlemen sitting on a bench in black gowns,” he wrote to Kennedy. “Why not have a Supreme Political Court in the present emergency like the Supreme Judicial Court? I think the people would accept their decree if it were carefully considered by carefully selected men?”<sup>88</sup> *Careful* was Winthrop’s watchword during the crisis. And, however ineffectual, it is only fair to acknowledge that caution is hardly a contemptible impulse in a polity teetering on the brink of an inferno.

Winthrop’s reservations against the plan proposed by his Beacon Street friends early in the crisis were at least partly well founded. Their plan was twofold. First, request an opinion

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<sup>87</sup> Winthrop to Clifford, December 20, 1860.

<sup>88</sup> Winthrop to Kennedy, January 16, 1861.

from Judge Shaw and Benjamin R. Curtis on the Constitutionality of the Personal Liberty laws. George Ticknor, the Harvard professor and scholar of Spanish literature, was emphatic that no additional names should be sought for the opinion. “No others,” Winthrop reported him as saying, “would add any weight to such an opinion.” With the opinion of such leading authorities in hand, they would then organize a mass petition requesting the State legislature to repeal the Personal Liberty laws as unconstitutional. Winthrop was properly dubious of the scheme. “I could not keep from feeling that it would be in danger of being regarded as a Boston affair, a Beacon St. affair, a Curtis-clique affair, a Bell-Everett affair (names used for purposes of derision by others, not by me), and might prevent the very result we all desired to accomplish.”<sup>89</sup>

But this objection was only half right. The addresses and names behind the proposals from Beacon Street were less important than the substance and style of the proposals themselves. Repeal of the Personal Liberty laws followed an unimpeachably respectable logic: The Constitution was a legally binding compact, and all honorable men were obliged to uphold it in good faith. Though everyone in Massachusetts might deplore the Fugitive Slave Act, though they had every right to urge its repeal by Congress or even the Supreme Court, the state could not nullify a national law unilaterally. If Massachusetts expected South Carolina not to flout its constitutional obligations, then the Bay State ought to lead by example – as a “city upon a hill” as Winthrop’s ancestor had put it.

The appeal of this position, for Winthrop and his friends, was that it felt like a genuine stand on principle, rather than a craven concession to Southern threats. There was a crucial difference between actively supporting an unjust law and accepting the results of the Constitutional process. By way of example, the North had no right to demand that Southerners vote for Lincoln, and it would be a disgrace for a Southerner to vote against his own conscience

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<sup>89</sup> Winthrop to Clifford, December 20, 1860.

in fear of Northern belligerence. But whether to abide by the results of a lawful election was an entirely different question. The same distinction explains why Winthrop was uncomfortable with any compromise on the territorial issue, which would require active Northern votes in favor of a provision they could not honestly support, preferring instead to focus on an antislavery law he genuinely believed to be unconstitutional.

But honest common sense often makes its learned cousin, legal erudition, look ridiculous, and so it was in this case. The first and weightiest objection was that the personal liberty laws were irrelevant. No Southerner honestly cared a whit about the local laws on the books in Massachusetts. They cared about the antislavery platform of the party about to take control of the Federal government. So from a practical standpoint, repeal of the personal liberty laws was pointless. And however principled Winthrop's position may have seemed to some cultivated minds, untrained common sense had every reason to regard it as the ingenious, craven stupidity of which only intellectuals are capable. As Southern states seized federal forts and arsenals, oppressed loyal citizens, and ran headlong into civil war, Massachusetts would meet the crisis by repealing a law that merely protected some of their own citizens from being kidnapped and sold into slavery? Charles Sumner was correct to dismiss the proposals of the Beacon Street men as "mere wind – nothing better than a penny whistle in the tempest."<sup>90</sup> Winthrop recognized this himself but he saw no better alternative.

There was a *more effective* alternative, though Winthrop was not willing to consider it, still less to embrace it as a better option. All substantive differences between conservatives like Winthrop, and the Northern wing of the Democratic party led by Stephen Douglas, had disappeared by 1860. Yet the idea of an alliance between the two groups never occurred to him, and he would have spurned it if it had. As Kennedy predicted to Winthrop early on, the initial

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<sup>90</sup> Winthrop's Memorandum on a visit to Washington during the secession crisis, January 1861. Winthrop papers.

desire for reconciliation “will give way at last to anger.”<sup>91</sup> Only the Douglas democrats had an effective answer to the pull of sectional chauvinism: Racial chauvinism. The Republicans were traitors, allowing their country to drift to the brink of ruin over a perverse sentimentality for blacks.

And the Democrats rarely ever put it that nicely. Such rhetoric disgusted Winthrop, and he would not associate himself with it, even tacitly. But an alliance with Douglas Democrats in outspoken opposition to the Republicans represented his only real chance at reasserting some control over political events. Ironically, however, the very quality that alienated Winthrop from the Republicans also prevented him from making common cause with the Democratic opposition. He had objected to the intemperate style of the Republicans, without dissenting from their animating goal as a party. He now wished to goad the Republicans into a compromise but he was not willing to associate himself with the dishonest vilifications of men like Douglas in order to do so. Winthrop had friends in the Republican party, friends he cherished. He was not remotely willing to equate them with the traitors threatening to dissolve the Union. And the result was that his efforts to promote conciliation and peace were treated with polite condensation by his Republican friends in Washington.

Winthrop visited the Capital as a member of a Boston delegation urging compromise in mid-January. With the single exception of Charles Sumner, who blamed Winthrop for his ostracism from polite Boston society, leading Republican greeted him warmly without showing the slightest sympathy with his public agenda. Indeed, the only hostile personal response he and his friends received was from Seward, who sympathized with their agenda and was (one infers) irritated at the timidity with which they advocated it. “When I asked what could be done,” Winthrop recorded in his memorandum of the trip, Seward replied, “somewhat scornfully, ‘ask

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<sup>91</sup> Kennedy to Winthrop, Dec. 3, 1860.

Charles Sumner and others what they are willing to do' – implying unmistakably that the obstacles to some adjustment were to be apprehended from their quarter."<sup>92</sup> When another member of his delegation pressed Seward more closely for specific plans, the New York Senator – for the first time in Winthrop's experience – lost his temper and turned on his interrogator "with great harshness of tone and expression."<sup>93</sup>

Seward doubtless found it exasperating to have these conservative Unionists, free from all the restraints of his difficult official position, demanding a boldness from him that they were too timid to show themselves. Soon after Winthrop returned to Boston, Seward expressed this frustration more diplomatically while still giving his friend a polite shove in the back. "I almost wish I were free as you," Seward wrote. "Oh How I would wake up...the North and the South for the Union – Compromise or no Compromise, concession or no concession. It is a glorious theme – Union and Peace."<sup>94</sup>

But Winthrop remained fixed in the posture of painful ambivalence that had marked his course from the beginning of the sectional controversy. Samuel Vinton, a Whig from Ohio whose public career had stalled at the same time and for the same reasons as Winthrop's, wrote his friend an anguished letter from Washington, where he served as delegate at the peace convention, just before Lincoln's election. "I know very well that those bold men who are ready to see our glorious and sublime national edifice tumble to pieces laugh to scorn all such fears" as those expressed by men such as himself and Winthrop. "They look upon this whole class of men as old fogies, anti-diluvian fossils and wanting in 'back bone' as the phrase now goes." And in a sense this contempt was deserved. Vinton had long feared that the "moral power" to arrest secession "is wanting in the country," even though he had "no doubt that the great body of the

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<sup>92</sup> Winthrop, Memorandum, January 1861.

<sup>93</sup> Ibid.

<sup>94</sup> Seward to Winthrop, January 24, 1861.

people both North and South are at heart for the Union.”<sup>95</sup> The irony was that what the Republicans contemptuously called a want of backbone among men like Winthrop applied as much to his attitude toward themselves as to the South. He was marginalized not by a lack of conviction but by a refusal to choose decisively between imperfect options. As with Winthrop, so with the country writ-large: The strong pro-Union sentiment throughout the nation drifted aimlessly into separate sectional currents.

Less than two weeks after the bombardment on Fort Sumter, Winthrop’s wife, Laura, died, and the grief silenced him on all public questions, after his initial show of patriotic support, for the first few months of the war. In late May he wrote a few short letters apologizing to intimate friends for being unable to summon the energy to acknowledge their condolences until then. “You must not imagine, however, that I am abandoning myself to any selfish and unchristian sorrow,” he wrote to Kennedy. “I have the deepest faith in the goodness of God, and in his kind dealings with me and mine; and I have resolved (so far as nature will hold out) not to bear his chastisements impatiently or unworthily.”<sup>96</sup> The gentle piety of Winthrop’s religion was imbued with the same patient faith that marked his attitude toward the war, combining passive resignation and hope.

“I go, as you do, for a whole souled patriotism and for a vigorous defense of the Capital and the flag,” he wrote to Kennedy in June of 1861, “but I shrink from brutal ferocity which seems stimulated by so many politicians and so many pulpits.”<sup>97</sup> But he also admitted that he wrote “*invita Minerva*” – that is, without inspiration – and could not summon any enthusiasm for the cause that he knew to be just and necessary. To a close friend in Massachusetts, Winthrop described the fatalism that likely dampened his enthusiasm. “Is [the Union] to be preserved?” he

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<sup>95</sup> Samuel Vinton to Winthrop, March 1, 1861. Winthrop papers.

<sup>96</sup> Winthrop to Kennedy, May 16, 1861.

<sup>97</sup> Winthrop to Kennedy, June 29, 1861.

asked rhetorically late in the war's first summer, soon after the disaster of Bull Run. "I dare not feel too confident – I dare not feel too distrustful. The balance is held on high and it is too early for man to say which scale is to preponderate. We can do nothing but try the experiment fairly and fully ..."98 The bitter hatreds of the war expanded relentlessly with the scale of the conflict itself, and it became impossible to see how the old Union could be restored even if Northern armies triumphed. But since the surest way to end the war was to win it, there was nothing to do but fight it out and hope for the best.

### *III: "I could be a Republican Anywhere Except Massachusetts"*

The first year of the Civil War brought a significant change in the political friendship between Kennedy and Winthrop. Previously, Kennedy had believed that Winthrop underestimated the danger of Southern separatism and the depth of his region's sensitivity to perceived Northern insults. Winthrop, for his part, believed and argued that Kennedy underestimated the legitimacy and intensity of Northern grievances against the proslavery interest. The war reversed this dynamic. Instead of urging one another to be more conciliatory toward their respective sections, Kennedy and Winthrop now accused one another of being unduly naïve about the vicious chauvinism rampant in his own section.

In a characteristic complaint, Winthrop wrote Kennedy about a "miserable clamor...raised by a few bitter spirits" because he and a few other gentlemen had sent wine to some old friends who had been captured and raised money to provide overcoats for Confederate soldiers held in Union prisons. For these charitable efforts they were denounced in the newspapers and threatened with being imprisoned themselves as traitors. "It is a wretched policy

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<sup>98</sup> Winthrop to Nathan Clifford, Winthrop papers, August 24, 1861.

to treat our prisoners with indignity and inhumanity,” he wrote sensibly enough, “in view of the friends whom we all have at Richmond and elsewhere.”<sup>99</sup> Winthrop was not so naïve as to believe the war could be fought with fraternal love for the enemy, but the inevitable cruelties of the war were horrible enough without inflicting additional hardship that served no purpose save spite. “Language is often used which suggests rather the ferocity of a tribe of Apache Indians than the sentiments of an educated and self-respecting community,” he complained to Kennedy.<sup>100</sup>

As a critic of the Republican war effort, however, Winthrop was uncommonly temperate and fair; indeed he was generally more realistic in his criticism than many of Lincoln’s Republican allies in Congress. He realized that a rigid adherence to established Constitutional norms placed an impossible burden on the government in such a crisis. And his solution to the dilemma – the dilemma of defying the Constitution in order to save it – was admirably pragmatic: “[I]t will not do to ask too many Constitutional questions or to give too many Constitutional answers about such matters,” he wrote. “It is a dangerous moment for giving reasons. Men are apt to give general justifications for exceptional acts.”<sup>101</sup> Indeed, Winthrop’s early support of the administration was enough to make him a desirable asset to the Union cause. Seward sought out both Winthrop and Kennedy for an unofficial diplomatic mission to defend the Union cause among the ruling classes in France and England, though these plans were quietly dropped when the international crisis over the rebellion stabilized in early 1862.

Winthrop consistently judged Union policy toward slavery pragmatically, as a matter of military expediency in defeating the rebellion. Such a commonplace view hardly deserves to be singled out for either praise or censure. But to regard Winthrop’s occasional criticisms of

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<sup>99</sup> Winthrop to Kennedy, December 1861.

<sup>100</sup> Ibid.

<sup>101</sup> Winthrop to Clifford, August 24, 1861.

Republican antislavery policy as an expression of sympathy with slavery itself is simply ridiculous – a point worth stressing as he was representative of prickly New England conservatism more generally. He showed not a whit of fastidiousness toward confiscation as military policy, though he bitterly condemned efforts to transform the war into “an abolitionist crusade.” His response to the Emancipation Proclamation was essentially agnostic, free from dogmatism of either wishful thinking or reactionary foreboding. “I cannot anticipate any very favorable consequences from it,” he wrote to a European friend in October of 1862. “But I am bound, as a patriot, to abstain from injurious criticisms and so I am silent. I respond heartily to the President’s own remark to those who serenaded him soon after it was promulgated, ‘God grant I have made no mistake’! The results thus far have been better than I feared. No outbreak of opposition has come from the border states.”<sup>102</sup>

As these concerns suggest, Winthrop fixated on the problem of restoring the Union after victory, though he readily admitted that this problem must be deferred to the more immediate one of actually winning the war itself. “How can we ever bring back love among brethren,” he wrote to Kennedy in late December 1862, “to re-unite the scattered fragments of our unhappy land – that’s the question which must be solved, but which I fear is left quite out of the account by our madcap fanatics.”<sup>103</sup> By the end of 1862, it was clear that Northern victory would introduce new, unimaginably difficult problems, problems that could easily lead to an indefinite military despotism over the South. Though the slaveholders were undeniably responsible for thrusting this responsibility onto the Republicans, the fact remains: Fear of imposing a military despotism on others, even when necessary, hardly amounts to an aversion to liberty as such.

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<sup>102</sup> Winthrop to Count Circourt, October 29, 1862.

<sup>103</sup> Winthrop to Kennedy, December 30, 1862.

Writing to Winthrop in the spring of 1862, Stanley Vinton expressed his friend's fears as well as his own in worrying, "that when the national authority shall be re-established, the country will continue to be in a painful and perilous condition arising from the necessity, for at least during this generation, of maintaining the public tranquility in all the region now in revolt by an overwhelming military force. So far as that section of the country is concerned, ours will no longer be a government founded in the free will, consent and affections of the people."<sup>104</sup> Note, however, that there was no concern for the South laced within these forebodings. The fate of that region was sealed. The real fear, to paraphrase Edmund Burke, was that the makers of law in the South would become the breakers of law in the Union as a whole. And even this apprehension was not a reason to give up the terrible struggle. "But the troubles and perils that will follow the re-establishment of the national authority," Vinton continued, "great as they are in themselves, are of small magnitude compared to the dismemberment of the country – that greatest of all evils must be prevented at any cost and every sacrifice."<sup>105</sup>

For all of his conservative dismay at the collapse of the old Union, Winthrop anticipated Lincoln in seeing the hand of providence in the results. "It seems almost as if a mysterious providence had resolved to chastise us for our arrogance and presumption as a people, or for some other of our National sins, by preventing any early issue which could prevent us from applying the scourge thoroughly to our own backs," he wrote soon after the Emancipation Proclamation.<sup>106</sup> At the same time, however, he loathed those who presumed to act as the agents of God's wrath, and it was precisely this "arrogance and insolence" that he found so detestable in Charles Sumner. Winthrop expressed the distinction well in a private criticism of clergy who "mistake the character and object of a National Fast." A day of humiliation and prayer during the

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<sup>104</sup> Vinton to Winthrop, April 10, 1862.

<sup>105</sup> Ibid.

<sup>106</sup> Winthrop to Count Circourt, Oct. 29, 1862.

present calamity was no more an occasion for clergy to offer political disquisitions, he grumbled, than one during a cholera outbreak would be for medical advice from the pulpit. “The one great idea should be a nation on its knees, acknowledging its own sins, confessing the impotence of all human wisdom for such an emergency and imploring the Divine aid.”<sup>107</sup>

Winthrop’s only biographer, his son Robert Winthrop Jr, was an outright opponent of the Union war effort, and he often distorted his father’s views by conflating them with his own. As a result, the most surprising decision of Winthrop’s public career has been recorded as a much less dramatic departure than it really was. Winthrop was the most prestigious supporter of George McClellan’s candidacy in 1864, a decision that divided him from virtually all of his friends, including Kennedy, who rebuked him more sharply than ever before.

“I could be a Republican almost anywhere except in Massachusetts,” Winthrop wrote to Kennedy in explaining his opposition to the party in power in his own state. “In Maryland, I should certainly be one.”<sup>108</sup> Winthrop had always been opposed to the Sumner-wing of the Republican party in Massachusetts. So it was hardly surprising that he would pine for a chance to break up the coalition that had relegated him to the sidelines and made Sumner the leading voice on national affairs from their state. But Winthrop, like everyone else, was forced to choose between the political parties as they were, not as he would have them. Deplorable as some of Sumner’s excesses may have been, he did not speak for Lincoln or all Republicans, and the alternative was a party that countenanced rank treason. Since 1853, Winthrop had refused to choose between bad alternatives, grumbling at everyone and influencing no one. Desperate at this insignificance, Winthrop decided to register a blow against the party of Charles Sumner by pretending the Democratic party of 1864 was, finally, the Whigs reborn.

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<sup>107</sup> Cited in Robert C. Winthrop Jr., *Memoir of Robert C. Winthrop* (Boston, 1897), 219.

<sup>108</sup> Winthrop to Kennedy, November 3, 1863.

Toward Lincoln, Winthrop harbored no real criticisms. He had met with the President several times during the war, genuinely liked him personally and supported him politically. Though the two men were the same age, Winthrop's attitude toward Lincoln resembled that of a political elder, respectful but not admiring. During Lincoln's single term as a Whig Congressman, Winthrop presided as Speaker, having already served in the House for nearly a decade. And in that sense their political careers belonged to different generations. But Winthrop's was an appreciative and insightful reader of the President's writings during the war. He judged Lincoln's "Letter to Kentucky gentlemen" defending his record in early 1864 "one of his best efforts," as it has since become one of the most widely quoted.<sup>109</sup> And despite his bias in favor of the literary style of Beacon Street, Winthrop was far more impressed with Lincoln's contribution to the ceremony at Gettysburg than with the more highly touted performance of his friend Everett.<sup>110</sup> And yet, as the election of 1864 approached, Winthrop was convinced, as he explained to Kennedy, "that our only hope for restoration is a change of administration."<sup>111</sup> And so, after a lifetime of opposition, he publicly supported the Democratic party.

Winthrop, more than anyone, marveled at the strangeness of finding himself at the head of the Democratic electoral ticket in Massachusetts. Stranger still was the fact that one of his closest friends and political allies in Boston, Edward Everett, was at the head of the electoral ticket for the Republicans. As for the official platform of the Democratic party that nominated McClellan, Winthrop considered it a gross libel to associate the nominee with the unfortunate planks of his party. "Yes, my friends," Winthrop said at one Democratic rally, "if anybody is disposed to cavil with you about your platform, tell him that General McClellan has made his

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<sup>109</sup> Winthrop to Kennedy, April 30, 1864.

<sup>110</sup> Winthrop to Kennedy, November 21, 1863.

<sup>111</sup> Winthrop to Kennedy, September 1, 1864.

own platform, and that it is broad enough and comprehensive enough for every patriot in the land to stand upon.”<sup>112</sup>

Winthrop’s major address on behalf of McClellan was rather bland as a campaign effort, and yet it was the most widely circulated and influential pamphlet on the Democratic side. The reason was not because he produced the most eloquent or enthusiastic endorsement of the Democratic party’s agenda; on the contrary, he was the most creditable figure to reassure voters that a vote for McClellan was not a vote against the war, i.e. for peace at the price of disunion. In this, most of Winthrop’s baffled friends believed he was deluding himself, and, more dangerously, deluding the country.

In a long letter, Kennedy pleaded with Winthrop to reconsider. Diplomatically, he began by admitting that Lincoln was not a perfect candidate and that the combination supporting him contained several odious elements. If a party ticket could resurrect Henry Clay and put him in the White House, Kennedy would rejoice at the prospect. Failing that, “I should go with great alacrity into any honest combination which gives better hopes” than the Republicans, he wrote. But the Democratic party was not then an honest combination, and it gave false hope to all but traitors. The leading elements of the party at the nominating convention at Chicago were all active disunions led by those who had treacherously betrayed the country in the final months of Buchanan’s administration. “The nomination by such a body of men totally disables McClellan for useful service in this crisis even if he should be elected,” Kennedy wrote. The vice president on the ticket, and Kennedy’s cousin, George Pendleton, was “personally an unexceptional gentleman, but as much of a secessionist as Alex Stevens.” And finally, the party resolutions –

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<sup>112</sup> Winthrop, *Occasional Speeches and Essays*, 2:598.

which Winthrop himself could not defend – were “perfectly detestable – cowardly, false and treacherous.”<sup>113</sup>

As for Lincoln, Kennedy faulted him “more for his omissions than for what he has done or said. I certainly do not think he is a tyrant or at all likely to overthrow the government. My complaint is that he does not prosecute the war with vigor – that he is often much too lenient...” That there had been unjust arrests, Kennedy readily admitted, but these were less dangerous to the safety of the country than the many active traitors whom the administration had forbore to arrest. “Our freedom of speech and of the press are quite as luxuriant as the public good requires,” he wrote.<sup>114</sup> The difference between the two friends was not one of principle or even temperament but immediate perception. In Kennedy’s own city, only the firm grip of Federal power had prevented divided loyalties from erupting into constant violence. He recognized, from visceral experience, that the country was inescapably enmeshed in a power struggle, and that the violence would not stop until every recalcitrant rebel felt the irresistible authority of the general government. Whatever the faults of the Republicans, there was no safe alternative to them. The hope for a peaceful reconciliation was a delusion that emboldened the rebels and prolonged the bleeding.

Winthrop had no answer to Kennedy’s argument. But he had a few unanswerable points of his own. There were no traitors in Boston except in the inflated and tendentious sense that any opponent of a war is a traitor. Unlike men in Maryland or the other Border States, the young men of Massachusetts could return home without risk that the war would follow them to their own doorsteps. And yet anyone who questioned the war effort was indeed branded a traitor, a fact Winthrop took personally as it included his own son. “The turning point with me,” Winthrop

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<sup>113</sup> Kennedy to Winthrop, September 6, 1864.

<sup>114</sup> Ibid.

wrote to Kennedy, “was, I believe, the insolent tone of the Andrew and Sumner and Boutwell men towards all who could not find it in their consciences to support Lincoln. It roused me to an indignation I could not restrain.”<sup>115</sup> When George William Curtis, a genteel social writer and editor educated at Brook Farm, assailed Winthrop for his “political infidelity,” the incident inspired one of the few good jokes to be found in Winthrop’s letters. “The butterflies are all buzzing and attempting to pass themselves off as wasps,” he observed.<sup>116</sup>

Implicit in Winthrop’s indignation at this moral bullying was a more substantive objection to what the war had become. “Who is there wild enough to imagine that mere military triumphs can accomplish that great consummation of Union and peace, which is the devout wish and prayer of every patriotic heart?” Winthrop asked rhetorically in his most carefully prepared speech during the election. “Why, my friends, we may go on conquering month after month, and year after year; we may overcome armies, we may take possession of cities, we may strip and devastate whole territories and regions of country, we may make a solitude and call it peace; but the restoration of the old Union of our fathers, with all the States in their constitutional relations to the General Government, and all the stars upon the folds of our country’s flag, will require something more than any mere force of arms can effect.” As a trial of strength between the Southern Confederacy and the Union, the war was over in fall 1864. All hopes that the South might vindicate its independence militarily and negotiate the terms of separation from a position of strength had died months earlier. And yet the South kept fighting, suggesting a grim possibility that few in the North were willing to face: That this was no longer a war that *anyone* could win, that the deepening defeat, humiliation, impoverishment, and suffering imposed upon the South only hardened the grim resolve the North hoped thereby to break.

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<sup>115</sup> Winthrop to Kennedy, September 23, 1864.

<sup>116</sup> Winthrop to --, Oct. 12, 1864.

Winthrop was not ready to go quite that far with his argument. But the possibility was implicit in his belief that a change of administration was the likeliest way to end the war. His crucial premises were: That the Confederacy was in its death throes, that its demise would merely mark a new stage in the rebellion unless Southern “hearts and minds” were converted from rebellion to loyalty, that a policy of conciliation was more likely to succeed than brute force, and that, finally, the Republican party, a sectional coalition fattened by the spoils of power, was unlikely to restore the Union at the price of ending their supremacy over it.

“The truth is,” Winthrop declared, “that the Republican party have so thriven and fattened on this rebellion, and it has brought them such an overflowing harvest of power, patronage, offices, contracts and spoils, and they have become so enamored of the vast and overshadowing influence which belongs to an existing administration at such an hour, that they are in danger of forgetting that their country is bleeding and dying on their hands.”<sup>117</sup> A cynical love of power for its own sake was one reason the Republicans might subvert the very object for which they fought. Another, more valid, impediment to restoring the Union was the North’s hatred of white Southerners for causing the war, and the fear that they could never again be trusted with the Constitutional rights they had so diabolically abused in the interregnum between Lincoln’s election and inauguration. But if punishment and safety were the North’s only objects, they had long accomplished them. And finally, many Republicans, particularly in Winthrop’s region, did not want to see the Union restored without an immediate and total abolition of slavery.

Winthrop readily acknowledged that the motives of the Republican party, like those within any human heart, were an ineffably complex mixture of noble and base impulses. Only an intellectual would insist on simplifying a party that combined, so outspokenly and dramatically,

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<sup>117</sup> Winthrop, “The Presidential Election of 1864”, *Occasional Speeches and Essays*, 2:615.

“schemes of philanthropy on the one side...with schemes of confiscation, subjugation and extermination on the other,” as Winthrop put it. Whatever one may say of Winthrop, his opposition to the Republicans was prompted by an honorable conscience, the wary revulsion of one who saw the idealism of his city sated by the blood of mere boys.

Subsequent events showed that Winthrop had underestimated the extent to which support of the rebellion would dissolve with General Lee’s surrender, but that was hardly an outcome anyone could have confidently predicted in the fall of 1864. His other arguments were all perfectly valid; that the Republicans deserved to prevail is no reason to forget or distort the best objections to them. History simplified into a series of civics lessons is worse than useless; it eliminates the need for the two greatest virtues of political life, humility and moral courage, encouraging both hubris and cowardice with the delusion that the right side of history is obvious to all decent men, that it is ever possible to stand for what is right without risk of being wrong.

#### *IV: “We Have Made a New Era”*

One irony of the contested memory of Civil War is that, at the outset of the conflict, only the opponents of the Confederacy denied that the rebellion was caused by slavery. The leaders of the rebellion rarely bothered to mention anything else in justifying themselves. But many astute observers, North and South, recognized that much of the uproar was insincere demagoguery, a spurious crisis that political hucksters and frauds used to manipulate credulous voters. “Slavery, of itself and for itself, is not the cause of the Rebellion,” Kennedy wrote in one of his most famous pamphlets during the war.<sup>118</sup> It was, as the title of his essay put it, “a mere pretext.” Kennedy’s point did not deny – indeed, it took for granted – that slavery was a uniquely potent

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<sup>118</sup> Kennedy, “Slavery the Mere Pretext for the Rebellion” (Baltimore, 1863), 3.

source of division between North and South. No other “pretext” could have driven the South into rebellion.

But a dangerous tinder box does not preclude deliberate arson—quite the contrary, such structures virtually invite it. The South was likely to erupt in revolution at some point, but in 1861 it was driven over the precipice by manufactured grievances, false propaganda and outright electoral fraud. “I do not believe there was one intelligent, leading and thinking man in the South, when this rebellion broke out,” Kennedy wrote, “who imagined that slavery was in any kind of danger either from the action of the National Government or the State Governments; nor that it could be successfully assailed by the hostility that was exhibited against it in the public or private opinion of Northern society.”<sup>119</sup> The fact that the Confederate leaders rested their hopes on an alliance with Great Britain – the most powerful antislavery government on earth at the time, and a country with which the United States had nearly gone to war just two years earlier over its attempts to police the slave trade – dramatically illustrated the duplicity of the Southern cause. What, then, was the driving motive of those who had fomented this great crisis? Why did the arsonists strike the fateful match?

For Kennedy, all was explained in the hubris of the planter class. Their wounded pride, the madness of outrageous arrogance, had doomed them, and all who followed them, to a self-destructive frenzy at the first hiccup of disappointment, like every other corrupt despotism since the world began. The planters regarded the Republic as their own private glory, and they had presided over it almost without interruption since the Founding. They could barely stand to share this grand edifice with Yankees, and they preferred to burn it down rather than see those insufferable traders, artisans and religious fanatics become the predominate power in their

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<sup>119</sup> Ibid.

government. The rabid thirst for expansion, for a slave empire in the Latin America and elsewhere merely reflected their jealousy at the growing wealth and power of the North.

In a sense, this explanation replaced the particular causes of the American Civil War with universal ones – the motive Milton described in the rebellion that preceded man.

But Kennedy's explanation is crucial to understanding why many supporters of the Union, who had no interest in defending slavery and happily celebrated its destruction, were reluctant to strike at it directly in the early part of the war. If the majority in the South had been manipulated into the rebellion by dishonest propaganda, then the Confederacy was likely to implode with the lie on which it was built, and the national government would hardly make its work easier by turning Southern demagogues into prophets. "A grand stroke of statesmanship as the Radicals think!" Kennedy wrote sarcastically in his journal upon reading Lincoln's Emancipation Proclamation. "It is likely to prove, like every thing else of their glorification, to be only a new element of discord without practical advantage to any one but the enemy."<sup>120</sup> Kennedy invariably judged the actions of radicals and abolitionists by their effect on political opinion in his own section, correctly believing that they empowered the worst elements in the South.

Kennedy's attitude toward slavery was essentially an afterthought, a contingency dependent on the circumstances of the war; his views changed dramatically with the progress of events, but it would be fatuous to attribute this to "moral growth" or any other internal transformation of mind or heart. He was as consistent as it was possible to be in the social upheaval that surrounded him, and that meant adjusting intelligently to rapidly changing circumstances. Kennedy had always shared Henry Clay's and Thomas Jefferson's attitude toward slavery as a grave evil without an immediate solution. He had always detested the moral

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<sup>120</sup> Kennedy, Diary, January 2, 1863.

simplifications he found on both sides. As Kennedy pointed out, go beyond the venom and eloquence of proslavery fire-eaters and abolitionists and ask what they actually proposed to *do*—and one arrived at the same stupid conclusion, secession!<sup>121</sup> The potential dangers and difficulties in the way of emancipation were real enough – no true social revolution is undertaken without rashness and blind faith – but as the political insanity of the masters and the opportunism of the slaves swept the old order away, Kennedy’s opinion moved as easily, as gracefully, as a leaf upon a rushing river.

“We have made a new era in Maryland which will become very significant in the future history of our republic,” Kennedy wrote to a British friend in the final months of the war.

Our new constitution announced three doctrines of great value. That the allegiance of the people of Maryland is due to the nation and not to the State. 2. That all men have an indisputable right to the earnings of their own labor. 3 That slavery is not only a moral but a political sin, entitled to no compensation for its destruction and on that ground is forever abolished.

In the shadow of our politics and our traditional opinions, these are three great startling revelations, which heretofore, with all our clamorous pretension to free speech and thought, we of Maryland and the other states of the South could never even utter without fear of proscription.<sup>122</sup>

Kennedy himself had been a leading figure in abolishing slavery in Maryland before the 13<sup>th</sup> Amendment made freedom truly national. Even as he condemned Lincoln’s Emancipation Proclamation as counterproductive, Kennedy was trying to get his state to accept the Federal government’s offer of compensation for emancipation, arguing that it was the slaveholder’s best hope of avoiding an outright loss.<sup>123</sup> Emancipation with state compensation, however, proved a harder sell, politically, than simple abolition. Secessionists, having recognized that the tide had turned against them, were using compensation as a “specious stratagem” to undermine support

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<sup>121</sup> E.g. Kennedy, “Slavery the Mere Pretext for the Rebellion”

<sup>122</sup> Kennedy to Stanley, January 25, 1865.

<sup>123</sup> E.g. Kennedy, Journal, January 13, 1863.

for emancipation among voters who wanted to be rid of slavery but who were not about to tax themselves in order to support the wealthiest minority in the state, Kennedy observed in the spring of 1864.<sup>124</sup> To working class whites, already anxious about competing with former slaves for wages, this proposition was doubly irritating.

Kennedy therefore embraced the principle that slavery was not entitled to any compensation. It was an entirely characteristic shift. Political principles were subordinate to political purposes for Kennedy. He stressed the organic aspect of the law, its capacity to grow with the needs of the community. And he never scrupled to swell or shrink – or occasionally even discard – a venerated political principle to suit his purpose. No one detested South Carolina’s feverish abstractionists more than he. This made him an effective political writer – one of the best in an era crowded with brilliant writers – but it also made his writings seem deceptively shallow as a direct expression of political thought. Clever opportunism riddled his political writings with contradictions, but behind these lay a deeper coherence and consistency of public purpose.

Kennedy marveled at the abrupt change in public sentiment, and the ease with which Maryland had been able to cast off an evil that had blighted the state for centuries. “It is quite remarkable and very gratifying to see how promptly this state has accepted its new lot,” he wrote in January of 1865. “The change has produced much less derangement than many expected; the new legislation is busy upon the adjustment of the details necessary to the transition and every thing seems to work smoothly for a prosperous commencement of the system of free labor. Indeed, almost every man feels that a load has been take off his conscience and an impediment removed in the way of a great improvement in our domestic policy.”<sup>125</sup> Kennedy was a tepid

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<sup>124</sup> Kennedy, Diary, March 18, 1864.

<sup>125</sup> Kennedy to Baldwin, January 13, 1865.

supporter of Lincoln throughout the war, alternatively critical and complimentary, but his opinion rarely showed strong sentiment in either direction. Tellingly, his first expression of outright awe toward the President came upon reading and re-reading his Second Inaugural. “I think it the best address for such an occasion I have ever seen,” he wrote in his journal. “The latter half of it is exceedingly eloquent and it speaks the language of an earnest and thoughtful and wise Christian man...it breathes the purest sentiment of a charitable patriot who weights the great responsibility of this war in a just scale, and who is determined to do his duty...Mr. Lincoln is establishing his character as one of the ablest and best Presidents we have ever had.”<sup>126</sup>

Kennedy never recorded a reconsideration of his own famous novel of Southern plantation life. In a sense, there was no reason to think Kennedy would change the mixture of affection and criticism that colored his portrait of life at Swallow Barn. He was writing about the Virginia of his boyhood and youth, the society represented by Jefferson and Washington, which he always recalled affectionately and which he instinctively dissociated from the recent breeding ground of radicalism and treason. But he occasionally demonstrated how far the war had estranged his old affections for the Southern gentry. Attending a reading by Mrs. Bryan, a Northern author of stories that presented “a picture of the pleasant and amusing side of slavery,” the author of *Swallow Barn* complained that the entertainment was “flat and insipid...Her negro is immensely happy and jovial and his master the pink of benevolence.”<sup>127</sup>

Kennedy was a reverent heir of the whole edifice of custom bequeathed to his generation by their fathers. But he also understood that this peculiar heritage, like any other, was a mixture of trash and treasure, and that indiscriminate worship would rot the whole edifice. “In these

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<sup>126</sup> Kennedy, Journal, March 5, 1865.

<sup>127</sup> Kennedy, Journal, March 3, 1864.

relics of ancestral creations, we have the wisdom of the past as well as its follies; its severe studies and its solemn trifflings, its genius and its dullness; its clumsy invention and its fortunate discoveries; its arts, caprices, fancies; its mellow and thoughtful philosophy, its noble piety, its bigotry, intolerance and cruelty; its imperfect and groping scholarship; its immortal as well its mortal poetry; its empirical science; its superstition, witchcraft, dreams, omens and signs; its pageantry, symbolism and ostentation; – in short, its whole multitudinous and many-sided life.” The course of Southern history that culminated in the Confederacy, however, had betrayed the best of the past in a frenzied fetish of its worst element. “So long as [custom] is honest, I stand by and applaud,” Kennedy wrote.

It has a lawful rule over the ritual of social intercourse, wherein it devises our forms and ceremonies, assumes to regulate our dress, gait, manners, prescribes our amusements and adjusts our thousand points of habit and modes of getting through the smaller exigencies of our duties and pleasures. I yield it all honor without troubling my head by question of its absurdity or caprice. As a liegeman I obey. But when it comes to its tricks to cozen me out of my integrity, to palter with my truth or to hoodwink my conscience – I must be excused. In such cases I not only resist opinions that have grown into customs, but I strive also to prevent opinions which are already showing a tendency towards the same growth.<sup>128</sup>

Vague yet charmingly simple, this was Kennedy’s political philosophy, and he followed it nimbly through the revolution.

The greatest blessing of the rebellion, worth the awful price paid for it, was in furnishing “a test of the true from the false American,” Kennedy wrote in July, 1865. “It has proved to us that the slave holding interest of the country has never had – as a general truth – any sincere attachment to our republican government – that it was purely sectional and provisional – and not at all American in the distinctive sense of that word. That it is a low form of aristocracy – a

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<sup>128</sup> Kennedy, “Custom,” *At Home and Abroad: A Series of Essays with a Journal of Europe, 1867-1868* (New York, 1872), 97-102.

shabby aspirant for mean distinctions and class predominance.”<sup>129</sup> Before the war, Kennedy’s attitude toward slaveholders – as distinguished from the institution itself – was overwhelming sympathetic. They suffered from the inherited evil as much as anyone. But that pretense collapsed with the slave regime itself.

All serious moral judgments must take the context of a particular social order into account when considering the morality of its members. Everyone within the slave regime was trapped by the logic of the system; inhumanity on one side was as inescapable as servility on the other. And the fixed nature of the relationship acted like a shell for both parties, allowing inner decency and integrity to survive within the totalizing surface of human ownership. Of course, power over just how cruel and brutalizing the relationship would be was possessed exclusively by the master. Yet the whole social order lent the slaveholder a defensible alibi, transforming naked exploitation into the pretense of paternalism that at least some slaveholders sincerely upheld. The countless disadvantages against free blacks in every corner of American society, which only an exceptionally talented or lucky few could possibly overcome,<sup>130</sup> made the dominance of the planter class possible, but it felt, on an individual level, like an involuntarily acquired responsibility.<sup>131</sup> The seething hatred of many whites without slaves toward all blacks, free ones in particular; local and state governments that were neither willing nor able to protect an oppressed and vulnerable caste from a variety of predators, to say nothing of supplying a safety net to those denied a way to make a living – these circumstances allowed the wealthy

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<sup>129</sup> Kennedy, Journal, July 8, 1865.

<sup>130</sup> Lucky,” of course, in a sense relative to others in the same circumstances, just as we might describe someone who survived a deadly disease as “lucky.”

<sup>131</sup> That is precisely how Kennedy felt of his own personal experience as a slaveholder. He owned three slaves, all acquired through family rather than purchased. One, in his own telling, was a criminal, whom he sold. The other two, Matilda and John, a married couple, he liked and freed. A little more than a year after freeing them, however, the couple had contracted debts from a predatory lender who ultimately went to Kennedy to collect. “These poor blacks I fear will never be able to support themselves,” he wrote in his journal (this is in my notes for 1858, but I either failed to record the exact date or Kennedy did).

planter to assume the air of a feudal benefactor, offering protection in return for service.<sup>132</sup> Only the wrecking ball of war shattered this framework completely, overthrowing all romantic illusions of the class who presided over it.

Human nature submits patiently to that which is “in the nature of things,” Rousseau wrote, but not to the ill-will of other men. Nothing in life is more infuriating than a scowl; and almost any cruelty is endurable when baked seamlessly into the cake of custom. Kennedy always disapproved of slavery but he had never found it incompatible with good-humor and kindness among decent slaveholders, many of whom, as Frederick Law Olmstead also recorded, expressed genuine affection for “their people.” Travelling through the South after the war, however, Kennedy found a very different situation. The old power structure had collapsed, leaving only appalling malice in its place.

“In a casual conversation today with one of our fellow passengers today,” Kennedy noted in his journal while steaming down the Mississippi in December of 1865, “I was given another insight into this feeling of hatred for the negro who is set free by the war.” He had been talking with a former captain in the Confederate Army who had lost all but ten of the 43 men under his command. Like so many Kennedy encountered on this journey, the veteran was full of hatred towards blacks, casually mentioning his wish that they would all starve. He gave Kennedy a full account of how those in his neighborhood in Arkansas planned to “fix the niggers.” The scheme he outlined was essentially the sharecropping system that soon emerged, with its rapacious

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<sup>132</sup> Students who cannot see how structural racism operates in their own society could easily recognize it in the antebellum South, by showing them how even the best impulses of Southern whites were perverted, by the impenetrable social reality in which they lived, into truly sinister illusions. But that means acknowledging that such impulses were, in fact, decent. Otherwise the “structure” disappears and the student is left with the impression of crude cruelty and arrogance, which he or she already knew was bad. Show students how a perfectly kind and generous Southern planter expected loyalty from people he exploited as property, and such students, especially at elite Universities, might learn a valuable lesson about their own expectations of what is owed to them. But this would require treating slaveholders as ordinary human beings, with the usual mixture of cruel and kind impulses. Too many historians today are incapable of regarding them as anything but vicious devils.

aspects candidly and even enthusiastically emphasized. “I have reason to fear that this man was disclosing to me a scheme and a purpose which was conceived of by men of more power and influence than himself.”<sup>133</sup> No proposed scheme was worse than slavery, of course, but the oppression was now undeniably willful. It was not possible for Southerners to pretend to acquiesce reluctantly in “the nature of things.” The dilemma Jefferson had compared to a man holding a wolf by the ears was moot. The wolf was free, and though bravely assertive in his new freedom, he was a model of political civility next to the snarling malice of the class that had kept him in chains on the plea of self-defense.

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Because he was reacting to the pernicious revolution begun by the Confederacy, Kennedy’s political opinions moved in a self-consciously conservative current, albeit an astonishingly swift one. The war, he wrote in one of a series of essays on the constitutional implications of the rebellion, published between 1863 and 1865, proved that “the idea of restricting a government to a written constitution is a fallacy; that such a constitution is inevitably incapable of providing for the emergencies of national progress. The real constitution of a nation lies deeper than its visible ordinances – in the character, habits and customs of the people, which do not admit of a complete expression by instrument of writing. The written fundamental law provides only for what is foreseen, and is, therefore, but imperfect wisdom.” Kennedy was influenced in this view by Sidney Fisher, a Philadelphia lawyer whose monograph, *The Trial of the Constitution* presented a strong argument for the superior strength and flexibility of an organic constitution.

The party that had once been “uncompromising in denial of power to construct the Cumberland turnpike,” Kennedy continued, or even to pave Pennsylvania Avenue, was now the

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<sup>133</sup> Kennedy, Journal of a trip to Cuba, Dec. 12, 1865.

most active in demanding that the government build a railroad to the Pacific Ocean. Even without the catalyst of war, the old scrupulous adherence to the letter of the Constitution as the final word on what the government could do had been absurd, “not because the written law has changed, nor that it is discovered to admit of new meaning, but simply because it does not meet the exigencies of national growth... We thus insensibly get out of the trammels of a written constitution, by building upon it, through a series of accretions, a traditional constitution...”<sup>134</sup> The horrors of civil war were a necessary step in that progress. “No nation has ever reached its highest term of manifestation without a resort to the fierce arbitrament of the sword and many a field of blood. This seems to be the normal law of human society, by which it is ordained that Governments shall arrive at their greatest capability through a career of strife and suffering.”<sup>135</sup>

Kennedy’s essays on the rebellion demonstrate that he had made a careful study of the history of the Constitution. And the contrast between his essay and the *Federalist* papers is therefore striking. “It has been frequently remarked,” Hamilton wrote in the key sentence of the first *Federalist*, “that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.” Indeed, Kennedy’s essay on that same crucial question began with the same passive construction Hamilton used – “It has been often said that the idea of restricting Government to a written constitution is a fallacy,” he wrote.<sup>136</sup> Experience had proven that the Founders’ attempt to limit

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<sup>134</sup> Kennedy, *Mr. Ambrose’s Letters on the Rebellion* (New York, 20). The letters were originally published in *National Intelligencer* between 1863 and 1865.

<sup>135</sup> *Ibid.*, 20-21.

<sup>136</sup> Kennedy, *Letters on the Rebellion*, 17.

the government through written law was a failure; “all orderly government is manifested as a growth, and not merely as a formula.”<sup>137</sup>

And that growth, as Kennedy wrote these words, had been fantastic. The irony of the war years is that an antebellum conservative like Kennedy could adjust to the transformation in the Constitutional structure of the Union – in the unwritten substance underlying the formula – far more readily than most who then considered themselves radicals. He had never been particularly enamored with his country’s democratic experiment; he mocked its excesses and deplored the parochial localism on which it had traditionally depended. In the Jacksonian era, he had written the most stinging satire of American politics, a subject that inspired only pious boasting from most of his countrymen. He believed in good-government, but he merely tolerated self-government. And when the two became incompatible in his own section in 1861, he did not hesitate to make his choice.

Kennedy disliked the malicious demagoguery that proliferated in the North after the war, the destructive tendency of small politicians to curry favor by enflaming wounds that desperately needed healing. But he also saw that, under the circumstances, Northern public sentiment was remarkable for its forbearance toward the South. And however ugly the spirit of revenge might seem in that section, it paled in comparison to the smoldering hatreds among the vanquished. A strong national government would be necessary to restrain the South from its own worst impulses for a long time to come. He saw, without blinking, that the South had doomed the antebellum ideal of self-government with its insane and suicidal bid for self-determination.

In a fitting final appearance, a capstone to his long career of public service, Kennedy presided over the Maryland Republican Convention in the election of Ulysses Grant in 1868. He spoke for only a few minutes, but for a man born in the eighteenth century, he saw with

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<sup>137</sup> Ibid., 18.

remarkably prescient eyes the future secured by the war. He offered none of the old shibboleths of liberty and equality. Instead he marveled at the grandeur, the awesome wealth and power of the American Empire, “suddenly emerged from what [the world] regarded as a doubtful and undetermined destiny, into a paramount and predominant master State, peer to the proudest empires in Christendom, whose alliance is courted and whose influence is felt over the whole globe, whose word is almost a command and whose favor is a reward to be coveted in the diplomacy of nations.”<sup>138</sup> The precious experiment in liberty, the fragile hope of the world, had arisen from its death throes, a military giant more powerful than any the world had yet seen. As for the vanquished, Kennedy encouraged his fellow Southern to accept the results of the war and join the rest of the country “in that new pathway which Providence has ordained to be the line of our future march to the highest destiny of nations.”<sup>139</sup> And so Kennedy, that self-proclaimed “perfect cork,” happily bobbed along with the onward rushing stream toward the American century.

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Though 15 years younger than Kennedy, Winthrop always felt like the elder of the two.<sup>140</sup> He was proud of their friendship and believed that the more closely he and Kennedy were associated, “the more sure I shall be of going down to posterity in good company. I should be sorry to think that our friendship would not be known to those who come after us.” He therefore hated to think of their difference in age, lest “I should be doomed to too long a survival,” Winthrop wrote in 1859. The deaths of so many that he and Kennedy had “admired and loved are

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<sup>138</sup> Henry Theodore Tuckerman, *Life of John Pendleton Kennedy* (New York, 1872), 462-463.

<sup>139</sup> Cited in Winthrop, “John Pendleton Kennedy,” *Addresses and Speech on Various Occasions, 1869 – 1879* (Boston, 1879), 76.

<sup>140</sup> Winthrop to Kennedy, February 25, 1859.

too suggestive of what may happen to one who is only on the eve of his fiftieth birthday.”<sup>141</sup> As he reached that milestone, Winthrop only seemed to regret that he was still so far away from 70.

Winthrop endured until 1894, outliving almost every prominent Republican leader of his generation. Though younger than most members of Lincoln’s Cabinet, Winthrop’s greatest ambitions were entombed in the era the Republicans brought to a close. When Winthrop published another volume of collected writings in 1867, a reviewer marveled at the parochialism of such a prominent national figure, his emphasis on obscure village personalities and events. The effect, the reviewer noted, was such “as when some well-bred old gentleman strikes in a general conversation on descriptive anecdotes of his deceased aunt, whom we never had the happiness to meet. But when, the aunt being concluded, the old gentlemen proceeds to make a homily...on his first wife’ relations, all we can do is try not to laugh.”<sup>142</sup> Winthrop was not only amused by this mockery but cherished it as one of the best things ever written about him. A obsolescent old fogey was exactly what he felt himself to be. And though he had nearly 30 years left to live, the honor the reviewer accorded Winthrop was the one he most coveted. Placing him in the company of many illustrious dead Whigs, the reviewer suggested that Winthrop “might vie for the name of our Philopoemen – the last great American of the epoch just closed.”<sup>143</sup>

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<sup>141</sup> Ibid.

<sup>142</sup> This mockery immediately brings to mind Kennedy’s mockery of Frank Merriweather in *Swallow Barn*: “he manifestly seems to consider that a young man who has astonished a whole village in Virginia by the splendor of his talents, must, of course, be known throughout the United States.”

<sup>143</sup> Press Clipping in the Winthrop Papers. 1867. Winthrop notes that it came from the Round Table, a short-lived New York Weekly.

*Charles Eliot Norton, E.L. Godkin, and the New Creed of the Nation**I: "We Have Not Yet Secured a Moral Union"*

"[W]ho has seen clearest the nature of the new Union for which we are fighting?"

Charles Eliot Norton asked a friend in early 1863.<sup>1</sup> Norton, who was then preparing a series of lectures at Harvard "On some Characteristics of the Medieval Revival of Learning," was no one's idea of a politician.<sup>2</sup> Yet in the final years of the war he emerged at the center of a small circle of intellectuals, journalists and editors who subtly adapted the nation's political principles to the carnage and chaos of the sectional conflict. Though derided by later generations as the so-called "genteel tradition" – as effete, ineffectual elitists – the formative experience of that tradition was in helping to transform the war for the Union into a revolutionary moral crusade.

To list Norton's organizational and literary efforts from 1863 to 1868 is to identify several of the most influential voices of elite public opinion during those crucial years. Norton served as the editor of the New England chapter of the Loyal Publication Society, the largest engine of pro-Union propaganda organized during the war. In October 1863 he became the coeditor, along with James Russell Lowell, of the *North American Review*, the most prominent quarterly in America. "We hope to nationalize it," Norton explained to Charles Sumner, "& secure for it contributions that shall truly represent the best and most advanced thought of America on questions of politics & literature."<sup>3</sup> To help "nationalize" American thought and culture was not a new mission among intellectuals. As its name suggests, the *North American*

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<sup>1</sup> Sara Norton and M.A. DeWolfe Howe, eds. *Letters of Charles Eliot Norton* two vols. (Boston, 1913), 1:261.

<sup>2</sup> James Turner, *The Liberal Education of Charles Eliot Norton* (Baltimore, 1999), 180.

<sup>3</sup> Cited in Turner, Norton, 188.

*Review* had been founded for that same purpose in 1815, during the first burst of cultural nationalism that followed America's second war with Great Britain. But that nationalism, as Norton and countless other Americans recognized, had frayed and failed well before the Union collapsed in Civil War. A new nationalism, rooted in a new institutional, ideological and moral consensus, was needed if the Union was to endure. That much was obvious. But who, as Norton asked, saw its nature most clearly?

It was in organizing an entirely new weekly journal in 1865, significantly titled *The Nation*, that Norton came closest to identifying the answer to his question. The editor he chose for the project, Edwin Lawrence Godkin, quickly established himself as the most influential journalist in the country. "An Irishman of English ancestry," as he liked to describe himself, Godkin had lived in America for less than a decade when he was hired, a relatively unknown figure, as editor of *The Nation* and began building it into the preeminent political journal in the country. "To my generation," William James wrote, "Godkin's was certainly the towering influence in all thought concerning public affairs, and indirectly his influence has certainly been more pervasive than that of any other writer of the generation, for he influenced other writers who never quoted him, and determined the whole current of discussion."<sup>4</sup> "As the greatest role in the leadership of opinion in the generation preceding the Civil War had been played by Horace Greeley," Allan Nevins observed, echoing the judgment of James Ford Rhodes, "so the greatest single part in the next generation was with little doubt that of E.L. Godkin."<sup>5</sup> A profound irony, however, marked the beginning of this happy marriage of man and magazine, for Norton, as the priest who presided over the ceremony, knew full well that Godkin did not fully share his

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<sup>4</sup> *Letters of William James* two vols (Boston, 1920), 2:182.

<sup>5</sup> "Our two great journalists of the nineteenth century were Greeley and Godkin," Rhodes wrote. James Ford Rhodes, "Edwin Lawrence Godkin," in Rhodes, *Historical Essays* (New York, 1909) Nevins quote cited in William M. Armstrong, *E.L. Godkin: A Biography* (Albany, 1978), 125.

conviction on the fundamental question *The Nation* was established to promote – the enfranchisement of black Americans.

Initially financed by abolitionists, *The Nation* was envisioned by its original backers as a successor to *The Liberator*, a high-minded journal devoted to rethinking what the Northern abolitionist movement should become in the aftermath of emancipation. The problem was a serious one, for the war not only destroyed slavery, it also destroyed the political framework in which the abolitionists had operated. Disunion, uncompromising moral suasion, and even insurrection were the only viable instruments of emancipation available in the antebellum polity, and it was their willingness to embrace these means that distinguished abolitionists from all other antislavery Northerners. After the war, however, the next logical step in the abolitionist cause was inescapably embedded in the larger project of redefining the American polity as a whole. As Norton recognized, the effort to incorporate black citizens fully into “the American system of democracy” required a clear understanding of what that system would become as it emerged from a revolutionary civil war. The sharp moral thrust of the abolitionist agenda needed to broaden its intellectual focus to cover all aspects of postwar national politics. And it was for this reason that Norton, who was not associated with the antebellum abolitionist movement, was entrusted with organizing the editorial talent for the postwar abolitionist journal.<sup>6</sup>

In promoting Godkin as editor, Norton did not deliberately betray the original mission of *The Nation*, but he was guilty of willfully deceiving his financial backers, who expected the journal to champion the rights of black Americans above all else. Having edited a few of Godkin’s essays for *The North American Review*, Norton knew that passages he had refused to

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<sup>6</sup> The fullest scholarly account of the early founding of *The Nation* can be found in *William A. Armstrong, E.L. Godkin, A Biography* (Albany, 1978), 75 – 88. Armstrong’s account grossly understates Norton’s role in organizing *The Nation*, which is perhaps understandable in a biography. But Godkin, himself, both publicly and privately, credited Norton as the most important influence behind *The Nation*’s early survival and success.

publish – and over which the two men had privately argued – would have made Godkin totally unacceptable to his abolitionist backers. At the same time, Godkin’s talents as an editor were truly exceptional, and his willingness to advocate for the political and civil rights of the freedmen was sincere, even though his personal commitment to that cause was not. “It is well known that we go as far as the farthest in claiming for the black men of the South equality as citizens with the white men, subject to no other conditions or restrictions than such as apply impartially to all, white and black,” read one entirely characteristic editorial in 1865.<sup>7</sup>

But careful readers noticed, right from the beginning, that Godkin was not quite espousing the same political ideals that so many high-minded Northerners believed the war had vindicated, much as he might camouflage the difference. He diminished the traditional preoccupations of republicanism – of communal self-government – and gave utilitarian liberalism – of an impersonal state protecting the private rights of individual persons and property – a greater emphasis than ever before at the national level. In a sense, the difference was a small matter of emphasis. But in the swift current of a revolution, crowded with competing principles, small differences can move the whole stream of history.

Within a few months of the first issue, a number of the original backers of *The Nation*, led by George Stearns, waged a war to retake control of their journal. Stearns, in privately printed circulars, combined an amusing pair of grievances against Godkin – that he lied about his support of black racial equality, and – *and* – that he misrepresented his own ancestry belonging to that no-good, degenerate race, the Irish. The struggle was bruising on both sides, but Godkin’s ultimate triumph was almost absolute. Because the early editorial position of *The Nation* advocated all that an abolitionist could ask for, Godkin gave his critics little to attack but suspicions, though he would fully vindicate those suspicions in due time. In outwardly deferring

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<sup>7</sup> “Equal Protection for Whites and Blacks” *The Nation* December 7, 1865.

to a political ideology he did not share, Godkin helped turn an entire generation of high-minded intellectuals away from the earnest republicanism of the Civil War and toward the blinkered liberalism of the Gilded Age – of genteel opinions and stunted politics.

The division in the Garrison household over Reconstruction neatly captures *The Nation's* influence on Northern moral reform movements more generally. Wendell Phillips Garrison, the son of the great abolitionist editor, had more radical views on Reconstruction than his father at the end of the war. After becoming literary editor of *The Nation* in 1865, however, he gradually fell under Godkin's influence, and wholeheartedly defended the paper's mounting attacks on Reconstruction, much to the mortification of his father.<sup>8</sup>

The list of prominent intellectuals whose views on public questions were transformed by Godkin is a very long one. But his relationship with Norton is in some ways the most significant of all. It was Norton who made Godkin's tenure at *The Nation* possible, and it was Norton who was, at least initially, the senior intellectual partner. Their friendship provides a fascinating case study of an important strain of American political thought at the pivotal moment in its transition from the antebellum to the postbellum eras. The Civil War enlivened Norton's faith in the American Republic, renewing a belief that its defining principles, unfettered by the galling inconsistency of slavery, offered the greatest possible hope for the onward moral advancement of man. But this heady vision of progress was tragically backward looking in its aspirations. It was the promise of the old Union perfected. And the irony is that this idealism expired in the same stunning circumstances that reawakened it, a casualty of the war in which it achieved its most sublime expression. The Civil War convinced Norton that the ideals of the antebellum Union were not fatally compromised by slavery. But in this he was wrong, or, if he was not wrong, he and his generation failed to make it true. And in his failure to reconcile that earlier idealism to

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<sup>8</sup> James McPherson, *The Abolitionists Legacy* (Princeton, 1975), 37-40.

the challenges of victory, Norton gradually yielded his convictions to Godkin's – and reluctantly but decisively abandoned the moral commitments with which he had sanctified the blood of the nation.

Emancipation and racial equality were, of course, the central issues – the fulcrum on which the politics of the era turned. But American ideas on race and equality – whether Norton's, Godkin's or anyone else's – are only intelligible in relation to the broader system of cultural values and institutions that defined the polity as a whole. The story of Northern reformers' and intellectuals' evolving attitude toward Reconstruction has been told many times, and the version that became scholarly orthodoxy in the late nineteenth century was originally recorded more fully in the pages of *The Nation* than anywhere else. That story has since been interpreted and reinterpreted countless times – as a disillusionment with a cause grossly undermined by corruption and incompetence, as an abandonment of hard-won ideals and a betrayal of the men and women struggling to make those ideals a reality, as a pragmatic acceptance of the political limitations in any violent revolution, and as an inevitable adjustment to the mounting crises of the Northern industrial order.

There is, of course, some truth in all of these interpretations. The careers of Norton and Godkin, however, are especially striking examples of how all of these intellectual currents moved in relation to one another, channeled by a particular vision of the American polity, as events swept them along and dispersed them in the muddled terrain of the Gilded Age. In their different ways, Norton and Godkin, struggled to reconcile the communal ideal of enlightened self-government with the ideal of liberal individualism, and, at the same time, the promise of egalitarian democracy with the realities of state power and machine politics. No sudden reversal or abrupt change of principle marked their political outlook. Instead there was a gradual loss of

confidence in the powerful vision that brought all their contradictory commitments brilliantly together, and made it seem as though all that was best in the old order might be retained undiminished in the new.

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Born in 1827, Charles Eliot Norton was the son of Andrews Norton, a Unitarian minister and Harvard theology professor, who was also the most formidable critic of the Transcendentalist movement, along with its inspiration in German idealism, in favor of Lockean empiricism. Norton's maternal grandfather, Samuel Eliot, was a merchant who amassed a fortune after the Revolution and, at his passing in 1820, was rumored to have been "the richest man who has ever died in Boston." This double inheritance of shrewd business sense and brilliant erudition made Norton eminently typical of his class, for "the distinguishing characteristic of Boston's elite" as Norton's biographer has written, "was the melding, achieved to perhaps a unique degree in American history, of the lives of the mind and of the counting-house."<sup>9</sup> One might add that never before or since in American history has such an exacting sense of social responsibility been shown by elites enjoying such a modest degree of privilege.

Upon graduating from Harvard at age 18, Norton went to work as a clerk in the counting house of the firm Bullard and Lee, where, as he later recalled, he "used to freeze in winter and to roast in summer overseeing the warehousing of thousands of bags of Rio coffee, or thousands of bales of Calcutta hides; I had to run errands, to do work that even a Freshman would not expect to do. It was against the grain, but it had to be done, and I stuck it out, and am not sorry that I did so. I learned something of the world, and more of myself."<sup>10</sup> The work demanded careful attention to countless tedious but crucial details, accounting for every article of inventory down

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<sup>9</sup> Turner, *Charles Eliot Norton*, 6.

<sup>10</sup> Norton to George Woodbury, October 11, 1877. Norton and Howe, *Life and Letters of Charles Eliot Norton*, 2:73-74.

to the last coffee bag, managing insurance policies, and balancing account books. And yet these long days in the counting house did not prevent Norton from opening up an evening school of continuing education for men and boys who worked during the day. He also wrote long scholarly essays for the *North American Review* on topics as diverse as the poetry of Coleridge and efforts to supply the poor with decent housing.

During the winter of 1849, Norton spent his evenings in the counting house with Francis Parkman, helping him polish up his account of his journey to the far West, *The Oregon Trail*. The following spring, with Parkman's adventures fresh in his mind, Norton took his first and only overseas journey as a merchant, travelling to India aboard the *Milton*. During the ocean voyage of 102 days, Norton studied Indian history, and Mill's political economy; he read most of Gibbon and, fittingly, all of Milton's poetry. British policy in India appalled him as short-sighted and cruel, though he could not pretend to have much affection for the natives of that country. He concluded his business in India with an extended tour of Britain and the continent, returning home in the early 1851, a seasoned merchant and a budding scholar. He was 23 years old.

Norton's merchant career lasted a total of nine years, from 1846 to 1855. It coincided with the beginning of an economic boom that transformed global commerce, along with the role of both Boston and Norton's social class in that commerce. Railroads to the West and steamships on the Atlantic both undermined Boston's position in global trade. And the increased pace of travel and communication shattered the thick cultural framework that made a business career seem attractive to a man like Norton. A more energetic, frenetic pace of capitalism began to overwhelm the steady discipline of the counting house, and Boston's resistance to the change was measured by its declining significance relative to the heady economic growth of the country

as a whole. Men like Norton were pushed aside.<sup>11</sup> Though Norton himself was indelibly marked by the social and cultural traditions that began to unravel in his youth, his outlook was simultaneously molded by his experience with the forces transforming his world in the very moment that he adopted its ideals as his own. And his perception of Boston was a microcosm for what he saw happening to the antebellum polity writ large.

What Lincoln experienced in anguish, the horrifying corruption of the Republic he revered as sacred, Norton encountered with the sense of normalcy that usually accompanies one's first mature impressions of the world. "Our Republican robe is soiled, and trailed in the dust," Lincoln said in 1854, but Norton had never been in awe of the supposedly pristine version; the garment had always seemed a little shabby to his eyes. Norton was still in his teens when the United States invaded Mexico, which brought the first great tear in the fabric of antebellum nationalism. But that war, and the controversy around it, was just one example of tendencies that seemed to grow more and more glaring in the decade before the Civil War, a period of tremendous material prosperity and appalling moral and political decay. As a result, the perceived economic threat of democracy receded almost to the vanishing point as moral critiques acquired a visceral urgency from events. By the 1850s, the old fears of the federalists had been pretty well discredited by events. The majority in America did not threaten the wealthy, but it did threaten anyone who criticized slavery too harshly or, in the South, treated the institution as anything less than sacrosanct, while also bullying weaker countries and callously tolerating the alarming growth of poverty in Northern cities.

"It was the act of the majority which doomed Socrates to death," Norton wrote in a youthful attack on the democratic theories of the early 1850s. "It was the act of the majority

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<sup>11</sup> Under Norton's editorship, *The North American Review* of January, 1868 published an essay considering the sharp decline in Boston's relative importance from what it had been 30 years earlier.

which has established the present arbitrary ruler in France. Of all tyranny, that of the majority has been the most fearful.”<sup>12</sup> Among political philosophers, this was a simple truism when Norton wrote it. But its precise meaning inevitably changes with the intent of the author at a particular moment in time – on the nature of the majority he or she fears. Norton’s book has often been wrongly interpreted as a reactionary polemic against democratic government. In fact, however, Norton’s essay was a vigorous defense of American Whig principles then in danger of being abandoned, principles that were perfectly compatible with a faithful commitment to the nation’s democratic experiment. His target was not democracy *per se* but faith in democracy as an automatic solution the problem of political morality.

Slavery, Norton believed, was a symptom, not a cause, of the more fundamental problem of immorality in a political system accountable to no external authority except the moral sense of the community. But Norton also distrusted the abolitionists’ emphasis on individual moral catharsis, the spontaneous, ecstatic conversion, that he believed was as fickle in religion as in politics. To proclaim a moral truth is easy; but to realize it as a durable achievement over the selfish nature of man meant advancing civilization in the broadest sense. His response to John Brown’s famous raid at Harper’s Ferry was characteristic. “There has been no rhetoric or mere words in his talk,” Norton wrote admiringly. “We get up excitements easily enough, but they die away usually as quickly as they rose, beginning in rhetoric and ending in fireworks, but this was different. The heart of the people was fairly reached, and an impression has been made upon it which will be permanent, and produce results long hence.”<sup>13</sup> Brown’s example, he predicted, would do more “than all the anti-slavery tracts and novels that ever were written.”<sup>14</sup> And the

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<sup>12</sup> Charles Eliot Norton, *Considerations on Some Recent Social Theories* (Boston, 1853), 47.

<sup>13</sup> Norton, *Letters*, 197-198.

<sup>14</sup> *Ibid.*

glimmer of hope he found in Brown's example expanded into a sublime faith during the war that followed.

"We are not making war to reestablish an old order of things, but to set up a new one," Norton wrote in September of 1861.<sup>15</sup> Military victory, he believed, would be hollow unless achieved as the fruit of a long, grinding struggle through which the nation would come to a new sense of itself. "We are not to expect or hope for a speedy return of what is called prosperity; but we are greatly and abundantly prosperous, if we succeed in extending and establishing the principles which alone can give dignity and value to national or individual life, and without which, material abundance, success in trade, and increase of wealth are evidences rather of the decline than of the progress of a state." Each military defeat seemed to strengthen Norton's faith. "The harder the war is for us the better it is for the negro. We are not yet worthy of peace," he wrote privately during the bleakest phase of the Union war effort in the spring of 1863.<sup>16</sup>

Norton believed the war represented a repudiation of the heedless individualism that had diminished the American ideal of liberty until it meant little more than the mere animal aspiration for comfort, security and survival. The great struggle was bringing Americans to "a juster sense than they before possessed of the value of individual life...Men are nothing in the count – man is everything." The great advantage America enjoyed over Europe – its material abundance – Norton counted as a curse, fostering a narrow selfishness and crude materialism that had all but blinded the country to the higher obligations of justice. The horrendous suffering of the war, however, proved "that the crimes, the wrongs, the miseries which deface the ideal of our state, – the inherited errors of the past, the selfishness of materialism, the mass of ignorance, the corruption of politics, the atrocities of slavery, – that these and all else of evil in their train were

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<sup>15</sup> "The Advantages of Defeat," *The Atlantic Monthly*, September, 1861.

<sup>16</sup> Norton to George William Curtis, April 13, 1863.

capable of removal, were not natural and inherent results of our system...<sup>17</sup> The war, in other words, had proven that the doctrine “all men are created equal” could be extended from the realm of religion and morals into a workable system of politics. Equality, in this sense, did not mean all men have an equal right to be protected by a liberal state. Indeed, it meant precisely the opposite – that all men have an equal capacity to govern in accordance with the highest ideals of their civilization. “Our ideal commonwealth” Norton wrote, “rests upon the foundation of individual morality, and its form is determined not by external authority or theoretical considerations, but by the moral sense of its members, and their capacity for self-control as determined by their moral civilization.”<sup>18</sup>

The crucial aspect of this ideal, the element that distinguished it from classical liberalism, was the denial of an external authority even to protect the individual. Personal freedom and political freedom were fundamentally related in Norton’s thought. The state withered away among the voluntary collaboration of enlightened equals. The fear, which the antebellum experience almost seemed to confirm, was that this ideal was self-negating: The practice of equality contradicts the moral principle; a society devolves into a chaotic, selfish scramble as its members are absolved of any obligation to an external structure of authority. But the Civil War, to Norton, presented the galvanizing spectacle of an egalitarian society voluntarily expending blood and treasure in defense of its own animating ideal. Though initially dismissive of President Lincoln, Norton gradually saw his public statements as one of the most hopeful signs of the new order coming into being. As “arguments seriously addressed by one in power to the conscience and reason of the citizens of the commonwealth,” Norton marveled, Lincoln’s public statements

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<sup>17</sup> Norton, “American Political Ideas,” *North American Review*, October 1865.

<sup>18</sup> Norton, “Sir Alexander Grant’s Ethics of Aristotle” *The Nation*, August 6, 1866.

were “permanent precedents – examples of the possibility of the co-existence of a strong government with entire and immediate dependence upon and direct appeal to the people.”<sup>19</sup>

Norton’s optimism, however naïve, did not rest on a willful obliviousness to the facts that complicated his hopeful view of the war effort. He himself worried occasionally whether “we are not going on too fast toward despotism?” as he wrote to a friend in 1862.<sup>20</sup> One of Norton’s closest confidants, the English cultural critic John Ruskin, whom he admired as much as any of his contemporaries, scolded him harshly about the war. “The miserable idiocy of the whole has been your mixing up a fight for dominion – (the most insolent and tyrannical – and the worst conducted, – in all history) – with a *soi disant* fight for liberty” Ruskin wrote in 1863. “If you want the slaves to go free – let their masters go free first,” Ruskin suggested, and then fight the pure cause of emancipation untainted by the motive of conquest. “But you know perfectly well no fight could be got up on those terms.”<sup>21</sup> A year later, during the most violent summer of the war, Ruskin wrote a short, bitter note ending his friendship with Norton in disgust over his support for the Northern cause. “It is just as if I saw you washing your hands in blood, and whistling – and sentimentalizing to me – I know you don’t know what you are about and are just as good and dear as ever – but I simply can’t write to you while you are living peaceably in Bedlam.”<sup>22</sup> Such a letter – and such a cruel image – from a friend Norton had considered almost as a mentor, must have cut as deep as any single letter could. But it did not change his view of the war.

In his most elaborate meditation on the historical significance of the war, published in the autumn of 1865, Norton observed that “the State” had acquired a new meaning in American

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<sup>19</sup> Norton to George William Curtis, Curtis Papers. September 3, 1863.

<sup>20</sup> Norton to Curtis, March 1, 1862.

<sup>21</sup> John Ruskin to Charles Eliot Norton, 10 February, 1863. John Bradley and Ian Ousby ed., *The Correspondence of John Ruskin and Charles Eliot Norton* (Cambridge, 1987), 75.

<sup>22</sup> Ruskin to Norton, 6 August, 1864. *Ibid.*, 80.

politics. “Hitherto, in political speculation, the state has been regarded as something apart from the people, or as embracing the people as one only of its elements. It has been considered as an abstract of the governmental institutions and political organization of any given country. But in this democracy of the New World the people constitute the state, its limits are defined by those of their moral co-operation; and the American idea of the state includes potential independence of institutions of government.” Unlike European political institutions, American governments, according to Norton, made no claim to authority except as an expression of the people’s right to govern themselves, a right they expressly maintained outside of the legalized forms of established institutions. “The most vital fact of American politics, the great, and historically considered, the new result that we have reached, is the establishment of a political system in which the government is subordinate to the moral order of a civilized community.”<sup>23</sup>

This was, to put it mildly, not a particularly helpful point to emphasize at the onset of Reconstruction. Norton even identified “vigilance committees and lynch courts” as characteristic examples of “extra-governmental” institutions. Though admittedly crude and prone to abuse, “These courts and committees are empowered by an authority which is no other than the moral sense of the community, and their work is to carry this moral sense or opinion into effect.” Norton was not endorsing the Ku Klux Klan or racist lynch mobs, which were the expressions of an antithetical and immoral community. But he somehow did not see, or did not acknowledge, the contradiction between the political principle he celebrated and the task of subduing and civilizing the barbarous South.

“We have secured a territorial Union, we have secured a geographical unity of the States, but we have not secured as yet a moral Union, a civil unity; we have the harder part of our task before us,” he acknowledged. The territorial Union between North and South made a moral

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<sup>23</sup> Norton, “American Political Ideas,” *North American Review*, October 1865.

Union necessary and even inevitable: “One must take the likeness of the other.” Having conquered the South, the North had the power, the right and thus the obligation “to impose those conditions on the Southern people which are requisite for the preservation, continuance and progress of the moral order of that community of which they and we form parts.” What the conquerors imposed, however, was not tyranny but liberty.

We have to insist on the political equality of all men, on the removal of all arbitrary distinctions in defining the political privileges of individuals, on a perfect equality of men in their relation to the community as members of its political organization. We have to insist on the right of every man to be equal to any other man. Strange it is to see conquerors compelling the conquered to take blessings at their hands!<sup>24</sup>

The problem was that this forced Norton to affirm and deny the same principle in the same breath. The principle of political equality denies that any individual or group has the right or capacity to others for their own welfare. Coercion is a legitimate means of self-defense but not of improvement. European despotism had proven so resilient, Norton observed, because it had taught the people “to rely upon another power than their own – to seek for aid from the state; instead of to help themselves; they had been taught dependence and cannot at once spring to independence.”<sup>25</sup> The promise of American society, Norton believed, was in placing civilization on the truer and more equitable basis of voluntary cooperation rather than the superior force of some over others. But the question of how to impose this blessing on the South by means of a military occupation involved an obvious paradox that he failed to confront.

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<sup>24</sup> Norton, “American Political Ideas,” *North American Review*, October 1865.

<sup>25</sup> Norton, *Recent Social Theories*, 126.

## II: "The Constitution and Its Defects"

Norton was a cultural critic, perhaps the most erudite and influential America has ever produced. And though he thought deeply and profoundly on the relationship between culture and democracy, he was not a political theorist, much less a practical politician. All of his writings on American politics contain virtually nothing on the actual instruments of government. But he also had a critic's keen eye for talented writers on subjects about which he himself was not an expert. A study of the young talent he harnessed in revitalizing the *North American Review* would be a worthwhile project in itself. William Dean Howells, John Fiske, Henry James, Charles Francis Adams, Henry Adams, and Chauncey Wright all published some of their earliest work under Norton's mentorship. But never was this discernment more evident than in Norton's cultivation of E.L. Godkin.<sup>26</sup>

"It is plain that we are to have if not great changes to the Constitution itself, great changes in the interpretation of it, in the manner of regarding it," Norton wrote to Godkin in early March, 1864. "I think this ought to be plainly stated, and that there should be a clear recognition of the fact that this is the result not of anything to be regretted but of the growth and progress of the nation. Behind the Constitution lies the nation, with its new social needs and moral convictions which will find expression." For Norton, the Constitution was an authentic but imperfect expression of a deeper American political creed. And so he did not consider the changes prompted by the war to be a revolutionary departure. Indeed, the Revolution itself was, for Norton, merely a stage in the organic development of American society from its earliest foundations at Plymouth (not, of course, Jamestown) into the present. A Constitution, he wrote to

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<sup>26</sup> James Russell Lowell was technically co-editor but all the real work fell to Norton. Though James Parton had already written several successful biographies, Norton published several terrific essays by him, elevating his reputation as a scholar even if it did little to add to his popularity as a writer.

Godkin, could only persist if it showed “a power within itself of adaptation to the needs of the nation. The main question then is how to use and how to develop this intrinsic power – with least injury to the form of the instrument and with least shock to its authority.”<sup>27</sup>

The country faced no more momentous question in the spring of 1864. But legal scholars were of no use answering it because they “have assumed, and our people have consented to believe, that the Constitution was more sacred than the principles which gave worth to it.”<sup>28</sup> And so he tasked Godkin with answering the question in the *North American Review*.

Godkin’s immigrant background made him an unlikely but inspired choice for the assignment. Perhaps inevitably, an outsider is best able to adapt his mind to revolutionary circumstances. Like most European liberals, he was intimately familiar with American political history without the entrenched convictions of a citizen rooted in the old order. His knowledge of the antebellum Constitutional history was unclouded by the visceral passions of one who had lived it, and so he was able to expound a new nationalist outlook unencumbered by any personal stake in the order being swept away. He saw the situation with fresh eyes, undeluded by the exaggerated hopes and fears of those who felt their world being transformed.

Godkin began his essay by marveling at how quickly the Constitution, from its tumultuous and hotly contested origins, became sacrosanct, “held up to the gaze of the world as a final result, which required no modification, and to which coming generations would have to adapt themselves, not it to them.” He then astutely, if somewhat superficially, described two important sources of this unqualified reverence. The first was the assumption, which even the most ardent antebellum nationalist had tacitly accepted, that the Union was, in some sense, a compact involving distinct political entities, and that any criticism of that compact was therefore

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<sup>27</sup> Norton to Godkin, Godkin Papers. Houghton Library, Harvard University. March 11, 1864.

<sup>28</sup> Ibid.

a criticism of the Union itself. The precise nature of the compact was, of course, bitterly contested, but the basic premise was so universal that it amounted to an accepted rule of political discourse. Just as any word can evolve to convey more than its literal meaning – automatically signaling a set of intense beliefs with which it is associated by convention but not necessarily by logic – in this way, any criticism leveled at the Constitution had signaled disapproval of the Union itself. All nationalist reformers, therefore, were compelled to frame their criticisms as a real or imagined deviation from the work of the Founders, demanding not to improve, but to restore, the Constitution to its pristine beginnings. Restoration as a political theme has hardly disappeared since the Civil War. The crucial difference, however, is that before the Civil War it was impossible to urge *nationalist* reforms *in any other terms*. At the state and municipal level, reforms did not have to meet this test. One could argue for the prohibition of alcohol – to give one example – without bothering to prove that the Founders had intended to do it too. So long as Americans regarded the Union as a voluntary compact defined by the Constitution, its provisions could not be criticized without being tacitly rejected.<sup>29</sup>

Another source of American constitutionalism was an ancient inheritance from the English political tradition, which Godkin identified as a defining characteristic of the Anglo-Saxon people. Despising the abstract philosophies that so enraptured the typical Frenchman, the Anglo-Saxon succumbed instead to a blind reverence for established institutions. “The English submission to a legalized abuse for the simple reason that it is old, bear all the marks of a degrading superstition,” Godkin wrote.

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<sup>29</sup> Godkin, “The Constitution, and its Defects,” *North American Review* (July, 1864). Because this point strikes me as significant, I have elaborated on an observation made rather more summarily. And I’ve also anticipated two objections that he himself did not include – i.e. on the difference between state level reforms and the difference between restoration as a political theme after the Civil War.

The combined effect of these cultural and institutional influences, Godkin continued, helped account for “the fatal facility we have shown in erecting an artificial standard of right and wrong, and in allowing it to shut out from our gaze all the higher criteria of political conduct furnished by abstract justice and truth.” By itself, this was hardly a novel observation; abolitionist had said as much for at least a generation. Though he acknowledged that the abolitionists had been the singular exception to the nation’s moral myopia under the Constitution, Godkin was far from endorsing their point-of-view:

During a long period the work of testing the morality of national legislation by the application of fundamental principles was abandoned by the leading minds of the country, and fell into the hands of the Abolitionists, – a body which, admirable as its aims have been, has had too narrow a field of vision, and been too deficient in the art of practical application, and had too little national feeling, to make its utterances on general politics of much value. In the eyes of most of those who should have been the lights of the community on questions of government, the Federal Constitution gradually, and we believe imperceptibly, became a final rule of right, behind which there was nothing to which good citizens were called upon to look for guidance.

With these two sentences, Godkin expressed a crucial change in American political thought, a sudden fusion of two arguments that had been as incompatible as oil and water throughout the antebellum period. The first sentence exactly expressed respectable Northern opinion about the abolitionist movement; the second sentence exactly expressed the abolitionists’ attitude toward respectable opinion. Each had been a condemnation of the other. And yet here was Godkin endorsing both in the same breath. No new insight allowed these antitheses to coalesce into a new national synthesis. Instead, Godkin cut the Gordian knot by simply ignoring what all sides in the antebellum debate had taken for granted – that the Union was a voluntary association and the Constitution its basis. The abolitionists were not lacking in national feeling – they rejected that feeling altogether. Garrison’s rallying cry – “No Union with Slaveholders!” – meant just that: Dissociation from a foreign, antagonistic social system. They were not “deficient

in the art of practical application” because they never claimed either the power or the authority to end slavery by direct political means. They championed abolition by moral example, not by coercion.

The same distortion marked Godkin’s mischaracterization of antebellum Unionists. The Constitution was not the final rule of right, but it *was* the final rule of what the government, based on the consent of the governed, had a right to *do*. The Constitution’s silence on slavery left no one uncertain about the morality of the institution. And their deference to the strict limits on the powers conferred on the Federal government rested on a principled aversion to arbitrary power, and did not imply any approval of slavery itself.

Both the abolitionists’ and Unionists’ critiques of one another were valid on their own terms: The mere fact that the Union conferred no legitimate power to end slavery did not eliminate Northern complicity in the evil institution. Lacking the legal authority to end slavery did not absolve Northerners for cravenly accepting slaveholders as partners in a shared government. And the abolitionists, in rejecting the Union, would have rejected the tremendous blessings that the Union afforded – namely, peace, prosperity and security – without ending slavery or even eliminating their society’s fundamental complicity in it, which reached beyond formal political association to the shared culture, history and commerce of English settlement in the Atlantic World. By 1864, however, both these critiques were equally misguided; both rested on obsolescent premises.

Significantly, Godkin did not limit his criticism of the Constitution to slavery – that, indeed, had been the shortcoming of the abolitionists. The effect of Constitution-worship had also effectively prohibited “all vigorous exploration in the field of legislative science. For a half a century or more the study of it has been all but entirely neglected by the best minds at the

North.” Only South Carolina, in John Calhoun, had produced a political leader willing and able to approach the Constitution in the same innovative, philosophical spirit as the men who had framed it. The rest of the country had produced only Constitutional lawyers, who, however brilliant at expounding the organic law, were not able to probe beyond it and think creatively about how to adapt the animating principles of their government to new circumstances.

Having advanced so far in his critique of the Constitution, Godkin then pivoted to acknowledge that the country had, in fact, been rife with political innovations – some fruitful, some rash and some downright dangerous. But all of this creative energy had been channeled into innovations at the state level. Godkin not only acknowledged this tendency but denounced its excesses. And so, in the same essay, he condemned his adopted country for its abject ancestor worship, its habit of blindly submitting to the rule of the past, *and* for heedlessly overturning established institutions. “[T]he vast changes which have been made during the last forty years in the Constitutions of the great majority of the States” were all rough-hewn and poorly considered, he complained. Local democratic whims had made “the course of legislation as erratic as a butterfly,” and plainly he did not think these experiments had any value in teaching a people how to govern themselves. “The law of marriage and divorce, the law of inheritance, the law of debt, the law of real estate, the law of corporations, matters of the first importance to society, are changed and rechanged, as if a fixed policy were a thing neither to be expected or desired.”<sup>30</sup>

Federalism allowed these extremes to coexist, and Godkin was not being inconsistent in condemning both Federal torpor and local dynamism. The strict Constitutional limits on the authority of the general government, and the near universal respect for those limits, allowed local

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<sup>30</sup> Norton, a Dante scholar and translator, likely thought of his favorite poet’s criticism of his own commune in the *Divine Comedy*: “What you weave in October doesn’t last to mid-November. How often you have changed laws, coinage, offices, usage and renovated every part!...you are like a sick woman who can find no relief in bed but keeps turning so as to free herself from pain!” Cited in Lauro Martines, *Power and Imagination: City States in Renaissance Italy* (New York, 1979), 129.

democracy to flourish, and Godkin was no democrat. Politics in the Northern states was driven by “the pressure of the democratic tide, which has been rising steadily here as in Europe, ever since the French Revolution.” The belief that sovereignty emanates upward from the people, and thus that every level of government ought to retain exclusive authority over its own affairs, had produced rampant corruption and licentiousness locally and disintegration nationally. “A common regard for our own safety would seem to require, therefore, that the division of power between the State and central governments should now undergo careful revision, and that it should be redistributed under the guidance of that experience of our wants and dangers which we have derived from the history of the last eighty years.”

That the country had more to fear from centrifugal than from centripetal forces, from the chaos of disintegration than from the despotism of consolidation, was a hard conclusion for anyone loyal to the Union to avoid after 1861. From the beginning of the war, it was the underlying premise of all significant Republican policies. But Godkin’s essay was still a striking example of how the pressure of the war, and the immediate problems of secession and slavery, were transforming how Americans thought about their government as whole. Not just the organization and distribution of political power, but the animating ideals that the Republic was meant to secure and express, the very meaning of freedom, was changing. Godkin anticipated and expressed these changes more clearly than almost anyone. He understood the difference between personal and political liberty, and he did not hesitate to state his preference. “Nations have been free under monarchies, as well as republics,” he wrote. Liberty, for Godkin, meant a government that protected the private rights of individuals. It was liberty defined by liberalism, not the political liberty of republican self-government.

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Godkin's essay was not intended as a repudiation of democracy. But his essay announced a dramatic shift in emphasis, signaling a new *summum bonum* by which the American Republic would measure itself. "My Dear Norton," Godkin wrote in the glow of success from his essay on the Constitution, "I propose...a paper of which my brain is rather full...It would be a criticism on all the delusions, – as a I conceive them to be—current at present both amongst democrats and aristocrats here and in Europe, as to the real nature, requirements, and consequences of a democratic form of government."<sup>31</sup> Squeezing this grand subject into a single essay overwhelmed even Godkin's immodest gifts, and so he divided the topic into two essays – the first covering the errors made by the enemies of democracy; the second those made by its friends.<sup>32</sup>

Godkin's primary criticism of aristocratic interpretations of America, especially Alexis de Tocqueville's, was that they attributed to democracy tendencies that actually belonged to the influence of the frontier on American society. It was not the American Revolution but the influence Western frontier that transformed American society into an egalitarian social order. Whatever might be said of the doctrine announced in the Declaration of Independence, "we do not find much trace of its influence in the legislation of the various States for some time afterwards; not, in fact, until the settlement of the West had begun to develop a fresh type of character and brought entirely new influences to bear on the work of government," Godkin wrote. "When the theory had, by force of circumstances, been embodied in the actual social condition of the new States, it speedily began to show itself in the legislation of the older

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<sup>31</sup> Godkin to Norton, 12 October, 1864. Cited in *The Gilded Age Letters of E.L. Godkin* William Armstrong, ed. (Albany, 1974), 15.

<sup>32</sup> Godkin, "Aristocratic Opinions of Democracy" *North American Review* (January, 1865), 194-232; and "The Democratic View of Democracy," *North American Review* (July, 1865), 103-133. There were, however, important changes made to the manuscript of the second essay, which are considered below. I have indicated all quotes from the manuscript with a footnote, though to avoid repetition, I have not referenced every quote in which manuscript and published text conform.

ones.”<sup>33</sup> This, of course, exactly anticipates what Frederick Jackson Turner famously argued thirty years later – with the crucial difference that Godkin considered the egalitarian influence of the frontier distinctly pernicious.

For Godkin, the best argument in defense of democracy was that it could overcome the vulgar egalitarianism of the frontier. “In so far as the influence exercised by that portion of the population which is immersed in the cares and toils of frontier life on the national character, or manners, or politics, or literature, or oratory, has been deteriorating or obstructive, it is, of course, fair matter for regret to all friends of rational progress.” But these effects were necessarily temporary, “and every day that passes weakens it force and hastens its disappearance.” Time would polish these rude beginnings. Deferential respect for the authority conferred by superior education and training would increase as settlers transitioned from grappling with the raw problems of nature to grappling with the problems of an increasingly complex society. Thus, Godkin argued, the spread of the suffrage to all citizens was compatible with the continued advancement of the most enlightened, talented and cultivated men. And this fact, by itself, robbed a legal aristocracy of its only justification.

That democracy and liberty were compatible, however, did not make them synonymous. The basic error of most democratic authors, Godkin argued in his second essay – also written in the winter of 1865, was their belief that liberty and democracy are one and the same thing. The vote is not an individual right; it is to assert a certain degree of power over the community. And all political power has no legitimate basis except the good of the public over which it is exercised. The natural right of the people to govern themselves was no different from the divine

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<sup>33</sup> This quote actually comes from the second essay, though it is the most cogent statement of the argument elaborated in the first.

right of kings. Both elevated the possession of political power over the ends that all legitimate power is meant to serve, transforming a public trust into a private right.

This much of Godkin's argument was far from original. Lincoln had made the same point, again and again, in his debates with Stephen Douglas. And Norton had made the same argument no less forcefully. But Godkin then brilliantly connected this democratic excess to the intellectual transformation wrought by capitalism, and connected both developments to the uniquely oppressive character of American slavery. The "great sanctity with which modern jurisprudence has...clothed everything bearing the name of property," Godkin wrote, has stripped "it of all conditions and qualifications, and knit it as closely as possible to the owner, as if it were an emanation from himself." The absolute dominion over the soil and serf in ancient and medieval law had never equaled that of the modern era, "and the complete degradation of the slave to the level of a thing was a feat reserved for the legislation of our own age. Of the way in which this tendency has affected the popular notion of the franchise, there are abundant illustrations in the political history both of this country and of France and England."<sup>34</sup>

Here was the ideological link that united Northern democrats and Southern oligarchs in a system of mutual irresponsibility. Godkin's point is crucial to rescuing classical liberalism as a political philosophy. Man has an absolute right to his *legitimate* property. But the concept of property is too often abused to encompass privileges and powers that can only be justified as a public trust. Of course, to acknowledge the distinction between "legitimate" property in this sense, and property as defined by law and tradition, raises far more questions than it answers. But it also creates an intellectual vocabulary with which doctrinaire liberals can mount a radical critique of a social order that ostensibly conforms to their own principles. So it was significant

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<sup>34</sup> Godkin, "The Democratic View of Democracy" *The North American Review* (July, 1865).

that Godkin emphasized the distinction, though his point was simply that no one has a right to the ballot.

Having placed democratic principles on what he considered their proper basis – as a matter of public expediency rather than individual right – Godkin then considered the implications of his argument on the most urgent question confronting the nation: the reconstruction of the Southern states. It was on this question that Norton, as editor of the *North American Review*, made his first significant revision of Godkin’s work, changing his argument in a way that would have tremendous consequences for Godkin’s later career and influence.

“It is more than probable that we shall witness before very long an agitation on the part of the friends of the negro for the immediate extension of the franchise to the liberated slaves,” Godkin noted in beginning his discussion of Reconstruction policy. Norton changed this sentence to: “By far the most important political problem before the nation at this moment is that concerning the immediate extension of the franchise to the liberated slaves.” The change partly reflects the changed circumstances from when the article was written (during the final months of the war) to when it was published (in July, 1865). But Norton also altered the meaning of the sentence, from a question raised by agitators to a moral problem that could not be honorably avoided. To Godkin’s next sentence, a long one, Norton added a final clause that changed its whole meaning:

While recognizing fully the impolicy of excluding, where it can be avoided, any portion of the population from the enjoyment of the privileges possessed by the rest, and the theory of the franchise for which we have been contending, if sound, suggests certain considerations with regard to its bestowal on them which it would be neither prudent nor just to overlook, even on the part of those who, like ourselves, are most friendly to the claims of the negroes.

In Godkin’s manuscript, the paragraph ended there. Norton, however, added the following clause, “and who believe that the reorganization of the Southern society, and the future

peace of the nation, both require the abolition of all political distinctions drawn from color.”<sup>35</sup>

Norton and Godkin both believed that a basic literacy test was a desirable condition to attach to the franchise, though for Norton it was only legitimate if applied impartially to all men. The ability to read the newspaper in a national republic, Godkin argued, was the modern equivalent of appearing physically in the agora of a Greek polis. It was the basic precondition to participating in the politics of a democratic nation-state. Thus a literacy test served two purposes: It distinguished genuine self-government from a spurious pantomime of self-government. And it reinforced the principle that the vote was a public responsibility, not a possessive right that could be exercised selfishly, ignorantly or even sold.

The next paragraph in Godkin’s original manuscript has a big “X” through it, and does not appear in the published version:

It is however, worthy of consideration, whether a regard for the negroes’ own interest as well as that of his neighbors, would not justify us in demanding of him something more than we demand of the white man. If the effects of slavery on the character be such as we have described then the presumption is raised at once that a large number of the freedmen will be wanting for some time to come in many of the more important social virtues. Their distaste for regular, steady and persistent labor will probably last for a good while after they have ceased to be driven to it by the lash. Their sense of the obligation to support themselves and still more to support and educate families, must be very feeble in men who have never had families, have never belonged to one, and who have owned property. And it will probably, as a general rule, be only acquired gradually under the influence of education and freedom. There will, too, after power is restored and the restraints of military rule removed, be a strong tendency amongst them, owing to various causes, to crowd into the towns and live in masses, from hand to mouth, by “odd jobs”, accompanied, of course, if not checked by an increasing disinclination to accept employment calling for continuous effort, exactness and punctuality. It is therefore, well worthy of consideration whether it would not be kindness to them as well as justice to the rest of the nation to make the support of the family, or the earning of a livelihood by regular labor of some sort, necessary to qualify any man who has been a slave for the franchise. No person worthy of it, and no person who would feel the want of it to be a

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<sup>35</sup> As will be seen below, Godkin intended that passage as the beginning of an argument justifying racial distinctions.

hardship would be likely to be excluded from it by so simple and reasonable a requirement....<sup>36</sup>

In a letter to Godkin, Norton explained his objection to this paragraph. The question of whether or not men have a natural right to vote is not the real question, Norton explained. The real question is, on what basis one man can exclude another from an equal say in the laws governing them both?

At this point, perhaps, our opinions diverge. In my judgment the broader the basis of suffrage in a country like ours the better, and the only qualification required of a voter should be one of universal application – the ability to read and write... You are fighting a shadow (is it not so?) in fighting against the notion of the natural right; but you have a pressing political question to deal with, in arguing for the restriction of the suffrage. As to the blacks – the freedmen – I am unwilling, it is inconsistent not only with my political creed but with my sense of right, if the two are not merely forms of one and the same thing, to exclude them as a mass from the right of suffrage...<sup>37</sup>

To place the political right of suffrage on the false and arbitrary basis of race or color, instead of the “intrinsic capacity and efforts of the man, black or white,” would corrupt the first principle of the American system, Norton continued. “I am not willing to do anything which may in any way confirm the prejudice against negro, because negro, citizenship. ‘All men up, say we.’ And the way to get them up is not to say ‘you shall not vote,’ but ‘you shall not vote till you have done or learned so and so.’”<sup>38</sup>

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Here, then, is a significant riddle at the heart of the intellectual relationship between Norton and Godkin. The point in dispute between them was, in Norton’s mind, the fundamental principle for which the Civil War had been fought. And yet within a few months he made Godkin editor of a weekly journal founded to advance that same principle. Even more

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<sup>36</sup> Manuscript of “The Democratic View of Democracy,” in The North American Review Papers. Houghton Library, Harvard University.

<sup>37</sup> Norton to Godkin, Godkin papers, February 24, 1865.

<sup>38</sup> Norton to Godkin, Godkin papers, February 24, 1865.

astonishing, he zealously defended Godkin against those who accused him of being an unreliable advocate of black civil rights, a charge that he, Norton, was in a unique position to confirm as true. “I need hardly say that you may count not only on my friendly and affectionate sympathy, but on my most hearty support whenever you need it,” Norton wrote in July, 1865, the same month in which the heavily edited version of Godkin’s essay appeared in *the North American Review*. “Your and my opinions are so nearly the same on most important points, that it is hard for me to imagine a case in which I should fail to agree more with you than with anyone who might call your judgment and your views into question.”<sup>39</sup> But Norton did not need to imagine such a case; he himself had just contradicted Godkin’s judgment on the most significant question before the country.

To be sure, Godkin yielded to Norton’s position on the question of black suffrage, though the careerist motives that led him to do so ought to have been obvious. After noting, diplomatically but unmistakably, that he would only publish Godkin’s latest essay with the changes he had indicated, Norton then dropped his editorial stick and waved a very enticing carrot. “The antislavery *Standard* and the *Liberator* are soon probably to cease appearing and [Mr. McKim] desires to start a new paper devoted to the national questions and interests involved in the condition and position of the black race, on a broader ground than that of the old papers,” Norton noted. “He has a good scheme and will have plenty of support.”<sup>40</sup> For two years, Godkin had been struggling unsuccessfully to raise money for a weekly journal of politics and culture, taking the English *Spectator* and *Saturday Review* as his ideal models. He had, in fact, first met Norton in pursuit of this goal. Not surprisingly, then, Godkin eagerly adapted his position to make him acceptable for a position he had long coveted. “I shall recast all that I have

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<sup>39</sup> Norton to Godkin, Godkin Papers, July 20, 1865.

<sup>40</sup> Norton to Godkin, April 5, 1865, Godkin Papers.

said about the negroes, and put it in a shape which will not clash with your own opinions and those of the *Review*,” Godkin wrote to Norton.<sup>41</sup>

In even his sharpest private disputes with Norton, however, Godkin argued from premises that Norton respected as legitimate. He expressly denied any presumption of biological differences between the races and carefully avoided resting any claim on that assumption. The degrading reality of slavery, not the arbitrary matter of skin color, was the basis for imposing additional requirements on the freedmen to qualify for the vote, Godkin insisted.<sup>42</sup> With the starting premise, Norton agreed, though he noted that it did not contain even the slightest pretext for holding the victims of slavery to a higher standard than their oppressors. “No class of men have any political rights above those of any other class,” Norton insisted, “excepting always the criminal and the ignorant. Our future seems to me to depend on the most liberal application of this principle in our society.”<sup>43</sup>

And yet, as Godkin later acknowledged, “*The Nation* owed its continued existence to Charles Eliot Norton. It was his calm and confidence amid the shrieks of combatants... which enabled me to do my work even with decency.”<sup>44</sup> What ultimately united Godkin and Norton was a shared belief that the best political journalism ought to be oriented around a wider framework that looked toward advancing civilization as a whole. This is what both men, as editors and intellectuals, tried to accomplish. The quality of political discussion was inextricably related to the quality of the nation’s historical scholarship, aesthetic arts, science and economics – politics, in short, was an integral part of the process by which a culture develops or decays. At

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<sup>41</sup> Godkin to Norton, April 13, 1865. *Letters of E.L. Godkin*, 28

<sup>42</sup> Godkin to Norton, February 28, 1865, *Gilded Age Letters of E.L. Godkin* William Armstrong, ed. (Albany, 1974), 21-22.

<sup>43</sup> Norton to Godkin, Godkin papers, March 5, 1865.

<sup>44</sup> Evening Post, December 20, 1899. Cited in James Ford Rhodes, “Edwin Lawrence Godkin,” in Rhodes, *Historical Essays* (New York, 1909), 274.

its best, their approach to politics resisted the relentless simplification that confuses the violence of partisan rhetoric with the depth of the reform being proposed. Superficial ideas have superficial consequences, even when the consequences are violent. They were both consistent in upholding the truth that political democracy is no guarantee of decency, justice or any of the other human aspirations by which a whole civilization is measured. And this broadly similar outlook allowed Norton to dismiss their narrow disagreement on immediate priorities.

“The mistake which, in my eyes, the radical democrats make,” Godkin wrote to Norton, “and I call those who support the bestowal of the franchise on the negro, merely because it would be an act of justice or of kindness to him, by that name – lies in their denial or forgetfulness of the fact that the highest allegiance of every man is due to liberty and civilization, or rather civilization and liberty.”<sup>45</sup> This last point, ranking civilization ahead of liberty as a moral ideal, was the profound point on which they agreed. It is easy to sneer at this attitude as elitist or worse, but it has the advantage of honesty. Criticism, in any political regime, tends to shy away from targeting the real power in the system. In democracies as in monarchies, the incompetence or immorality of the sovereign is usually blamed on wily ministers and demagogues.

Norton was especially drawn to Godkin’s undeniable talent for invective against those who advocated cheap and dishonest shortcuts in the hard work of advancing civilization – and if that phrase seems grandiose, it becomes positively modest as a description of the effort to create an interracial democracy out of a racialized slave society. When the effort to enfranchise black citizens in Connecticut was soundly defeated by the voters, for example, Norton wrote to Godkin with the hope that he would write “a ringing leader” on “the meanness, the ignorance, the folly and the prejudice of which it is the indication...it proves the unfitness of the majority to possess

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<sup>45</sup> Godkin to Norton, April 13, 1865. *Letters of E.L. Godkin*, 27.

the very privilege which they deny to the negro...’’<sup>46</sup> And though he had recently finished lecturing Godkin on this very point, Norton’s confidence in him was not misplaced. “The ‘effete and bloated aristocrat,’ whom we are so much in the habit of lecturing upon his pride, prejudice and selfishness” Godkin wrote in *The Nation*, “may certainly take courage and hold up his head, when he finds that so large a body of Good New Englanders are ready to retain in their polity a distinction a thousand times more odious and absurd than any which European aristocracy has yet ventured to establish.” While the European aristocrat struggled mightily to justify his exclusive share in the government with all sorts of laborious arguments, the majority in Connecticut, Godkin continued, “are able to boast that they have hit upon a form of injustice so utterly absurd as to save them the trouble of defending it.”<sup>47</sup>

Historians have an odd habit of condemning the racism of American society in the nineteenth century in one moment and then condemning the undemocratic elitism of reformers who were provoked by that same racism in the next.<sup>48</sup> There were problems with Norton’s and Godkin’s conception of civilization – and we will consider them – but it represented a good-faith effort to approach the problems of democratic politics philosophically, without any of the convenient disguises that allow writers and intellectuals to separate immediate problems from the ultimate one, which is how to make men better than they are.

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<sup>46</sup> Norton to Godkin, September 22, 1865. Godkin Papers. Houghton Library, Harvard University.

<sup>47</sup> *The Nation*, October 12, 1865.

<sup>48</sup> The most remarkable example of this is George Fredrickson. “Charlies Eliot Norton and others claimed that their wavering belief in democracy had been revived by the proofs of obedience and endurance shown by the common people and by the Negroes in the struggle. This commitment to equality, however, was obviously conditional...If the ‘inferior elements’ whether Negro or white, consented to be led by the ‘best culture,;’ then their rights were assured.” The rhetoric here disguises a problem that ought to be blindingly obvious to anyone familiar with mid-nineteenth century America, namely that democracy and equality were not in fact complimentary or even wholly compatible. George Fredrickson, *The Inner Civil War*, 165.

### *III: Barbarism and Civilization*

Norton and Godkin were heavily influenced by John Stuart Mill, whose famous essay, *On Liberty* (1859), provided an elaborate defense of the principle that, in Mill's words, "the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection...In the part which merely concerns himself, [the individual's] independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign."<sup>49</sup> Mill's essay remains the clearest and most consistent defense of the liberal concept of freedom ever written. But two ambiguities are worth stressing as particularly relevant to the problems that preoccupied American liberals during the Civil War and Reconstruction. To grant an individual his independence in that "which merely concerns himself" is almost a tautology. The realm of absolute independence is so narrow that even those who want to protect it cannot define its boundaries precisely. Mill compounded this ambiguity by making "civilized" a necessary qualification for civil liberty. "Despotism is a legitimate mode of government in dealing with barbarians, provided the end be their improvement and the means justified by actually effecting that end," he wrote, creating a potentially limitless exception to his principle that the individual's moral or physical welfare "is not a sufficient warrant" for interfering with him – in civilized communities. But what communities are civilized? And, as if that question weren't difficult enough, what distinguishes members from nonmembers?

"Civilization" acquired a new meaning during the Enlightenment as Western culture became conscious of itself as the product of a long historical process from ignorance, slavery and squalor to knowledge, liberty and refinement. Ultimately, the concept expressed the growing self-consciousness of Western culture; it meant whatever one imagined distinguished the West

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<sup>49</sup> John Stuart Mill, *On Liberty* (New York, 1974), 68.

from the rest of the world – whether one defined that superiority in racial, cultural, technological or political terms. For nineteenth century liberals, however, a richly detailed narrative of historical progress allowed them to see their own social customs and institutions as both the result of a particular history and as universal improvements on human nature. “Barbarism” was the antithesis of civilization – man frozen in the brutish, primordial condition of nature. And the dichotomy created by this historical process made plausible the liberal vision of a complex society in which men internalized the elaborate system of rules that made them civilized and, therefore, capable of collaborating in an ever-advancing standard of freedom, as opposed to the static, savage freedom of unrestrained, unimproved human nature.

Mill used the concepts of civilization and barbarism to avoid a problem that only moral relativists and moral fanatics have resolved to their satisfaction. Unwilling to remain agnostic about the content of men’s aspirations and aversions – which ignores that both are subject to cultural, social and institutional influences that can elevate or debase individual natures – Mill also refused to subordinate the individual’s will to the communal ideals that ennoble freedom with a meaning beyond the mere absence of restraint. And so, for Mill, the freedom of the individual was both an end in itself *and* a means toward his moral development from a lower to a higher mode of existence. As *The Nation* later observed, Mill converted the materialistic concept of utility into a “religious principle,” and made it seem compatible with the highest moral aspirations of man.<sup>50</sup> “Civilized” was the vague qualifier that allowed him to do so without abandoning his argument or accepting all human appetites and aspirations as equal.

Significantly, Norton and Godkin both acknowledged Mill’s influence while acknowledging his severe limitations as a guide to the political problem that most preoccupied them. How should a civilized community defend itself against the forces, internal or external,

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<sup>50</sup> Godkin, “John Stuart Mill,” *Reflections and Comments* (New York, 1895), 76.

arresting its progress or threatening its very existence? “If civilization has got the better of barbarism when barbarism had the world to itself,” Mill wrote, “it is too much to profess to be afraid lest barbarism, after having been fairly got under, should revive and conquer civilization.”<sup>51</sup> Americans emerging from a life-and-death struggle with that “relic of barbarism,” however, were unlikely to be reassured by Mill’s blithe confidence. Norton and Godkin both believed the Civil War was, first and foremost, a test of Northern civilization against the resurgent barbarism of the South.

“What the rebellion really was,” Godkin wrote in *The Nation*, “was the effort of a lower civilization, or, if you will, a barbarous society, to preserve itself and retain its peculiarities against the pressure of a more advanced and more civilized society.” The mixture of chauvinism and self-criticism in that sentence was inextricable, for the two elements were inherent in the concept of “barbarism” as Norton and Godkin understood it. “The southern gentlemen” embodied the threat of barbarism in a civilized community. Outward polish disguised inner degradation, as the material advantages conferred by an elevated civilization became an excuse for rapacity and plunder. “Having somebody always at hand to kick and cuff, and ‘paddle’ and rob, made the Southerner the turbulent, intractable visionary, pistol in one hand, Aristotle in the other, which we have for fifty years, to our sorrow, had to deal,” Godkin wrote in *The Nation*. But Southerners were not the only ones vulnerable to this deadly form of hubris.

Those who celebrated the Civil War as a vindication of grand moral principles could not ignore the fact that it had also been a test of material resources. A resort to war as the final arbiter in a conflict of principle inescapably placed a superior capacity for organized violence above all others as the ultimate test of a civilization. A barbarous society could be identified by the savagery with which it pillaged and plundered others – and by the helpless ferocity with

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<sup>51</sup> Mill, *On Liberty*, (New York, 1974), 161.

which it resisted the overwhelming power of more civilized peoples. And in this sense, the Civil War catalyzed one of the most ominous developments of the nineteenth century, as the technological and organization advantages that so easily engendered a false sense of superiority began to confer something frightfully close to omnipotence.

“Let us consider in what a village of English colonists is superior to a tribe of Australian natives who roam about them,” Walter Bagehot wrote in his influential political treatise, *Physics and Politics*. “Indisputably in one, and that a main sense, they are superior. They can beat the Australians in a war when they like; they can take from them anything they like, and kill any of them they choose. As a rule, in all the outlying and uncontested districts of the world, the aboriginal native lies at the mercy of the intruding European.”<sup>52</sup> There is admirable candor in this appalling statement, for it proceeds from the admission that brute force is the only objective criterion by which one community can claim superiority over another. More importantly, those who rejected the criminal logic that stemmed from this premise still had to reckon with the overwhelming importance of the premise itself as a reality in the nineteenth century.

Racial ideologies emerged to justify the temporary but staggering power disparities that allowed Western European peoples to rule over the rest of the world with ever greater efficiency and impunity. But these ideologies did not create the reality they justified. And the rise and fall of these ideologies precisely coincides with the rise and fall of the power disparities they purported to explain. It is simply misleading to consider this intellectual trajectory purely in terms of ideology or moral progress.

The fact of white supremacy, meaning the power disparity that made possible a horrific system of racial oppression and exploitation, coexisted awkwardly with the philosophy of human equality that animated the efforts of Northern intellectuals and philanthropists. The dilemma was

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<sup>52</sup> Walter Bagehot, *Physics and Politics* (New York 1948), 214. The book was originally published in 1872.

inescapable, for they could not assume responsibility for the freedmen's welfare without falling into the paternalistic role of presuming to judge another's best interest. What Emerson called "Self-reliance" and what Lincoln called "self-government" both pointed to a political ideal of manhood elevated above any corrupting dependency upon paternalistic institutions, however benevolently intended. This was far from the narrow economic doctrine of laissez-faire, and it was openly hostile to such a creed as a limitation on the political rights of citizens to participate as equals in the public life of their community. Man had possessed the freedom to work or starve from the primordial beginning, before there were masters or slaves. Civilized freedom was political freedom.

But their idea of political equality posed the same dilemma in different terms. The contradiction was an inescapable result of seeing North and South as a single political community, yet somehow divided completely into civilized and uncivilized parts. And it did not require a prophet to foresee how this contradiction, unresolved, would be shifted ultimately onto the South alone, the burden of sectional domination relinquished, once again, by an ideology of racial domination. The logic was the same: Two communities were inextricably linked, one powerful and advanced, the other weak and uncivilized. And thus the more advanced community would impose its will on the less advanced, not selfishly but benevolently, liberation by conquest, emancipation as subjugation.

Godkin and Norton witnessed the post-bellum South through the eyes of the soldiers, philanthropists and journalists who were actually there – reading about the former slaves' first experience of freedom in anecdotal evidence that varied almost as much as the biases of those who recorded them.<sup>53</sup> In July of 1865, Norton published an essay on the freedmen at Port Royal

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<sup>53</sup> Significantly, Godkin eventually came to support "home rule" in the South for reasons that were identical to his support for "home rule" in his own native Ireland. The son of a prominent Irish nationalist protestant, Godkin's

by William Channing Gannett, who had been there as a teacher and minister for three years. “[I]n slavery,” Gannett began his essay, “not only are natural rights denied, but, what is quite as injurious, necessary wants are supplied; everything contributes to the repression of faculty. The slaveholder’s institution is a nursery for perpetuating infancy; and the more enlightened the nurse, the more successful the efforts. The world has waited for the nineteenth century to develop slavery in its hugest and most direful proportions; and now that the man-owner’s reckless pride has made its fatal mistake, the most shameful spectacle that ever saddened earth is opened for the nations to behold, – the spectacle of a race of stunted, misshapen children, writhing from the grasp of that people which, in so many respects, is the foremost of the age.”<sup>54</sup>

Such a staggering view of the former slave’s degradation, combined with the belief in the superiority of the civilization that enslaved him, made an ideology of scientific racism almost superfluous. But Gannett was wrestling with a problem that no Northern philanthropist could honestly ignore. To the question, “what shall be done with the four million slaves if they are emancipated?” Frederick Douglass, early in the Civil War, had a sublimely simple answer: “Our

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attitude toward his native country was, to put it mildly, complicated. He believed English civilization was superior in every conceivable sense, and yet, like his father, he was a lifelong proponent of Irish home rule. He believed even the most well-meaning attempts to reform Irish society worsened the very evils they sought to cure. Even more counterproductive was the high-minded insistence on punishing ‘Irish outrages’, as these merely deepened the toxic social divisions that produced such outrages. Despite the important differences between Ireland and Great Britain, on the one hand, and the South and the Union, on the other, the analogy became almost perfect in Godkin’s mind. Because his Irish background was a favorite point of attack among Godkin’s critics, he rarely dwelled on the analogy in *The Nation*, but he wrote an entire essay on the parallels for an English journal.

In both instances, Godkin wrote, vicious criminality had acquired moral sanction within communities as expressions of “discontent with a government directed or controlled by the public of another indifferent or semi-hostile community...” Such criminality, and especially the widespread sanction it received, became a justification for permanent outside interference. But “lawlessness and cruelty, considered as expressions of political animosity, do not necessarily argue any incapacity for the conduct of an orderly and efficient government, although I admit freely that they do argue a low state of civilization.” Godkin was careful to avoid seeming to justify the unjustifiable crimes of these unruly communities. “I am not doing anything of the kind. I am trying to illustrate a trite remark...: ‘that government is a very practical business, and that those succeed best in it who bring least sentiment or enthusiasm to the conduct of affairs’...it is only in nurseries and kindergartens that we can give offenders their exact due and withhold their toffee until they have furnished satisfactory proofs of repentance. Rulers of men have to occupy themselves mainly with the question of drying up the sources of crime, and often, in order to accomplish this, to let much crime and disorder go unwhipped of justice.” E.L. Godkin, “American Home Rule” *The Nineteenth Century: A Monthly Review* (June, 1886), 793-806.

<sup>54</sup> “The Freedmen of Port Royal,” *The North American Review* (July, 1865), 1.

answer is, do nothing with them; mind your own business, and let them mind theirs. Your *doing* with them is their greatest misfortune.”<sup>55</sup> This was an important and necessary point about where, exactly, the problem lay. But in the North, leaving the freedmen alone meant abandoning them to the vicious barbarism of their former masters. The alternative was to play the role of benevolent guardian, and American democracy was premised on the idea that such a role was profoundly corrupting. *Noblesse oblige* was the best that all past civilizations had offered the downtrodden, and all past civilizations proved that it was a delusion and snare. These two alternatives did not exhaust all possibilities, but they did contain the essence of the dilemma confronting the North.

#### *IV: “Carpet Knights of Politics”*

*The Nation* described itself as a journal “devoted to politics, literature, science and art,” and it was the effort to bring these separate vocations into harmony with one another that united Godkin and Norton in a shared sense of purpose. Aesthetic arts and moral perception, no less than scientific knowledge, they believed, were all capable of advancing according to a timeless human standard of excellence, and an informed view of public affairs required an intelligent, critical synthesis of all current events, from finance to politics, from new voices in literature to new discoveries in geology. The ponderous style of older scholarly journals must be enlivened with a lighter, more elegant touch to compete with the casual tone of daily journalism, without sacrificing intellectual substance.

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<sup>55</sup> Frederick Douglass, “What Shall Be Done with the Slaves if Emancipated?” January, 1862. *Life and Writings of Frederick Douglass* Philip Foner ed.(New York, 1952), 3:188-189.

Norton's first choice to edit *The Nation*, however, had been George William Curtis, a writer, orator and politician whose political temperament and prose style were far closer to his own than Godkin's. As a New York delegate to the Republican Convention in Chicago in 1860, Curtis had prevented the party from dropping a resolution affirming the principle of equality from its platform. "I rise simply to ask gentlemen," Curtis had said in a rousing impromptu speech, "to think well before, upon the free prairies of the West, in the summer of 1860, they dare to wince and quail before the assertions of the men of Philadelphia in 1776."<sup>56</sup> The hall erupted in applause and a resolution affirming the Declaration of Independence passed unanimously. Such a fine moment might make anyone incurably addicted to politics: A convention hall full of jaded politicians, preoccupied with horse trading, persuaded by a few well-chosen words to forget expediency and remember their ideals.<sup>57</sup> It was an auspicious, but also quite deceptive, beginning to his political career.

Throughout the war, Norton and Curtis exchanged letters regularly and their views on public affairs were almost identical. Both were impatient to see the war converted into a moral struggle against slavery, and both were appalled and disgusted by the moral vanity – as they saw it – of the Radicals who schemed against President Lincoln in 1864. But Curtis's outlook was always sunnier than Norton's; he delivered even his sharpest criticisms in a cheerful, optimistic tone. He was not given to the philosophical brooding about underlying moral rot that often preoccupied Norton. And, more importantly, he did not see the need for the kind of journal Norton was trying to create. "The change in public sentiment upon the true democratic idea is so wide and deep that an organ of a special reform in the matter does not seem to be required," he

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<sup>56</sup> Cited in Allan Nevins, *The Emergence of Lincoln* two vols (New York, 1950), 2:254.

<sup>57</sup> Naturally, there are other, less inspiring ways to explain what happened. The Republican party needed to keep idealistic free-soilers while broadening its appeal and invoking the Declaration of Independence was the safest way to do it. The significant point, however, is that idealist and practical motives were aligned.

replied to Norton's letter soliciting him for the job. "If I lay more stress upon the special object of the paper than its projectors intend, then it becomes merely a liberal Weekly of the most advanced kind, and I can see no particular reason for its success."<sup>58</sup>

Curtis was then the political editor of *Harper's Weekly*, where he had the freedom to say what he liked on political questions while reaching a much larger audience than Norton's proposed high-brow weekly could expect. But that was the problem, for the Harper brothers' publishing empire represented precisely the sort of shallow commercialization of intellectual life that Norton was trying to correct.<sup>59</sup> Curtis himself had once written that *Harper's Weekly*, "will follow, and echo, and shirk, but whoever believes in his country and its constant progress in developing human liberty, will understand he has no ally in *Harper's Weekly*. But as a repository of pleasant, various reading, of sprightly chit-chat, and safe, vague and dull disquisitions upon a few public questions, it will probably live long and be widely sold." Naturally, and with some justification, Curtis's opinion of the Weekly improved when these criticisms inspired the wealthy proprietors to hire him.<sup>60</sup>

*The Nation*, under Curtis, would have almost certainly proven a failure, for his elegant, unobjectionable style lacked the pugnacious intelligence that made the journal so influential under Godkin. It is not a coincidence that the political cartoonist at *Harper's Weekly* during this era – Thomas Nast – is far better remembered than Curtis. Norton believed journalism, at its best, was "a means of the developing the nation, of stimulating its better sense, of setting before and holding up to it its own ideal."<sup>61</sup> Ultimately that meant both upholding the right ideas and

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<sup>58</sup> Curtis to Norton, April 26, 1865. Norton Papers. Houghton Library.

<sup>59</sup> Norton made no secret of his contempt for *Harper's*, nor did Curtis mind it, as they both knew that his primary incentive for writing for the magazine was that they could afford to pay him a lot of money. Of course, compared to the standard set by later publishers like Pulitzer and Hearst, *Harper's* was a model of high-minded civic discourse.

<sup>60</sup> Norton quoted those lines, which Curtis may preferred to have forgotten, in a review of *Harper's* in 1865. *Harper's Weekly*, North American Review, (July, 1865), 623.

<sup>61</sup> Cited in Turner, *Liberal Education of Charles Eliot Norton*, 196.

ruthlessly swatting down heresies and frauds. In literary style, cultural sensibility and practical judgment, Curtis was an ideal candidate to establish a weekly journalist counterpart to Norton's more scholarly quarterly. But he lacked the power of invective that came to define the embattled idealism of the postwar era.

Like Norton, Curtis experienced the war as a profound moral and spiritual event in the life of the nation, and this optimism about the ideals sanctified in the war was the most significant difference between the tone of *Harper's Weekly* and of *The Nation*. Failure to secure the former slaves their political rights, Curtis insisted, meant betraying the essential cause the war had vindicated. "[K]neeling among the dead and mangled bodies of our first-born and best beloved," Curtis wrote in *Harper's Weekly* in May of 1865, "amidst the fire and storm of battle, we have acknowledged that God has made of one blood all the nations of the earth."<sup>62</sup>

Though Curtis did not fight in the war, he was not speaking abstractly. When he invoked the memory of "our...best beloved," he had cherished friends and unspeakable sorrows in mind. His brother-in-law, Robert Gould Shaw, had died while commanding the first all-black regiment in the War at the Second Battle of Fort Wagner. Shaw was buried in a mass grave with the men who fought with him. During the bleakest month of the war, Curtis had tried impotently to comfort Shaw's weeping mother as she gave in to despair that it had all been for nothing. And yet this emphasis on the transcendent moral dimensions of the war inevitably left its baser influences hidden from view. Writing about the impending challenges of Reunion in *The North American Review* of April, 1865, James Russell Lowell presented the war as a romance that should end, inevitably, with everyone living happily ever after: "America lay asleep, like the princess of fairy tale, enchanted by prosperity; but at the first fiery kiss of war the spell is broken, the blood tingles along her veins again, and she awakes conscious of her beauty and her

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<sup>62</sup> *Harper's Weekly*, May 22, 1865.

sovereignty.”<sup>63</sup> He wrote those words not for children but for the most sober and scholarly readers in the American public.

Godkin harbored no such illusions about the war. It was not an ennobling crusade or a purifying ordeal, but a desperate fight against a depraved and vicious social order. Significantly, Godkin’s one serious criticism of Curtis – they were all friends – hit upon the most important difference between them and also echoes the insult most commonly hurled at genteel reformers generally. “His mind does not raise political ideas in the open air. They all grow under glass, and are feeble when exposed,” Godkin wrote to Norton. “He is by temperament and training a literary man, and has not, I think, enough combativeness, or rather that tenacity and distinct consciousness of what he wants, of which combativeness is so often the expression, to be put in [a] difficult post.”<sup>64</sup> This was astute but backwards. The combativeness that Curtis lacked – and which Godkin possessed in spades – was the scathing power of denouncing what he despised, not the ability of expressing what he wanted. But this same power channeled Godkin’s influence in directions he would later come to regret bitterly. He was not cynical, but his talent for political invective endeared him to those who were. Godkin made his mark almost entirely by criticizing what he was against; he himself may not have known what he was for.

Curtis’s political career ended, as it began, with a memorable speech at a Republican convention, this time the state party convention at Rochester in 1877, and it is worth noting as it dramatically illustrates the changed tone of Republican politics that marked the beginning and end of an era. Without delving too deeply into the thicket of issues that divided the New York State Republicans as they debated their platform at the party Convention at Rochester, it is enough to say that Curtis was the recognized leader of the reform wing of the Party and Senator

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<sup>63</sup> “Reconstruction,” *North American Review* (April, 1865), 541.

<sup>64</sup> Rollo Ogden, ed. *Life and Letters of E.L. Godkin* 2 vols. (New York, 1907), 1:293-294.

Roscoe Conkling was the leader of the so-called stalwarts, who intended to keep the state party machine just the way it was, i.e. ridden with corruption. All expected the convention to be the scene of a dramatic showdown, and Conkling, at least, did not disappoint. “Who are these men who, in newspapers and elsewhere, are cracking the whip over Republicans now, and playing schoolmaster to the Republican party, and its conscience and convictions?” Conkling asked, rhetorically, and then answered with a sneering diatribe about the effeminate pretensions of Curtis and his followers.

“Some of them are the man-milliners, the diletanti, and carpet knights of politics, men whose efforts have been expended in denouncing and ridiculing and accusing honest men who, in storm and sunshine, in war and peace, have clung to the Republican flag and defended it against those who tried to trail and trample it in the dust,” Conkling declared, glaring directly at Curtis. Their preoccupation with reform was a mere sham “to parade their own veneering of purity...Their vocation and ministry is to lament the sins of other people. Their stock in trade is rancid, flat, self-righteousness...They forget that parties are not built by deportment, or by ladies magazines or by gush.”<sup>65</sup> Curtis, appalled, did not deign to reply, and the Conkling wing carried the convention.

Curtis’s musical voice, perfectly pitched to carry high-minded sentiments, had served him well during the Republican national convention of 1860, when the party was at the threshold of its transition from dissident idealists to power and responsibility. But the harsh, violent years since had yielded the floor to men who knew how to snarl and sneer.

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<sup>65</sup> *New York Times*, September 27, 1877.

V: “*The First Duty of Government*”

There is a difference between a commitment to the abstract principle of human equality and to the cause of actual human beings who have been denied the most basic rights implied by that principle. The messy reality of politics, the inevitability of compromised alternatives, will ultimately paralyze those who care more for the pristine principle than the particular cause they espouse. E.L. Godkin’s astute grasp of this fact made him the most influential polemicist on Reconstruction politics throughout the postwar era, even though his influence at the end was exactly the opposite of what it had been in the beginning. The contrast between his forceful, often caustic style in *The Nation* and Norton’s elegant prose neatly encapsulates why Godkin was so effective at carrying more philosophical minds into his more decisive orbit. “There is such a thing, my dear fellow,” Godkin once advised Norton, “as having too good a taste, and being too fastidious.”<sup>66</sup> Godkin was more consistent in his pugnacity than in his principles, but the one unifying theme of his career was a distrust of popular government as a reliable pillar of a liberal state.

This pessimism made Godkin a devastatingly effective critic of the naïve shibboleths on Reconstruction that marked the thinking of both radicals and conservatives. Charles Sumner’s many bills and resolutions, Godkin complained, have “the air of town-meeting resolves, reciting well-established and indisputable axioms, and re-enacting the phrases of the Constitution and the Declaration of Independence. So accomplished a student of history and jurisprudence should have found out that rights, in order to be maintained, must have a basis of specific law to rest upon, and that the ‘appropriate legislation’ needful to enforce the constitutional abolition of slavery is not to be supplied by a declaratory resolution of ten lines setting forth nothing but

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<sup>66</sup> Godkin to Norton, January 26, 1866. *Letters of E.L. Godkin*, 72.

political truisms.”<sup>67</sup> What the North wanted from its leaders, Godkin complained two years later, was “not general disquisitions on the rights of man, but their reasons for thinking their plan of reconstruction a good one – i.e. one likely to succeed; because of these they been uncommonly sparing.”<sup>68</sup>

Even when Radicals moved beyond lofty proclamations on abstract rights to consider the harsh reality of the postwar South, the results were still marked by a naïve faith in an immediate solution. “There is no doubt,” Senator Benjamin Wade wrote to Charles Sumner late in 1865, “that if by an insurrection [black Southerners] could contrive to slay one half of their oppressors, the other half would hold them in highest respect and no doubt treat them with justice.” That quote is often cited as evidence of Radical vindictiveness, but it is far more striking as evidence of Radical obtuseness.<sup>69</sup> Henry Winter Davis, the coauthor of the Wade-Davis Bill, the first significant blueprint for Radical Reconstruction, was similarly enamored with the idea of a simple solution to the profound problems of the postwar South. Suffrage, Davis concluded as the postwar violence in the South escalated toward the end of 1865, cut the Gordian Knot. He therefore combined an insistence on immediately enfranchising black Southerners with an equally strident attack on the military occupation of the South. “Retaining the States under military power postpones the first danger, but it involves a greater,” Davis wrote. “Such rule continued long over such vast populations must destroy every vestige of republican government...I prefer to risk the negroes under their masters and the country to the rebel vote in Congress, rather than subject loyal negroes and disloyal whites to common despotism of military

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<sup>67</sup> *The Nation*, February 8, 1866.

<sup>68</sup> *The Nation*, January 23, 1868.

<sup>69</sup> For example, Howard K. Beale, *The Critical Year: A Study of Andrew Johnson and Reconstruction* (New York, 1930), 51.

government and expose the North to the dangers of tolerating and organizing such a despotism...”<sup>70</sup>

It is perhaps worth repeating that the military was the only instrument the Federal government possessed for enforcing the law in the South. When a substantial part of any political community refuses to obey the procedural rules of free government, when they are unwilling to substitute ballots for bullets, the question isn't whether that community will be despotically governed but only who will despotically govern whom. Nothing could have been more obvious and nothing better illustrates the Radical Republicans failure to face the problem before them squarely and candidly. “No position for the Negro that would please the [white] South would agree with the enlightened opinion of the North,” George Sidney Fisher wrote. “But how can the North enforce its views? Only by such an exertion of the power of the general government as would be inconsistent with its plan and theory...I can see no way out of these difficulties consistent with the preservation of the Union and free government.”<sup>71</sup> It is impossible to solve a problem without first grasping its full dimensions, and that was the weakness of most radicals.

Godkin was a rare exception, and his early writings in *The Nation* presented an unvarnished version of the task before the North. “Protection to persons and property of freedmen is the first duty of the Government, and this is to be afforded at any expense, any risk, and any amount of exasperation and mortification of the late masters and the ‘white trash’ worse than they,” he wrote in December 1865.

The nation should be willing, and we believe it is willing, to maintain an army of two hundred thousand men for twenty years, if necessary, to garrison the rebel States and enforce the national laws. ..We utterly dissent from the doctrine that the ballot alone is sufficient to enable the negro to protect himself....

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<sup>70</sup> *The Nation*, November 30, 1865.

<sup>71</sup> Sidney George Fisher, *Diary*, June 8, 1865, pg. 499.

No; the armed protection of the nation will be needed by the negro at the polls as much as in the fields, in the school-house, in the church, and in the court-house. Give him effectual protection in his contracts, his labor, his family, his education, his freedom of locomotion, his right to bear arms, to sue and to testify in all courts, and the right of suffrage will not be long withheld from him, even if it cannot be secured along with those other rights.<sup>72</sup>

The passive construction of that last sentence was telling. Godkin was always deeply skeptical of suffrage as an instrument of liberal reform, but for journalistic reasons he was reluctant to express that skepticism with regard to Reconstruction. “There is not a single argument against negro suffrage which is not based on prejudice,” he declared in May of 1866, though he himself had written such an argument.<sup>73</sup> But in the same week, *The Nation* denounced Otto von Bismarck for using universal suffrage as “a weapon by which old governments can be destroyed and old rights thrown to the wind... Where universal suffrage has not been heralded by universal education, it becomes the most powerful ally of force and despotism.”<sup>74</sup> For Godkin, however, the difference in the two cases was obvious: The South deserved to be governed despotically – indeed, it could only be governed despotically – for it was an essentially barbarous society and political freedom had produced the cruelest tyranny imaginable. Political equality, Godkin noted, by which he meant equality before the law, had been achieved by many nations that “we have been accustomed to regard as destitute of political freedom, [whilst] its total negation in respect to a large class is a peculiar characteristic of our own institutions. England has had it; France has had it; Prussia has had it; but in the land of Fourth of July orations, the assertion of such political equality has been, and is yet, a world-insulting lie.”<sup>75</sup>

Godkin’s elitism was so pronounced that his racial views were ambiguous. He treated pseudo-scientific racial theories with scathing sarcasm, though his objection was on intellectual

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<sup>72</sup> *The Nation*, December 7, 1865.

<sup>73</sup> *The Nation*, May 22, 1866.

<sup>74</sup> *The Nation*, May 16, 1866.

<sup>75</sup> *The Nation*, July 25, 1865.

grounds rather than egalitarian principles. And his view of the lasting degradation blacks suffered under slavery meant that his rejection of crude biological racism amounted to little politically. Still, when he wrote of “a race degenerated beyond redemption,” he was referring to the poor whites of the South, whom he considered the “most wretched, most cadaverous, most thinly clad, most lean, most haggard, most woebegone, forlorn, hopeless, God-forsaken-looking portion of the human race...”<sup>76</sup> Godkin’s attitude toward his own ancestry provides the key to his ambivalence on the subject. He insisted on his English ancestry, and was proud of it, but he knew full well that he had enough Celtic blood in him, whatever that meant, to despise racial theories that branded him as inferior to any dimwitted member of the Aristocracy. And yet, unlike, say, Frederick Douglass, he lacked the confidence to hold such theories in total contempt. He attacked manifestly stupid and crude racial theories, but the “Irishman of English ancestry” would have been distraught to learn he was simply an Irishman.<sup>77</sup>

Toward the Radicals, Godkin initially presented himself as a friendly critic, sharing their goals even as he deplored their impractical grandstanding. And though Radicals had good reason to doubt his ultimate sympathy, no one could deny that he reserved his harshest invective for the “conservatives” and “copperheads” who wanted to restore the South to its full political rights. “[T]he dread of having the general Government unduly strengthened by its efforts to better [African Americans’] condition,” he wrote in dismissing the fears of everyone who remembered the antebellum theory of the Union, “in reality generally comes from men who are never troubled

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<sup>76</sup> Godkin, *Life and Letters*, 1:129-130.

<sup>77</sup> Godkin astutely noticed that prominent American families took pride in having some Indian ancestry while treating any black ancestry as a horrible disgrace. He suspected the reason was “the greater ferocity of the Indian, and if it be the true one, it furnishes a curious commentary on what is called Christian civilization.” But the essay is a strange mix of harshly mocking racial prejudices in one moment and then blatantly employing them in the next. *The Nation*, “Indian Blood,” August, 17, 1865.

by an assumption of authority if only the “nigger” is not the object of it...”<sup>78</sup> Godkin’s favorite target for abuse – at least until the failings of the Grant Administration complicated matters – was William Henry Seward. As Secretary of State, Seward undoubtedly felt more comfortable serving under Lincoln than under his successor. But Seward’s emphatic defenses of Johnson’s Reconstruction policy contained an unmistakable kernel of passionate conviction, and that made him doubly guilty, in Godkin’s eyes, as both a heretic and a craven courtier.

“There is no soundness at all in our political system,” Seward declared in May 1866, “if the personal or civil rights of each member of the state, white or black, free born or emancipated, native born or naturalized, are not more secure under the administration of State Government, than they could be under the administration of the National Government. Harmony is essential to Union, but harmony is impossible to the citizens if every State is not left free from constitutional intervention in their civil rights by the Federal government.” Seward insisted that the folly of violating this principle had been demonstrated “in the pestilential fruits of the fugitive slave law and the Dred Scott decision.”<sup>79</sup>

Godkin, writing in *The Nation*, contemptuously dismissed this as “an odious comparison” unworthy of serious consideration, and his reasons for doing so are only too obvious.<sup>80</sup> The difference between the Fugitive Slave Act and the Civil Rights Bill was the elemental difference between right and wrong. For Seward to ignore this difference in presenting both acts as inconsistent with the federal system was especially galling to those who remembered that he had first risen to national prominence with his famous attack on the Fugitive Slave Act in which he had invoked “a higher law than the Constitution.” Norton captured the sentiments of many

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<sup>78</sup> *The Nation*, May 22, 1866. Godkin did not write every editorial in *The Nation*, though they certainly reflected his judgment. To anyone familiar with Godkin’s journalistic writings, however, the caustic tone of the last sentence almost amounts to a signature.

<sup>79</sup> “Secretary Seward’s Speech,” *New York Times*, May 23, 1866.

<sup>80</sup> *The Nation*, May 25, 1866.

Northerners toward Seward in exclaiming, “What a miserable close to his career! What a loss to him and to the country that he did not die with Lincoln!”<sup>81</sup> But there was an underlying consistency to Seward’s position. And it worth stressing the precise and sincere sense in which he meant this “odious comparison,” for it helps illuminate the difference between him and the younger generation of nationalist intellectuals who no longer understood him.

In the antebellum era, Seward had been uniquely free of the doctrinaire Constitution worship that Godkin so astutely criticized. The precise wording of its provisions was never sacrosanct in his mind; he recognized it for the elaborate compromise of competing interests and ideologies that it was. But he was an absolute believer in the broad philosophy of the Constitution as a system for incorporating a continent into a republican system of government. It was a philosophy he had learned primarily from John Quincy Adams. The logic of this system, rather than the particular whims of lawmakers, determined what could be done and what could not be done under it. Thus Seward had declared with the confidence of a prophet that the Fugitive Slave Act would have an effect exactly the opposite of what its authors intended. The most crucial years of Seward’s political life, in which his youthful political ideas hardened with the wisdom of experience, had been years in which the slaveholders had undermined and ultimately destroyed their authority over the federal government by arrogantly extending its reach against the will of local political communities. Seward’s attitude toward these efforts had always been unique in his absolute confidence that they would fail.

Unlike antebellum Democrats, Seward did not believe the general government was, or should be, strictly limited or “weak.” In organizing the energy of the nation toward common purposes, its power was limited only by the depth and extent of those common purposes. But to array the will of the Federal government against the will of particular states would exhaust the

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<sup>81</sup> Norton to Godkin, August, 30, 1866.

vitality of the system as a whole, or, as in 1861, create a furious backlash against the agenda advanced by those means. He made that point again and again in the 1850s, and he was making exactly the same point in his final years as Secretary of State.

Seward's nationalist vision had been the most robust version available in the antebellum era, but its applicability to the problems of Reconstruction depended on whether the Civil War had interrupted or permanently upended the system he defended. "We do not reconstruct that which has not been destroyed," Seward declared in the same May speech.<sup>82</sup> At the time, however, Seward was entirely correct in arguing that under his theory of the Union, federal attempts to protect black civil rights would prove a counterproductive failure. So the crucial question is not how Radical Republicans differed on the particular question at issue, but how well they met the broader challenge implicit in the charge that their policies required a new conception of the government as a whole.

Just a month before Seward delivered his speech in defense of Johnson, Godkin and Norton had met with him privately for an extended interview. Norton's detailed notes of the conversation provide one of the most outspoken records of Seward's thinking at that time, largely because his interviewers made him angry. Seward presented the Constitutional system as a harmonious alternative to the competing despotism of Europe. "But how then about the negroes," Godkin asked in response. At this, Seward got angry. The notes of this conversation, Norton later commented on his recollection of it, "failed to reproduce the vehemence and passion that I recall in his manner, and the arrogance and lack of good-breeding in his air and tone."<sup>83</sup> What provoked Seward is a matter of speculation. But though violent bluster never shook his composure, Seward had a long history of losing his temper and speaking intemperately in

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<sup>82</sup> "Secretary Seward's Speech," *New York Times*, May 23, 1866.

<sup>83</sup> Norton to Godkin, March 21, 1888.

response to what he considered pious posturing. “The North has nothing to do with the Negroes,” he answered hotly. “I have no more concern for them than I have for the hottentots. They are God’s poor; they always have been and they always will be so everywhere.” Seward was equally emphatic about seeking extra security from admitting rebellious states back into the Union as equal partners. “The North must get over this notion of interference with the affairs of the South...what harm can they do? I am not afraid of them; I never was afraid of the South in my life, not even when it had power and wealth and united interests and patronage.”<sup>84</sup>

In the North of 1866, Seward’s second point would have excited far more incredulity than the first. *What harm can they do? Aside from a Civil War that had produced 750,000 corpses? Aside from sending an assassin into Seward’s own bedroom, gruesomely attacking and nearly murdering him and his son and indirectly killing his wife?* It would be absurd to suppose that Seward did not suffer from these horrors. He was personally convinced that the assassination conspiracy was organized and financed by senior leaders of the Confederacy.<sup>85</sup> Yet he conspicuously lacked any malice toward these same leaders, and blithely dismissed them as a threat to the future stability of the country. This gives the measure of Seward’s reckless optimism, his sublime faith in the democratic principles he had always championed as the best means of resolving the intractable problems of freedom. Though those principles could not survive the Civil War, there is no mistaking the grand and honorable faith of those who carried them across the threshold into an era of diminished hopes and diminished contradictions.

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<sup>84</sup> Ogden, *Life and Letters*, 1:260-267. Seward’s latest biographer, Walter Stahr, dismisses the note as “unreliable” on the flimsy pretext that it was not immediately published. It is not hard to infer why a sympatric biographer would like to dismiss Norton’s notes. They record, by far, the most callous statement Seward ever made about black Americans. And they reflect his frustrations with his critics more than anything else. But there is no reason to doubt Norton’s veracity. I have not found a manuscript copy of the notes, if it exists, but Norton and Godkin referred to it often in their private letters.

<sup>85</sup> John Bigelow, *Retrospections of an Active Life* (New York, 1913), 4:43.

Seward's attitude toward black Americans' fate in the nation's democracy was, to the end of his life, far more sincerely optimistic than Godkin's, though it hardly required a total absence of prejudice to clear that low bar. Even after his association with Johnson's Reconstruction policies soiled his name among many Republicans, Frederick Douglass included Seward on the short, honorable list of white Americans who, in his personal experience, proved that enlightenment was stronger than prejudice.<sup>86</sup> The difference between Seward and Godkin can hardly be explained by their attitudes toward race. Instead, it was a difference in their attitude toward the American political system, and the extent to which badly governed communities could or should be tolerated. In the aftermath of the rebellion, this made Godkin a far more powerful advocate for protecting the civil rights of black Americans. It also made him the most fickle friend to the interests of black Americans imaginable, for his idea of rights precluded the principle that people must be able to collaborate as equals in determining the substance of those rights.

#### VI: *"The Next Great Political Revolution in the Western World"*

Looking back on nearly a half-century of journalism in 1899, Godkin recalled the period just before the Civil War as "the golden Age of America." Like many other Americans of that era, Godkin instinctively distinguished the South from the rest of the country. "Force was worshiped, but it was moral force: it was the force of reason, of humanity, of human equality, of a good example," he recalled. "The abolitionist gospel seemed to be permeating the views of the American people, and overturning and destroying the last remaining traditions of the old-world

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<sup>86</sup> Frederick Douglass, "The Color Line" *North American Review* (June 1881).

public morality.”<sup>87</sup> Virtually everything Godkin wrote at the time contradicts this sunny assessment of late 1850s, but though it grossly distorts the view he took of America at the time, his nostalgia accurately captures the hopes that era inspired in him, hopes that receded with each year after the war.

Godkin’s original attitude toward the early Republican party was captured in his assessment of their great tribune. “Mr Horace Greeley is self-educated, and very imperfectly educated at that, has no grasp of mind, no great political insight, and has his brain crammed with half truths and odds and ends of ideas which a man inevitably accumulates who scrapes knowledge together by fits and starts on his way through life,” Godkin wrote in 1863. “But he has an enthusiasm which never flags, and a faith in principles which nothing can shake, and an English style, which, for vigor, terseness, clearness and simplicity, has never been surpassed, except, perhaps, by Cobbett.”<sup>88</sup>

Professional academics are in no position to be appalled at the suggestion that the systematic training of a formal education is an advantage to an intelligent mind. Godkin’s assessment was condescending, however, not in what he observed but in what he failed to see. Already ambitious to start his own weekly journal, there is little doubt whom Godkin had in mind when he hoped “to see such power as Greeley undoubtedly wields lodged in hands of nicer touch and more careful training...”<sup>89</sup> Though Godkin acknowledged that no American journalist ever played a more effective and useful role than Greeley’s in energizing the antislavery movement, he never realized that this extraordinary power to galvanize public sentiment was not compatible with the sort of fine touch, the careful exhibition of erudition, designed to impress other cultivated intellectuals.

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<sup>87</sup> Cited in Rhodes, “Edwin Lawrence Godkin,” 289.

<sup>88</sup> Ogden, *Life and Letters*, 1:255.

<sup>89</sup> *Ibid.*

“Good government” was the defining cause of Godkin’s career, the amorphous aim that supplied a unifying theme to his many contradictory commitments, commitments he never quite organized into a coherent philosophy. Though he enjoyed many modest successes in this crusade, he was painfully aware that he had never mobilized the powerful moral crusade that would always be associated with Greeley’s *Tribune*. And yet it never occurred to Godkin that the influence of his journalism was inevitably limited by his pessimism, often flashing into outright contempt, toward the political capacities of the very people he needed to enlist in support of his cause.

Godkin was, however, an astute critic of how an older generation of elites had lost the esteem of the public. Until very recently, Godkin observed in 1867, the highest public offices in America had been filled by men molded in the European model of statesmanship: “the polished, regularly educated, cautious, somewhat timid, formal, punctilious, rather unsympathetic personage, precise in his language, careful in his dress, distrustful of popular enthusiasms, and strongly influenced by the traditions and tone of thought of old societies.”<sup>90</sup> From the Revolution to 1860, every President “with one or two exceptions” had fit this description, Godkin wrote. Though that caveat doesn’t do justice to the immense cultural significance of Andrew Jackson, it is almost a surprise to realize that Godkin was essentially correct. The Jacksonian era had challenged the authority of elites in government but only in the final years of the antebellum era did this fastidious style of politics seem in danger of being completely discredited. What, Godkin asked, had led to the emergence of this new type of statesmen, self-made, yet “wanting in nearly everything which has from the earliest ages been supposed to be an essential to the statesman’s character except honesty.”<sup>91</sup>

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<sup>90</sup> *The Nation*, “The New Type of Statesman” July 4, 1867.

<sup>91</sup> *The Nation*, “The Political Decline of the ‘Perfect Gentleman,’” August 22, 1867.

Two important causes were the social influence of the frontier and the moral influence of the antislavery movement, “a struggle so entirely moral in its nature that moral excellence – in other words, fidelity to principle – was, during its existence, almost the only excellence exacted of politicians in the Republican party. Training and knowledge of political science was of little or very inferior importance.”<sup>92</sup> But it was also true that, in the North, the “gentleman politician” had discredited himself by succumbing to a stultifying moral and intellectual conservatism. This “perfect gentleman”, Godkin wrote, had lost all faith in progress and insisted that the world, bad as it was, was “as good as it was ever going to be.” The Constitution became more sacred to him than the Decalogue. Maintaining that politics was “a science the knowledge of which was entirely confined to himself,” he also insisted that it was a science in which no more progress was possible, and with the works of Aristotle and Sir Archibald Alison “he declared the canon of political revelation closed.” Worst of all, he became a flunkey to the pseudo-aristocratic Southern slaveholder. This sort of gentlemen “last occupied the Presidential chair between 1852 and 1860, and during the whole period conducted himself with such a shocking want of manliness, courage and truthfulness that good clothes and published manners got to be associated in the popular mind with moral turpitude and mental imbecility.”<sup>93</sup>

And so the backlash came. Andrew Johnson was a heaven-sent corrective to the low repute in which gentlemanly airs had fallen. But the remarkable fact was that the removal of Johnson would be the elevation of Benjamin Wade, who was both one of the President’s bitterest opponents and also his identical twin in terms of political temperament and style. Smart, hot-tempered and impetuous, they were earnest men who held the fastidious pretensions of elites in roaring contempt. Between them, they had less than a month of formal schooling, and, what was

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<sup>92</sup> *The Nation*, “The New Type of Statesman” July 4, 1867.

<sup>93</sup> *Ibid.*

more, they were proud of it. Politics was a simple matter of right and wrong, friends and enemies. If they acknowledged a theoretical distinction between ambivalence and cowardice, they were incapable of recognizing it in practice.

Godkin's criticisms of the nation's political culture were consistent with the abuse he showered on conservatives and radicals alike. But the intellectual style – the reasoning behind a particular political position – was usually more important to Godkin than the position itself. His most revealing attack on the mindless conservatism of “the perfect gentleman” concerned black suffrage, since he hardly qualified as an enthusiastic proponent himself. “Negro suffrage has worn on him horribly, but not so much because of the ignorance of the negroes as from a fear that they will get into “the marriage bed” and attend his evening parties without his invitation. He is also somewhat afflicted by the woman's rights agitation, but rather on grounds of taste than expediency, and in fact now regards nearly every public question from a purely sentimental view.”<sup>94</sup> It was the sentimentality he hated, a tendency he associated with Tory conservatives and puritanical idealists. He argued both for and against black suffrage with equal vehemence, but he consistently rejected appeals to abstractions, whether the natural rights of man or the noble purity of the white race.

Another subtle but significant fault Godkin found with American political discourse during the Civil War era was the fashion of invoking classical history as though it offered directly relevant moral examples, just as preachers used the Bible. “There are no two facts of history that exactly resemble each other any more than any two noses or blades of grass,” he wrote in *The Nation*. “Human nature, indeed, is the same in all ages, and the effects of its passions on human affairs have certain generic resemblances, but always with distinctive specific differences. As the circumstances, attendant and antecedent, of historical events are never alike,

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<sup>94</sup> *The Nation*, “The Political Decline of the ‘Perfect Gentleman,’” August 22, 1867.

so no repetition of a particular result can be safely prophesied from an imagined or real resemblance in a new set of facts to those which brought it about.”<sup>95</sup>

So much for the belief, perhaps the most pervasive in American political thought, that republics followed a particular logic of growth and decay. Naturally, Godkin’s criticism was, in part, simply an occasion to mock politicians who adorned their arguments with a shallow show of historical erudition, “gleaned, no doubt, from “Lempriere’s Classical Dictionary” and “Plutarch’s Lives.” And his mockery of speakers who got “lost in the mists of antiquity” in making their point shows the wit that endeared him to a generation reacting against the earnest zeal of their elders. For example: “Mr. Deming of Connecticut, when arguing in favor of Grant’s being made a full general, instituted an investigation into the practice of the earlier Pharaohs, which was of the highest interest and showed clearly that Grant ought to have the place.”<sup>96</sup>

But this narrow point about historical analogies was part of a much more fundamental orientation toward politics, morality and time. Godkin’s political essays were deeply steeped in historical reasoning, but he inevitably stressed the impersonal laws of social development that distinguished scientific from literary history. Antebellum politicians, by contrast, even the most erudite, like Charles Sumner, tended to use history and literature interchangeably, as an exploration of the relationship between circumstances, events and character rather than an attempt to illuminate the complex processes of historical cause and effect. The danger of liberty producing licentiousness, of power tempting hubris, of wealth spoiling into corruption – and the moral virtues necessary to offset such tendencies – these were the primary lessons history taught antebellum politicians. And as Godkin noted, this approach to politics only grew more

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<sup>95</sup> *The Nation*, March 29, 1866. Almost all articles in *The Nation* were unsigned, though there is a great deal of archival and published material that directly connects Godkin to many pieces (and shows a lot of what he did not write), in most cases one must make an educated inference. This is one of those cases.

<sup>96</sup> *The Nation*, June 25, 1866.

pronounced “with the long absorption of the public in the antislavery struggle,” which seemed to validate a conception of history as moral melodrama.<sup>97</sup>

And finally, Godkin’s critique of American political culture contained a prophetic grasp of how the growing complexity of industrial society was gradually undermining the republican ideal of self-government. The increasing sophistication of the social sciences, he predicted, was initiating “a revolution in the art of government, and one that promises results no less fruitful for human happiness than those produced by the application of the experimental method to other sciences.” But the immense training necessary to master this wealth of information raised the question of whether representative government “can ever be made an instrument of scientific legislation, that is, can ever be made to perform that nice adjustment and readjustment of men’s legal relations which the peculiar nature of modern civilization constantly calls for.” Elected assemblies symbolized the victory of democracy over oligarchy and monarchy, and that was the source of their immense prestige in the minds of the people. But this prestige would not survive the failure of even the most honest democratic legislators to promote the people’s happiness, not from want of sympathy but from “ignorance, haste, want of training and the distractions of an infinite variety of details and of multifarious conflicting interests...” Godkin then offered as a hopeful prediction what Tocqueville had anticipated as a nightmare.

What the nature of the final remedy will be I do not pretend to predict, but nothing is more certain than that the next great political revolution in the Western world, which will take place after the popular delight in parliaments as mere symbols of victory has passed away, will be some such change in their organization as will not only supply the means of giving prompt, but also scientific expression to the popular will, or, in other words, will

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<sup>97</sup> *The Nation*, July 4, 1876. It is a mistake to consider this approach to politics simplistic or superficial compared to the approach engendered by social scientific methods, unless we are prepared to say the politics in Shakespeare is simplistic or shallow compared to that in, say, Marx. Nor is a focus on morality in politics necessarily a sign of dogmatism or fanaticism. Lincoln knew little history and no economics but he had a keen appreciation for the ironic distance between intention and motive. Of the many passages he memorized from Shakespeare, Lincoln was especially fond of quoting a line from *Hamlet*, “There’s a divinity that shapes our ends, Rough hew them how we will.” William Herndon, *Life of Lincoln* (New York, 1930), 352.

place men's relations in society where they never yet have been placed, under the control of trained human reason.<sup>98</sup>

This was very far from what Lincoln meant by self-government. One could hardly ask for a more cogent expression of the logic tending toward the establishment of an administrative state. Though a liberal, Godkin never believed that laissez-fair principles provided a simple solution to the ongoing problems of government. "It is becoming clearer and clearer every day that the hope that...a short and simple code will supply the legislative wants of modern commercial communities is utterly chimerical," he wrote in the same lecture. The idea of a society guided by business leaders he found preposterous in prospect, grotesque in reality. No one had a higher opinion of the qualities necessary for an intelligent grasp of public affairs, and it would be hard to say whether the political intelligence of capitalists or laborers met with more contemptuous derision in *The Nation*. Nevertheless, Godkin's expansive vision of scientific legislation in an industrial society was strictly negative. His essential point was the growing incapacity of the people to govern themselves in any meaningful sense.

Godkin's skepticism toward democratic self-government, however, meant that the distinction between private and public was far more important than it had been for either Whigs or Democrats. He replaced the complex layering of authority that characterized antebellum political thought with the simple dichotomy between the state and the people. "Since the war began there has been exhibited a marked tendency to bureau-making," Godkin lamented in June, 1866.

Now these bureaus may possibly be so ineffective as to do no great harm in themselves, but they all have one mischievous effect. They propagate and give countenance to the grave error that Government agencies have the power to foster and promote these great national interests. It should never be forgotten that all real growth and progress in agriculture, commerce, manufactures, sciences, or education is from the people, never

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<sup>98</sup> Godkin, "Legislation and Social Science," Read Before the American Social Science Association, March 18, 1870. *Journal of Social Science* (Boston, 1871).

from the government. The Government may hinder, but cannot help; a bureau may record progress, but never originate or cause it. In matters touching education, science, or manufacturers, the best instructions which the people could give to their chosen representative would be – let us alone... The true function and bounden duty of the national government in the Southern States is to keep the peace between all classes of citizens, and to make life, property, and personal liberty as secure there as they are in New York ...<sup>99</sup>

The contradiction between this statement and Godkin's vision of scientific legislators placing human relations "under the control of trained human reason" is obvious, but for that very reason some of the underlying consistencies are all the more significant. In both cases, Godkin maintained a stark separation between the state and the society and culture over which it presides. He instinctively emphasized the police power of the state over the communitarian conceptions of government that had been so pervasive in American thought up through the Civil War. He criticized Whiggish paternalism both in the economy and in morals, and he blamed this impulse for undermining the legitimacy of the Republican party by engendering gross corruption and puritanical intolerance. In September 1867, Godkin warned that many who were "ardent friends of equal rights and thoroughly convinced of the wisdom of the Congressional plan of reconstruction, are yet so alarmed by the prevailing political corruption" that they were losing faith in the Republican leadership. In the same editorial, however, he also referred to state controversies over prohibition and Sunday laws and warned that "the Republican party is in great danger of suffering itself to be controlled by the Puritan idea," that is, the impulse to use the state "to legislate for the prevention of personal sin."<sup>100</sup> What may seem like paradoxical or unrelated tendencies, were, for Godkin, naturally related. Both stemmed from a misbegotten view of the state.

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<sup>99</sup> *The Nation*, "To govern well, govern little," June 12, 1866.

<sup>100</sup> *The Nation*, "The Dangers of the Republican Party," September 19, 1867.

To adjust and enforce the rules of a social system, constantly evolving in its complexity, was itself such a vast and crucial responsibility that to make government the agent of any additional social aims could only corrupt and encumber its fundamental purpose. This view of the state was ideological, of course, but it also reflected the obvious failure of the government to perform even its most essential functions honestly and competently. Godkin admitted that the government “may one day be able to do a great deal more, but not until a great change has occurred in the condition of the country.”<sup>101</sup> The explosive growth in material wealth, Godkin noted, was breaking up old traditions and habits – the real glue of social and political ethics – and “the result is a kind of moral anarchy, from which we are learning, for the first time, how much the old bonds did to supplement and aid both the law and the gospel.”<sup>102</sup> And yet these moral bonds were social, not political. He viewed the state as the crude instrument that imposed itself where the informal norms of the community and culture failed.

The power of the state was not a moral instrument but a physical one; it had the power to coerce but not to instruct. “[M]en cannot be dragooned into morality...to make men moral, you must not legislate but *teach*,” Godkin wrote.<sup>103</sup> “When [the state] lays its commands on a man he knows that obedience will, if necessary, be enforced by an agency of such tremendous power that he does not think of revolt.” To suppose that this blunt instrument succeeds by appealing to the moral sense of those on whom it operates is not only delusional but pernicious.<sup>104</sup> It stifles the moral development of the individual by imposing through fear what ought to be taught through reason, and sanctions “an immense field for the most odious and mischievous

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<sup>101</sup> *The Nation*, January 30, 1873.

<sup>102</sup> E.L. Godkin, “Commercial Immorality and Political Corruption,” *The North American Review* (July, 1868).

<sup>103</sup> *The Nation*, “Puritanism in Politics,” October 3, 1867.

<sup>104</sup> E.L. Godkin, *Reflections and Comments, 1865-1895* (New York, 1895), 255.

tyranny.”<sup>105</sup> Inevitably, this conception of the state discourages the idea of politics, going back to Aristotle, of a community united by a collective commitment to public ideals.

In his essay on the social sciences, Godkin argued that the statesman ought to regard “the weaknesses of men, their follies, vices, passions, prejudices” as a chemist regards the compounds in his laboratory and their reactions to different elements.<sup>106</sup> His point was not that the citizens of a democratic republic were as beyond the reach of moral suasion as inorganic matter; he was simply denying that this role was a legitimate function of the statesman. Five years after Abraham Lincoln’s Second Inaugural Address, Godkin’s opinion had not become predominant. But its rapid acceptance among American intellectuals represents the most significant change in the nation’s political culture.

Political reform ceased to be a moral problem and became a technical one. Instead of a spasmodic reassertion of civic virtue – a return to first principles reaffirming the values of American republicanism, American intellectuals began to approach politics as a science. The evils of society were primarily organizational or technical – not moral. And they could only be resolved by trained experts. The logic of the older outlook was simple: The virtue of the people, expressed through upholding the covenant that bound them together as individuals and communities, was the only safe means of resisting the usurpation of power by those organized to exploit, oppress and even enslave them. This virtue was a combination of assertion and restraint – a jealous defense of political liberty and a voluntary obedience to law and justice.

However naïve, however incompatible with the actual conditions of an industrial society, the older idealism had the great advantage of defining self-government as a genuine aspiration, not a fatuous slogan for democratic accountability. Forgetting this basic insight leads to illusions

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<sup>105</sup> *The Nation*, “Puritanism in Politics,” October 3, 1867.

<sup>106</sup> Godkin, “Legislation and Social Science.”

equally naïve and even more dangerous – that the primary problems in politics are technical, that the people’s interests, never mind their freedom, can be entrusted to the benevolence of elites, that freedom is a private right rather than a political endeavor.

The antebellum Union was a system of governing institutions, of course, but it was primarily a creative cultural collaboration. *E Pluribus Unum* was not a material phenomenon analogous to chemistry but a collaborative performance analogous to music. What Henry Clay or Daniel Webster did as Congressmen, Senators and Secretaries of State amounted to laughably little next to the prestige they acquired as orators helping to define a national creed. The only national bureaucratic institution that had any tangible presence in the lives of most American citizens, the post office, functioned not to govern them but to knit them together into a common political discourse. The nation became a nation by creatively expressing and contesting what sort of nation it was going to be. Godkin did not reject this vision of government so much as he recognized that it had been discredited by events. The Republic ceased to be a work of art and became an engineering project, clumsily developing into a distinctly modern edifice of experts. “Trained men,” E.L. Godkin predicted, “all other things being equal, are pretty sure in the long run to be masters of the world.”<sup>107</sup>

### *VII: The Genteel Tradition at Bay*

“Old Harvard men will remember the sweet sadness of Professor Norton,” George Santayana wrote in recalling his former teacher. “He would tell his classes, shaking his head with

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<sup>107</sup> E.L. Godkin, *Reflections and Comments, 1865-1895* (New York, 1895), 255. For a terrific study of the origins of American social sciences, which locates the development squarely in the “crisis of American exceptionalism” that followed the Civil War, see Dorothy Ross, *The Origins of American Social Science* (Cambridge, 1991).

a slight sigh, that the Greeks did not play football.”<sup>108</sup> This gently mocking portrait of Norton was part of a more biting critique of the tradition he represented, a tradition that Santayana criticized for creating a division between the innovative spirit of American enterprise and the moribund traditionalism of American high culture. The division was symbolized, for Santayana, in architecture. “The American Will inhabits the sky-scraper; the American Intellect inhabits the colonial mansion. The one is the sphere of the American man; the other, at least predominately, of the American woman. The one is all aggressive enterprise; the other is all genteel tradition.”<sup>109</sup> But it was precisely this cultural division that Norton struggled mightily to resist. The animating purpose of his life was to harness the rough energies of democratic society with the highest cultural aspirations of a young civilization, enriched by the fruits of the Old World but untrammelled by its ruins. The ambiguity at the heart of his outlook – American society was at once behind Europe in refinement and culture and yet also at the vanguard of human progress – was not unique to Norton, but it explains the peculiar mixture of conservative nostalgia and visionary hope that marked his politics.

“You speak of yourself as a radical,” Norton wrote to an editor in Indiana during the Civil War. “I am one too, but let us also be Conservatives. There is much more that is good and precious in the past than our people are willing to believe...In this country we have got hold of some good things which men have not attained elsewhere. And if we hold fast to them, we shall secure that ideal America which is better in hope than any Utopia of which men have ever dreamed.”<sup>110</sup> Norton’s meaning in that last sentence was deliberately vague. He did not have a specific ideal in mind, only a means of attaining it. By recognizing and preserving what was

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<sup>108</sup> George Santayana, *The Genteel Tradition at Bay* (New York, 1931), 3-4.

<sup>109</sup> George Santayana, “The Genteel Tradition in American Philosophy” originally delivered as a lecture at The University of California at Berkeley in 1911.

<sup>110</sup> Norton to George Baxter Harrison, 14<sup>th</sup> December, 1863. Norton Papers, Houghton Library.

good in their society – measured not by the fickle light of the present but by the accumulated wisdom of the ages – Americans had the opportunity to advance their collective imaginations to conceive of and then realize an ideal that would satisfy the inchoate aspirations and discontents animating the rude growth of the era.

To expand the creative capacities of the human imagination was, for Norton, the essential act in the advancement of civilization as a whole. It was not simply analogous to the creative arts but was the ultimate aim and purpose of the creative arts. The artist was produced by the social ideals of his community as he struggled to give those ideals a sublime expression. “In their highest achievements the arts are not so much the instruments and expression of solitary individual artist, as the means which the nation adopts, creates, inspires for the expression of its faith, its loftiness of spirit,” Norton wrote in 1867.<sup>111</sup>

Norton’s review of Walt Whitman’s *Leaves of Grass* in 1855 provides a significant demonstration of his point, for it perfectly summarizes his attitude toward American democracy as a whole in the 1850s. Norton astutely recognized an authentic, new and distinctly American spirit “in this gross yet elevated, this superficial yet profound, this preposterous yet somehow fascinating book.” Whitman’s poetry, Norton observed, “is a mixture of Yankee transcendentalism and New York rowdyism, and, what must be surprising to both these elements, they here seem to fuse and combine with the most perfect harmony.” Norton noted that the author’s proud boasts of being an American were superfluous, for “there is no [other] quarter of this universe where such a production could have had a genesis.” There was, in this new poetic voice, “an original perception of nature, a manly brawn, and an epic directness” that had

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<sup>111</sup> “American Culture,” an unpublished public lecture. Cited in Kermit Vanderbilt, *Charles Eliot Norton: Apostle of Culture in a Democracy* (Cambridge, MA., 1959), 205.

no parallel.<sup>112</sup> And yet, as he wrote privately to James Russell Lowell, the book also contained “passages of intolerable coarseness, – not gross or licentious, but simply disgustingly coarse.”<sup>113</sup>

Norton’s opinion of Whitman was his opinion of American culture *writ large*, his criticism of what it was inevitably contained a glowing optimism of what it would become. “The art of social morals is, like most other arts, much more advanced in Europe than here,” he wrote to Godkin in 1866. “But it rests there for the most part on false postulates. Here, as in politics, we have rejected the old theories, have begun to practice upon new and sounder ones, but have not yet made advance beyond the awkward efforts of beginners. We have lost the ancient grace, the fine trained sense of moral relations in purely conventional society and have not gained the true modern grace which is hereafter to model lives and manners in its own form.”<sup>114</sup> Manners were an art like any other, and like all other arts they could be corrupted from an expression of moral excellence to a “disguise of selfishness.”<sup>115</sup> In Europe, the arts were more refined but also more artificial. The same false distinctions that preserved aristocratic power in manners also created a technical virtuosity in the arts, and a hedonistic standard of beauty, that was unconnected to the expression of any underlying moral truth.

“So far the relations between man and man are truer, simpler more confiding and more humane than they have been in the past or are elsewhere in the world, we may hope, we have the right, indeed, to believe, that the manners of men will constantly improve; that they will be simpler, more considerate, more conformed to the absolute test of morals than the manners of other peoples,” Norton wrote in *The Nation* in 1866. “We think we already see a great advance;

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<sup>112</sup> *Putnam’s Magazine*, “Leaves of Grass,” September, 1855.

<sup>113</sup> Norton to Lowell, Sept. 23, 1855. Cited in Norton, *Life and Letters*, 1:135.

<sup>114</sup> Norton to Godkin, January 24, 1866. Godkin Papers.

<sup>115</sup> *The Nation*, “Good Manners,” May 4, 1866.

we have got rid of the faults that spring from the existence of an upper and lower class, of arrogance, pride, servility, flunkeyism as embodied in conventional manners...”<sup>116</sup>

The unanswered question was whether the advanced culture Norton identified with Europe was ultimately compatible with the vigorous democratic spirit he cherished in his own country. “The reconciliation of the purity of youth with the power of maturity has never been achieved in life or art,” he once wrote to John Ruskin, his intellectual collaborator in making art criticism a vehicle for social criticism in the broadest sense.<sup>117</sup> This reconciliation was the task he set for American culture, to infuse a fresh, youthful spirit in old forms grown corrupted and stale. His inspiration for this imagined purpose was the Northern Italian communes of the twelfth and thirteenth centuries, and though he never drew out the comparison with crude analogies, the historical development of those cities profoundly influenced his perception of the development and fate of his own society.

At its crude beginnings in the eleventh century, the civilization of the Middle Ages was still far behind the attainments of antiquity. But a number of interrelated tendencies in society “were operating with irregular but constant force to bring its discordant members into closer moral connection with each other than had been possible in any previous epoch.”<sup>118</sup> A new ideal of individual and civic life was coming into being, and the influence of classical civilization on this new growth was as valuable as inspiration as it was fatal as imitation. Church architecture in this era was, for Norton, the most enduring and sublime expression of the spiritual harmony achieved by the societies that built them. “It is only when men in this world are in conscious

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<sup>116</sup> *The Nation*, “Good Manners,” May 4, 1866.

<sup>117</sup> Norton to John Ruskin, August 30, 1874. Cited in Norton, *Life and Letters*, 2:48.

<sup>118</sup> Charles Eliot Norton, *Church Building of the Middle Ages* (New York, 1880).

spiritual relation with one another,” he observed, “that their characters acquire dignity and strength, and their works possess enduring vitality.”<sup>119</sup>

This new spirit in the Italian cities manifested itself in all the arts of life – in commerce as in politics, in architecture and in literature, in the scholarship recovering the wisdom of antiquity and in the new sciences that advanced beyond it. A new Cathedral built in Florence in the thirteenth century declared the lofty artistic achievement in its inscription, which set forth its builders’ design to “make it correspondent with a heart which is of the greatest nature, because composed of the spirit of many citizens, united together in one will.”<sup>120</sup> But this burst of creative energy ended with the so-called Renaissance, as the vigor of the new spiritual and civic faith faded, and a period of increasingly slavish imitation began. “The masters of the ancient world were made the despots of the modern...Original thought was discouraged, and the knowledge of the classics served to stifle fresh and independent works of mind.”<sup>121</sup> Standards of material splendor and technical ability continued to advance but without the animating spiritual passion that alone gives human endeavors an original and enduring value. “Art was no longer the handmaid of piety, no longer the expression of purity. It was sinking into mere decorative purposes.”<sup>122</sup>

As Norton struggled to make sense of his own society in the mid-nineteenth century, however, the most significant fact of the Italian Renaissance “was a strange contrast, during this period, between the greatness of physical achievements, the vast increase of knowledge from sources external to the mind of man, the extraordinary intellectual activity, and the deficiency of intellectual force.

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<sup>119</sup> Norton, *Notes of Travel and Study in Italy* (Cambridge MA, 1859), 303.

<sup>120</sup> Norton, “The New Life of Dante,” *The Atlantic Monthly*, January 1859.

<sup>121</sup> Norton, *Notes of travel and Study in Italy*, 304-305.

<sup>122</sup> *Ibid.*, 315.

Intrinsic feebleness corresponded to a hitherto unexampled rapidity of material progress. In the midst of discoveries of startling grandeur, the Italian imagination grew cold, and rarely showed itself, save in the range of science and physical investigation. Literature lost dignity, and seemed to lose even the consciousness of morality. The so-called golden age of Italian letters...was in truth a gilded, rather than a golden age. Lorenzo [de Medici] is called the patron of letters and of Art; but when letters and Art need a patron, it is because they have lost their own natural vigor.<sup>123</sup>

Dante marked the peak of Italy's creative achievement, while Michelangelo was the greatest genius stunted by the hollow splendor of the later Renaissance. "Michel seems to me one of the greatest and awkwardest of mankind," Norton wrote to Ruskin in 1870. "He never could express himself. Had he been able to do so, he would have stood fairly and squarely side by side with Dante." The reason for the great artist's failure was "the sharp contrast between his nature and his times. In 1300, he would have been consistent with himself, – in 1500 the conditions under which he grew to knowledge of himself made consistency impossible."<sup>124</sup> Whatever the merits of this as an interpretation of Michelangelo's art, it astutely captures Norton's increasing sense of dislocation within his own society during the 1870s.

Throughout the 1860s, however, Norton felt himself in the middle of a moral and intellectual awakening as brilliant as that in the time of Dante. And his interpretation of the cultural unity of that era, of the broad intellectual current that advanced all arts and sciences together, offers a key into the mission he envisioned for *The North American Review* and *The Nation*. "Philosophy invaded the sphere of poetry, while, on the other hand, poetry gave its form to much of the prevailing philosophy," he wrote of Dante's Florence. And it was the great poet who, more than any other man, "resumed in himself the general zeal for knowledge. He genius

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<sup>123</sup> Ibid., 317.

<sup>124</sup> Norton to Ruskin, March 31, 1871. Cited in Bradley and Ousby, ed., *Correspondence of Ruskin and Norton*, 187.

had two distinct yet often intermingling parts, – the poetic and the scientific. No learning came amiss to him.”<sup>125</sup>

Far from accepting a separation of the American intellect from the bustling enterprise of the will, Norton attempted to make *The North American Review*, a conduit in which all the dynamic eddies of American thought and culture would find a coherent stream. That meant incorporating the methods revolutionizing the physical sciences into humanistic and political traditions, which alone could give these creative impulses lasting meaning. What is most striking about the *Review* under Norton’s leadership is the extent to which the humanistic tradition retained its self-confidence as the unifying element in the expanding universe of human knowledge – without muddling the legitimate boundaries between scientific and humanistic knowledge or ignoring one in favor of the other. Rejecting attempts to subject all human affairs to the crude materialism of scientific and pseudo-scientific empiricism, Norton also avoided, at least initially, the defeated sense of fragmentation, most memorably expressed by Henry Adams, or the cheerful acceptance of uncertainty embraced by the pragmatists.

Norton accepted Darwin’s theory of evolution, and he assumed as a matter of course that this newly discovered truth was relevant to all other truths. But he dismissed attempts to extend theories explaining the physical universe to interpretations of human social and cultural development as a mere confusion of thought, the infantile mistake of taking a metaphor literally.<sup>126</sup> Norton was a champion of modern research methods, but he was also wary of erudition for its own sake and the stunting tendency toward narrow specialization that such methods encourage. Unlike most intellectuals of his generation, he was not overly impressed with the staggering erudition of German scholarship, which struck him as an overreaction against

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<sup>125</sup> “The New Life,” *The Atlantic*, January 1859.

<sup>126</sup> Turner, *The Liberal Education of Charles Eliot Norton*, 283.

idealism toward a relentless accumulation of facts. “The change in the spiritual temper of Germany is surprising,” he observed in 1871, but one sees that it is to be accounted for in part as a natural reaction against the over-tension of the intellectual faculties in the attempt to solve the insoluble, and to make ropes out of sand, and partly as the result of the splendid display of the virtues of fact, of practical training, of thorough and positive drill, during the war.”<sup>127</sup>

The same ambivalence marked Norton’s politics. Indeed, his criticism was the same wherever he looked. What he disliked in later Renaissance art was what he disliked in German scholarship, which was the same as the flaw in the Prussian state. In all cases it was the stunting specialization that expanded man’s external powers at the expense of the internal spiritual and cultural depth that alone created what was most precious to human development – and that could never come from a specialist.

Norton was not a reactionary, but he deplored the effects of “that damaging wave of prosperity that has swept over the world during the last twenty years,” as he complained from Europe in 1871. The result was that the world was achieving “an external uniformity,” a monotonous consistency brought by railroad timetables and standardized fashions, that served as a cheap, empty substitute for the robust local identities that had created a real sense of unity, and this diagnosis also captured Norton’s diminished sense of what the Civil War had accomplished. His disillusionment with the optimism of the Civil War years, however, came not from his perception of American politics but during an extended trip abroad.

Arriving in London in the summer of 1868, eleven years after his last visit, Norton was appalled by the staggering increase in both luxury and squalor. “The gulf is wider between the lowest and the highest than human nature can bear,” he wrote to Godkin.<sup>128</sup> The difference

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<sup>127</sup> Norton to G.W. Curtis, November 17, 1871. Cited in Norton and Howe, *Life and Letters*, 1:412.

<sup>128</sup> Norton to Godkin, Godkin Papers, August 20, 1868.

Norton found in Europe was almost certainly exaggerated by his own heightened idealism and the perception, which had become far more obvious over the last decade, that American society was rapidly replicating these same social conditions. Indeed, the change in Europe was perhaps less striking than the increased presence of American wealth there. As the first generation of great American fortunes became conspicuous abroad, it was no longer possible to pretend that the Republic in the New World offered an Arcadian refuge from the staggering inequities of the old. During this visit, Norton introduced Henry James to the social circles that loomed so large in the novelist's work.

Norton wrote a long essay for the *North American Review*, denouncing the selfish pretense that the "laws of political economy" were a viable substitute for morality in the intelligent contemplation of human social relations. His disgust for the short-sighted greed of the ruling classes did not, however, produce a sentimental reverence for the exploited poor. He considered the growing chorus of revolutionary talk, "vague, wild and ignorant to the last degree – but not less dangerous for that." And yet he occasionally wondered whether a merely destructive revolution might be better for civilization in the long run. "Whether our period of economical enterprise, unlimited competition, and unrestrained individualism, is the highest stage of human progress is to me very doubtful," he wrote soon after traveling from America to Europe in 1869:

And sometimes when I see the existing social conditions of European (to say nothing of American) social order, bad as they are for the mass alike of upper and lower classes, I wonder whether our civilization can maintain itself against the forces which are banding together for the destruction of many of the institutions in which it is embodied, or whether we are not to have another period of decline, fall, and ruin and revival, like that of the first thirteen hundred years of our era. It would not grieve me much to know that this were to be the case. No man who knows what society at the present day really is, but must agree that it is not worthy of preserving on its present basis.<sup>129</sup>

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<sup>129</sup> Norton to Chauncey Wright, December 5, 1869. Cited in Norton and Howe, *Life and Letters*, 1:372.

More significant even than the pessimism in this prognosis is the absence of a meaningful distinction in Norton's mind between the social order of America and that of Europe. Indeed, though the degree of poverty and class conflict were graver in England, Norton began to think that "she is essentially in advance of us in regard to the ultimate settlement of the main social problems, on account of the more solid training and more serious temper of her best men, as compared with those of our best men." There were deplorably few such men in England, but in America there were none at all. The best and most original mind America had produced, Norton believed, was Emerson – "but the country has in a sense outgrown him...He belongs to the pure and innocent age of the Presidency of Monroe or John Quincy Adams...we have no one to take his place in supplying us with the thought itself on which the spiritual growth in good of the nation mainly depends."<sup>130</sup> Though he now looked back nostalgically on that more innocent era, Norton still hoped that the future contained the secret to a better world than any the present could imagine. "For my part, I should think poorly of mankind if they did not before long discover some better political arrangement than any that have yet been tried," he wrote from Florence in December, 1869.<sup>131</sup>

Norton's reaction to Charles Dickens's death was characteristic of his political outlook. He lamented the loss exclusively as a great political calamity, as though the great novelist were a statesman or general in the middle of a war. "Just at this time England can ill spare such a leader in the uncertain battle," he wrote to John Ruskin upon learning of Dickens's death in June of 1870. "The prospect of the field, dark enough before, grows, visibly darker, with the loss of one

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<sup>130</sup> Norton to Wright, September 13, 1870. Cited in Norton, *Life and Letters*, 1:399.

<sup>131</sup> Norton to Miss Gaskell, Dec. 21, 1869.

who so long had been among the foremost in the struggle.”<sup>132</sup> Dickens’s “unparalleled power of sympathy with all sorts and conditions of men, the breadth and generosity of his appreciation of human nature,” – these literary gifts served not merely to entertain but to broaden the readers’ moral imagination.<sup>133</sup> Norton had known Dickens for 15 years, and he vividly recalled their last conversation a year before his death. “We were waiting for a train, and as we walked up and down the platform, he seemed so strong and likely to live long, that I thought of him as almost certain to come to the fore in case of any sudden terrible overflow of the ignorance, misery and recklessness which the selfishness of the upper classes has fostered, and which now, as Dickens believed, are far more threatening to those classes than they seem to have the power of conceiving. ‘If the storm once sets in it will be nothing short of a tornado, and will sweep down old fences.’”<sup>134</sup>

Ruskin’s reply to Norton’s letter lamenting Dickens’ death illustrates a significant contrast between the two friends. Ruskin acknowledged the great loss to literature but saw no real loss for politics. “Dickens was a pure modernist – a leader of the steam whistle party par excellence – and he had no understanding of any power of antiquity except a sort of jackdaw sentiment for cathedral towers – He knew nothing of the nobler power of superstition...His Christmas meant misletoe [sic] and pudding – neither resurrection from dead – nor rising of new stars – nor teaching of wise men – nor shepherds.”<sup>135</sup>

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<sup>132</sup> Norton to Ruskin, June 15, 1870. Bradley and Ousby, ed., *Ruskin and Norton Correspondence*, 191.

<sup>133</sup> The second quote comes from Norton’s letter to John Simon around the same time. Norton, *Life and Letters*, 1:390-391.

<sup>134</sup> Norton to Ruskin, June 15, 1870. Bradley and Ousby, ed., *Ruskin and Norton Correspondence*, 191. This is, of course, exactly Dickens’s attitude toward the French Revolution presented in *A Tale of Two Cities* – a disgust with the selfish cruelty of the aristocracy and a horror at the monstrous forces unleashed by that cruelty. “Crush humanity out of shape once more, under similar hammers, and it will twist itself into the same tortured forms,” he wrote of the terror.

<sup>135</sup> Ruskin to Norton, June 19, 1870. Bradley and Ousby, ed., *Ruskin and Norton Correspondence*, 194.

Neither Norton nor Ruskin accepted the literal truth of the Bible, but both men remained essentially religious and experienced their loss of faith as a spiritual crisis, intensifying, rather than resolving, the urgent mystery of man's relationship to God. Ruskin, however, was disgusted by the godless materialism he found in the outlook of middle class liberalism, and this spiritual defect was no less objectionable when disguised by what he regarded as shallow sentimentality. "New freedom," George Young observed in his classic study of Victorian England, "is a painful thing, most painful to the finest minds, who are most sensitive to the breaking-up of faiths and traditions and most apprehensive of the outcome."<sup>136</sup> So it was with Norton and Ruskin. But Norton, unlike his more temperamental friend, retained a confidence in the possibilities of the new freedom, not as it was but as it could be, that kept him from the revolt of a reactionary. The superstitions that fired the moral imaginations of past ages were gone, and that inevitably meant less powerful, less sublime forms of artistic expression. But it also opened the possibility of more generous, gentler ideals than any even conceivable under the rigid dogmas of the past. Just as Dante's poetic ideal of the gentle-hearted man captured a loftier ideal than any available to the artists of classical civilization, so the simple-hearted sweetness celebrated in Dickens might mark a similar milestone in the moral advancement of man.

Aside from illustrating his understanding of the purpose of art, Norton's faith in the positive social influence of Dickens's novels also reveals an essential kinship in their political outlooks. Both combined a generous appreciation for the best ideals of their social order with sincere horror at its defects. Both loathed utilitarianism and other economic doctrines that elevated crude selfishness into an iron-law of human social relations. Although Norton wasn't a literary genius, he, no less than Dickens, wrote scathing social criticism that could easily be mistaken for the rant of a violent socialist. And yet neither man showed the slightest interest in

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<sup>136</sup> G. M. Young, *Victorian England: Portrait of an Age* (London, 1936), 75.

any alternative economic or political theory. The problem at the root of what was wrong with society was essentially a moral problem. If the rich and powerful were not selfish and cruel, they would not ruthlessly exploit the poor. If the poor were not ignorant and weak, they could not be exploited.

Efforts to prevent these grave abuses, without making the wealthy less selfish or the poor less exploitable, risked replacing the true purpose of society with a cold vision of a mechanically maintained solidarity. It was like reforming a brutish marriage, marked by rape and infidelity, with chastity belts that could only be unlocked when both spouses turned their keys—a more plausible solution than preaching about love and the sublime sanctity of the marriage bond, perhaps, but one that reduced a spiritual ideal to the crude cynicism of a jailer, who treats men warily as exceptionally clever but essentially unimprovable beasts.<sup>137</sup>

Even in Norton's lifetime, such a moralistic social outlook came to seem quaint even to those who did not dismiss it as an unwitting or cynical defense of privilege. "Victorian critics such as Arnold, Renouvier, and Godkin, simply lacked the intellectual tools to construct a new framework for politics in the emerging urban-industrial world of the late nineteenth century," James Kloppenberg writes in his brilliant study of the origins of pragmatism in European and American thought, and his examples just as easily could have included Norton and Dickens. "They disliked what they saw, but they were unable to offer constructive alternatives."<sup>138</sup> As Kloppenberg's observation implies, the refusal to embrace the solution to a problem is not the same as dismissing the problem itself. But as Kloppenberg suggests elsewhere, the intellectual

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<sup>137</sup> Norton would consider this a very vulgar analogy, and perhaps I should avoid it. But I think it's apt, especially given the influence of Dante – and Dante's Beatrice – on his social thought. "One who knows anything of the *Vita Nuova*" and of the "Divine Comedy" may be pardoned if he smile compassionately at poor Mill's experience of love," Norton wrote to Thomas Carlyle. "There is room for improvement, doubtless, in the regulation of our passions, but to regulate them out of existence is to go too far." Norton to Carlyle, November 16, 1873.

<sup>138</sup> Kloppenberg, *Uncertain Victory* (Oxford, 1986), 194.

‘progress’ implied in this passage is misleading. Instead of new intellectual tools awaiting development, one could just as easily speak of old moral commitments waiting to be jettisoned, as changing circumstances led intellectuals to abandon inherited ideals as untenable, and then forget them altogether.

To follow Norton out of the bright enthusiasms of the Civil War is to witness the confusing vision, the shifting light of human possibilities, beheld by one born at the dusk of the Enlightenment and the dawn of the industrial age. To the philosophically minded American born in the early nineteenth century, the trajectory of human progress seemed to consist primarily of moral and intellectual advancements, accompanied by material improvements in the technological applications of scientific knowledge. And the advancement in moral perception, in the broadly recognized principles and mores that defined the fabric of social relationships, was the only movement Norton recognized in the history of civilization, which was marked by flashes of moral insight that left an indelible mark, even when overthrown by barbarism, and thus became the starting point for each new advance.

As Norton came of age in the 1840s, the material texture of life in America was not meaningfully different from what it had been in the more affluent pockets of antiquity. There were differences, obviously, but in access to clean water and food, the pace of travel and communication, the relative balance of urban and rural populations, in all these areas the structure of civilization was still essentially what it had been for Aristotle, Jesus, Dante and the Founders. It was only in the realm of ideals and morals that these men had seen their worlds transformed. Norton simply projected this historical trajectory forward in his understanding of progress. Some of his expectations were fulfilled, either in his lifetime or shortly after – abolition of slavery and the political enfranchisement of women, for example. But these aspirations were

fairly modest, amounting to little more than removing the most egregious inconsistencies to a moral and social ideal that was already widely accepted.

His optimism ran much deeper, harboring hopes that later generations would consider simply incredible. He imagined a society united by the most profound spiritual awareness of their relation to one another and their creator, allowing each individual the fullest expression of his or her own unique nature, without the bigotry or dogmatism of an externally imposed creed.<sup>139</sup> He imagined a society in which the best, most rarified qualities of his own privileged class were as broadly shared as the suffrage. And once elites lost their monopoly on these fine qualities, they might cease to be accompanied by their characteristic vices – snobbery, affectation and other expressions of artificial distinction – because the outer form of a gentleman would no longer suffice to impress those who had become acquainted with the inner-substance. Shallow erudition, fancy clothes and polite manners would count for little when most people could distinguish them from cultivated intelligence, good taste, and genuine decency.

However preposterous such optimism now seems, it was far more creditable in the early nineteenth century than the possibility, since realized, that the average citizen of the American Republic would enjoy a material standard of living then available to no one. The nineteenth century abruptly upended the earlier version of progress and the concept of civilization that went with it. As intellectuals shifted their attention to the material disparities and miseries that could, for the first time, be significantly ameliorated, they inevitably lost sight of the problem of how to effectively elevate the moral, spiritual and intellectual tone of society as a whole. Because the

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<sup>139</sup> See for example, his letter to John Baxter Harrison, March 19, 1865. “It is my firm conviction that we are just entering in this country on a new style of religious life and a new manner of religious faith. Forms and creeds are to hold less part in our religion, and the spirit is to be more sought and expressed. There is to be greatest independence in religious thought, and with the widest differences of speculative belief there is to be more harmony of feeling and of action, and a more general recognition of the duty as well of the right of freedom of personal inquiry and conviction.”

former problems were so much easier to resolve than the latter, an emphasis on moral and spiritual shortcomings became associated with a common form of reactionary croaking, a defense of material privileges enjoyed by a shoddy aristocracy. And as the problem that democratic republicanism, or self-government, was meant to address – reconciling the principle of equality with the highest standards of civilization – the meaning of self-government was lost along with it. *Noblesse oblige* eventually returned in the form of the bureaucratic benevolence of an administrative state. And though this was a decided improvement over the increasingly hollow echo of the old idealism that had lost all plausibility, it represented a resounding defeat of all that was best in the hopes of an earlier era.

Exactly the opposite of Norton's hopeful vision occurred. Arrogance and wealth accumulated along with ignorance and helplessness. These tendencies first became obvious around mid-century, and the slavepower symbolized the threat at its most malicious. And thus the Civil War seemed to justify even loftier hopes for American political idealism even as it accelerated the forces leading to its collapse. Norton embraced the best version of the Union ideal during its apotheosis. The selfless democratic crusade he saw in the Civil War was a sign of the same sublime spiritual upheaval that had preceded the age of Dante. But this time, instead of Chivalrous Knights seeking immortal fame in defense of a narrow creed, it was the crusade of nameless millions courageously sacrificing themselves on behalf of the great moral principle of human equality. That vision may have been delusional. But he refused to forget what he had hoped a democratic society could be as he accustomed himself to the disappointing reality of what it had become.

“Not even the wealth of Croesus was more extraordinary and unexampled, or more conducive to self-delusion, than our national prosperity has been during the century which is just

coming to its close,” Norton wrote near the turn of the century. “History affords no other such splendid spectacle of material growth and well-being...Never before have such vast numbers of men enjoyed such wide-spread peace, comfort and freedom from fear.” But the gross materialism engendered by this prosperity was corrupting the moral fabric of all social classes. “The hoodlum of the street corner and the rough loafer of the village find their mates among the students of our colleges. The difference between them is only one of circumstances and degree.” And this coarsening of civilized manners raised “the problem which the next century is to solve...the question is not whether the mere material advantages of civilization are to be lost, – for they attract the barbarian, and it may be assumed that their attractions are sufficient to secure their permanence, – but whether its moral and intellectual attainments, its refinements, its elevations of character, its best results in life and expression – whether these are safe.

“The signs are dubious,” Norton continued. “No sure inference can be drawn from the evidence of material prosperity, for though this may afford assurance of industry, energy, and a certain (not the highest) grade of intelligence, it gives little in respect to the superior elements of civilization.”<sup>140</sup> Unlike Henry Adams, for example, there was no cynicism in the alienated criticisms of his later years, only the recurring disappointment of one possessing an ineradicable faith. And the result was that this most hopeful apostle of democracy came to be seen as an elitist snob.<sup>141</sup>

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<sup>140</sup> Norton, “Some Aspects of Civilization in America” *Forum* (February, 1896).

<sup>141</sup> “For two hundred years we had sawed and sawed and sawed at the branch we were sitting on. And in the end, much more suddenly than anyone had foreseen, our efforts were rewarded, and down we came. But unfortunately there had been a little mistake. The thing at the bottom was not a bed of roses after all, it was a cesspool full of barbed wire.” George Orwell, “Notes on the Way,” 1940.

## Conclusion:

### *“The Death Struggle of the Republican Party”*

“Let us glance at the history of the Republican party,” George Julian wrote in 1878, “and indicate some of the methods by which the deforming hand of ambition has been able to gain the command of its fortunes, and is now lashing it to death.” A lifelong radical in the antislavery cause, Julian considered himself one of the earliest and most ardent champions of the party he now pronounced doomed. The Republican banner had always attracted a heterogeneous combination of professional politicians and special interests, he acknowledged, but its animating spirit was formed by the inner-core of the antislavery movement. “Chilled by want of sympathy, denounced as violators of the Constitution, derided as visionary enthusiasts, persecuted as disturbers of the peace, the founders of this party were faithful to their mission – the defense of human liberty.” And the seed these men planted gradually sprouted into the organization that rid the Union of the evil blight of slavery. But during the presidency of Ulysses Grant, Julian wrote bitterly, the spirit of liberty had been replaced by a mindless lust for power. The Republican party, he concluded, “lies wallowing in the mire of its apostasy, the helpless victim of its leaders and the spectacle of the nation.”<sup>1</sup>

Julian had never hesitated in choosing between party and principle. He was a politician who distrusted politics, an idealist who considered “compromise” the basest word in the American political vocabulary behind “conservative.” But his attack on the Republican party went beyond the familiar charge of corruption to echo the same conservative reservations that he and other radicals had once denounced. President Grant had “trampled down the right of local

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<sup>1</sup> George Julian, “The Death-Struggle of the Republican Party” *North American Review* (January 1, 1878).

self-government,” he wrote. “The Constitution expressly declares that the ‘powers not delegated to the United States, are reserved to the States respectively, or to the people,’ but the theory upon which the President conducted his Administration was, that all powers not conferred on the states by the Constitution are reserved to the United States, thus completely overturning the doctrines of the fathers, and setting at defiance the very words of the Constitution itself.”<sup>2</sup> Though this certainly seems like an indictment of Julian’s own proudest political achievements, he had always sincerely believed in the rights of local self-government and in the balance between state and federal power enshrined in the antebellum Constitutional system, even as he had fought relentlessly for the revolutionary changes that permanently upended that balance.

The greatest strength and weakness of uncompromising political idealism is an habitual blindness to the claims of competing ideals – a strength because ambivalence rarely prompts bold, determined action and a weakness because one cannot successfully resolve a moral dilemma by evading it. Julian championed the rights of African Americans and abandoned that same cause in a consistent spirit of absolute righteousness. During the early stages of the Civil War, when Julian denounced “this never ending gabble about the sacredness of the Constitution,” he meant such reservations were a disingenuous cover for those actively sympathizing with treason and slavery; he was not questioning the sanctity of the Constitution itself. Believing that slavery presented a grave threat to the Constitution, Julian refused to see that the two were organically linked together, that the death of the former required the transformation of the latter. And when Julian’s priorities began to shift in response to the rampant corruption of the postwar period, the once sacred cause of black civil rights conveniently replaced the Constitution as the dishonest excuse of ambitious demagogues. The

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<sup>2</sup> Julian, “The Death-Struggle of the Republican Party,” 271; Julian’s contempt for “compromise” and “conciliation” was expressed in his speech, “Radicalism and Conservatism – the True History Vindicated” (1865), Julian, *Speeches on Political Questions* (New York, 1872), 230.

same pair of ideological blinkers that Julian had worn in his relentless attack on slavery now allowed him to denounce President Grant's Constitutional violations as despotic usurpations unconnected to the problem of defending black civil liberties.

The ratification of the Fifteenth Amendment, Julian insisted in his memoir, "perfectly consummated the mission of the Republican party, and left its members untrammelled in dealing with new questions."<sup>3</sup> In truth, however, the Amendment consummated the logic of a failed political idealism. Julian stridently denied that his abandonment of the Republican party also meant abandoning the cause of equal rights. "How could men apostatize from a cause which they had served with unflinching fidelity until it was completely triumphant?" he asked.<sup>4</sup>

Julian's confusion was emblematic of an entire generation of idealists, whose most cherished political assumptions proved incompatible with one another. Those who fully internalized the antebellum Republicans' ideal of freedom rushed to war to defend and perfect it. But they were unprepared for the hardened realism that such a violent ordeal inevitably engendered. This stubborn devotion to loftier hopes made them erratic and unfaithful stewards of the victory they actually achieved.

James G. Blaine was perhaps the fullest embodiment of the Republican party of the next generation, of the party that Julian had come to loathe. Most historians have seconded Julian's harsh verdict. Even progressive historians who present the Civil War as a capitalist revolution from start to finish acknowledged that the party of Lincoln and Sumner "suggested positively Spartan virtue and idealism compared with the new leadership of a decade later."<sup>5</sup> But Blaine's cynicism was the product of his predecessors' failure. He was a supremely talented politician – charismatic, clever, and opportunistic – operating in the rubble of ideological visions that had

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<sup>3</sup> George Julian, *Political Recollections, 1840-1872* (Chicago, 1884), 330.

<sup>4</sup> Julian, *Political Recollections*, 344.

<sup>5</sup> Matthew Josephson, *The Politicos* (New York, 1938), 87.

ennobled such gifts among the antebellum generation. There is no doubt that Julian was a far more earnest champion of black civil rights than Blaine, and for that very reason, the contrast between the two men's attitude toward the broad prerogatives of the Federal government is striking. "Previously to the civil conflict," Blaine wrote in his memoir, "every power was withheld from the National Government which could by any possibility be exercised by the State Government. Another theory and another practice were now to prevail; for it had been demonstrated by the thoughtful statesmen who then controlled the Government, that every thing which may be done by either Nation or State may be better and more seriously done by the Nation. The change of view was important and led to far-reaching consequences."<sup>6</sup>

Blaine accepted a theory of government capable of defending black civil rights; Julian did not. But Julian was a plausible and sincere champion of the moral principles that had led to emancipation, and Blaine was not. The contrast between these two Republicans contains the essential tragedy of the Civil War.

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A political community, the Constitutional scholar John Hurd observed soon after the Civil War and Reconstruction, is not created by moral principles – "all men are created equal," for example. It is not the principle that creates a political society but the existence of a power capable of establishing a particular standard of right and enforcing obedience to it. This power is not an abstraction but a tangible a reality – a fact that the people recognize by their obedience to it. The first step to analyzing the government of any country, Hurd wrote, is "to discover the person or persons whose will was there obeyed by the mass of the population." Opinions about where this power resided should be compared carefully with "any exhibition of actual force or power which might come under his own personal observation." Legitimate power is always

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<sup>6</sup> James G. Blaine, *Twenty Years in Congress* two vols (Boston, 1884), 2:160

cloaked in the symbolism of a culturally sacred source of authority. But ultimately, the symbolism is a shadow of the reality, and the reality is revealed by the actions of power, not the explanations.

An intelligent traveler, Hurd wrote, when studying a foreign country and its institutions, would first ask who had ultimately authority to enforce obedience to that country's laws and institutions. Depending on the country, he continued, the traveler might be taken "to some sacred grove, whose leaves whispered to the reverent ear...or...to some cavern, in whose vapors a priest raved in ecstasy." The intelligent traveler would not be deceived by this, however. He "would still look about for a human agency, a human intellect interpreting the meaning of the words, and a human will and force compelling obedience to that meaning." And what, Hurd asked, should the intelligent traveler think if he were told that no such agency existed, because the people governed themselves. In this remarkable country, the people created their own fundamental laws as a covenant, which they obeyed voluntarily as a sacred promise, and there was no superior power to enforce it. Perhaps the traveler, Hurd continued, in a brilliant satirical passage:

Might witness a war in which millions of this people had risen in arms with the declared intention to nullify or make void, as to themselves, the public relations defined or described by the written monuments, or so-called laws; and he might be told that the sacrifice of life, disaster and final defeat suffered by these millions, followed by the unrestrained action of the other party to this war, were an illustration or evidence both of the fact that all public relations in that country rested on the consent of the individuals affected by such relations, and of the inherent potency of the written monuments to maintain their own provisions; and, moreover, as a proof of the absence of any such power-holder as he had made the object of his vain inquiry.<sup>7</sup>

No single paragraph could better describe what the Civil War did to the American ideal of the Union. Whatever anyone might say, the war was an indelible fact that would forever contradict the American ideal of Constitutional self-government.

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<sup>7</sup> John C. Hurd, *The Theory of Our National Existence, As Shown by the Action of the Government of the United States Since 1861* (Boston, 1881), xix.

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“You had to save the Union,” Otto von Bismarck told Ulysses Grant, “just as we had to save Germany.”<sup>8</sup> The history of the territorial nation-state is the history of autonomous political communities succumbing, often violently, to the consolidation of power by a centralized, hierarchical structure of administrative control. With the Civil War, Americans joined the historical process from which they had boldly proclaimed their independence. To those who looked back across this threshold in the nation’s existence, its early development seemed curiously stunted by an irrational fear of power. For all the staggering material and economic growth between 1776 and 1861, Allan Nevins wrote, the nation “seemed as vertebrate as a jellyfish.”<sup>9</sup> The simile perfectly captures how American intellectuals have thought about their government ever since the Civil War. The organic unity was there, but it was unevolved, lacking the bones and sinews of an administrative state. The process by which power consolidates itself, the thinking went, marks a society’s evolution to a more advanced stage of existence. And the abrupt progress of the war demonstrated the tremendous strength with which the national will could manifest itself and the curious failure of earlier statesmen to develop it. Within just four years the jellyfish produced a centralized spine that even the Iron Chancellor could admire.

Even during the war, of course, the American government never achieved anything close to Prussian efficiency. The country was far too vast, and far too diverse, to sustain bureaucracies capable of channeling private interests to public purposes at the level achieved by Germany in the late nineteenth century, for good or ill. As the idealism and hatreds of the war receded, the primary impetus for political consolidation receded with it.

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<sup>8</sup> *General Grant’s Tour Around the World* (Chicago, 1879), 151.

<sup>9</sup> Allan Nevins, *The War for the Union: The Improvised War, 1861- 1862* (New York, 1959), 241.

But Americans' understanding of themselves, their government, and the historic significance of their society had undergone a fundamental departure. Americans believed they were leading the world in the historical transition from the absolutist state to democratic self-government. Instead, the ideal they followed led them to disaster, and when they emerged from that awful reckoning, they moved in a new direction. The Union philosophy embraced by nationalist like John Quincy Adams and William Henry Seward became indistinguishable, under the new nationalism, from the philosophy of Calhoun. European States became a model to be emulated rather than scorned. Americans had learned the hard way, John Hurd wrote, "that liberty for one means law for others, and, if they did not know it before, an experience of war, and especially of civil war, tells them that law means power, and that power means somebody holding power."<sup>10</sup>

The Republic originally established as a hopeful alternative to this grim reality had collapsed, only to be restored by blood and iron – where reason and compromise had failed, nationalism and industrial capitalism had succeeded. And though the future greatness of the nation was more assured in 1865 than ever before, its destiny moved decisively away from the Enlightenment vision of a moral example toward the 20<sup>th</sup> century reality of a global superpower. A truly novel attempt at exceptionalism gradually gave way to the oldest and most ordinary exceptionalism – the exceptionalism of the strongest and the richest nation among nations.

And yet, because Republicans never disavowed the earlier premises of their government, because they successfully imbued old concepts with new meanings, they were able to project assumptions acquired through bitter experience backward to create an imagined continuity. Cherished ideals discredited by events became an eccentric misreading of the American political system, not just after the war but always. In hindsight, the war only seemed to destroy that which

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<sup>10</sup> Hurd, *Theory*, 532.

right-thinking Americans had always opposed – secession and slavery. In truth, however, these achievements were part of a much larger intellectual process by which an entirely new conception of the American Republic emerged from the failure of the old.

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