

American Slavery Since Abolition



Kristofer Allfeldt

AMERICAN SLAVERY SINCE ABOLITION

This approachable volume uncovers the often-hidden history behind the persistence and resilience of modern slavery in the United States, tracing its evolution from the forced labor on nineteenth-century plantations to today's hidden global networks of coercion, exploitation and human trafficking.

In the period leading up to our modern era, Americans participated in, and profited from, the enslavement of African men and women, Native American children, Chinese peasants, Polynesian islanders, American sailors, and teenage girls from Asia and Eastern Europe. Historical in approach, *American Slavery Since Abolition* explores the evolution of distinctly modern forms of exploitation such as the Prison Industrial Complex, the gig economy, enslavement by the algorithm, cloning and organ theft. Engaging with concepts of agency and coercion, wage slavery and economic inequality, the book unravels how old systems of domination seem to have been continuously reshaped and reinvigorated by new technologies, requiring ever-expanding supply chains. It shows how these encourage exploitation, despite near-continuous efforts to abolish the repulsive trade in human misery, and in doing so, exposes the troubling ways in which the modern USA, and most other economies, continue to participate in, and depend on, unfree labor.

Lucid and unsettling, this book will be of interest to students and scholars of American history, politics, sociology and American studies.

Kristofer Allfeldt is an Associate Professor at the University of Exeter, UK. He has produced six academic books on US themes and delivered public lectures in Europe, the UK and the USA. He has taught on a variety of themes, including anti-immigrant feeling, organized crime, post-emancipation slavery and hate groups in early twentieth-century America.



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INTRODUCTION

Since 2000, the United Nations, the European Union and the United Kingdom have all sponsored measures aimed at defining, investigating and attempting to abolish or at least control slavery – so has the United States. Yet, while slavery is universally condemned, it has been claimed that there are more slaves in our times than there were at the height of the trans-Atlantic traffic in the late eighteenth century. What is more, an enslaved person is now seen as a disposable item. This is as true in the world's wealthiest country as it is in the developing world. Today, buying a fellow human being on the Dark Web costs a fraction of the sums paid in the slave markets of Natchez or New Orleans during plantation times.

In eight discreet but inter-related chapters, this book will set out to look at how this dreadful trade continues to exist. It will investigate how we define slavery; who are the victims of slavery; what sort of numbers are involved and what measures have been taken to curb it – and why they've largely failed. The approach is historical. Starting with the Thirteenth Amendment in the USA abolishing chattel slavery and taking the investigation through to today's Prison Industrial Complex. It will investigate the continuity of Black enslavement as well as the trafficking of Native Americans as well as Chinese "Coolies" and other more or less willing immigrants.

Alongside these continuities, it will also look at the changing nature and perception of the victims of slavery. It will look at the increasing emphasis placed on sex trafficking since the 1910s and examine how and why this centuries-old trade suddenly exploded into the public imagination, exciting levels of near universal attention which have not really subsided since.

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The book will engage with concepts of agency and coercion; wage slavery and economic inequality, even the patterns of slavery detectable as stemming from notions of enslavement to the algorithm. Looking at the changing nature of slavery, it will consider not just slavery's past but also try to predict the directions it may take in the future and how we might prevent them becoming a reality.

The object of this book is not to simply provide an original and wide-ranging overview of slavery since abolition, but also to draw on the author's ties with a network of current activists, especially legislators, law enforcers and modern abolitionists. These connections I hope give me an understanding, however patchy, of some of the problems and issues involved in drafting, assessing and enforcing legislation on such a complex topic – not just in the past, but also the present and into the future. I hope that this shows.

Before someone – more or less kindly points it out – I am aware that there are some obvious omissions. There is no discreet chapter on child slavery. That especially cruel aspect of enslavement appears in the chapters on sexual enslavement; Chinese enslavement in the USA; involuntary servitude and Native American enslavement. The same is true of the enslavement of Mexicans, Latin Americans and West Indians. This is also covered in other chapters, most importantly those on Native American enslavement and involuntary servitude. For that and other serious omissions of which I am unaware – at the moment – I apologize to them. In my defense, it is a large topic and I wanted the book to come in under the promised word count, and it did.

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EMANCIPATION

The Emancipatory Urge

Some would argue that what was surprising about emancipation in the United States was not that it happened, but that it took so long to happen. Since 1776, Americans had prided themselves that theirs was a country in which “all men are created equal.” They’d been told they lived in a land where all were endowed with “inalienable rights” to enable their “pursuit of happiness.” Yet, famously, Americans did not set free their millions of slaves until nearly a century after Thomas Jefferson’s Declaration of Independence so unforgettably gave the nation those memorable words. And even then, it took the deaths of over three-quarters of a million Americans in a bloody civil war to precipitate emancipation.

It was not as if the American abolitionists had no one to look to for lessons on how to go about launching such a revolution. Less than 20 years after the Declaration of Independence, France briefly abolished slavery. Less than 40 years after that, in 1833, Britain banned slavery throughout its empire. Over the following 35 years, almost all European powers had outlawed slavery in their imperial territories. In the Americas, their former colonies followed their lead. In 1821, Peru temporarily outlawed slavery. Chile freed its slaves in 1823. Mexico proclaimed the abolition of slavery in 1829, and in the next two years Bolivia and Uruguay followed. By the end of the 1850s, Argentina, Columbia and Venezuela had made slavery illegal, leaving Brazil, Paraguay and the United States as the only slaveholding societies in the continental Americas.

The abolitionists were not just active in other countries either. The American abolitionist movement was formally born in the same year as Britain outlawed slavery in its empire. In 1833, William Lloyd Garrison announced the formation of the American Anti-Slavery Society. A renowned Boston newspaper editor, Garrison was dedicated to the complete, immediate and uncompensated abolition of slavery. He was relentless, single-minded and persistent. Right up until the Thirteenth Amendment was passed in December 1865, he kept up a constant stream of shocking revelations of the brutality and inhumanity of slavery every week in his newspaper, *The Liberator*. And it was influential. It reached nearly a million readers a week by the outbreak of war in 1861.

Nor was Garrison a lone voice. Abolitionists reached huge audiences. Harriet Beecher Stowe wrote what was arguably America's first bestseller. With its graphically anti-slavery message, *Uncle Tom's Cabin* (1852) sold over 10,000 copies in its first week and millions in its first year.¹ Nor were all the leading abolitionists white. There were the two celebrity runaway slaves, Frederick Douglass and Harriet Tubman, who told first-hand of their experiences of being "owned" and abused by fellow Americans. Then there was the free-born Black native of New York, Solomon Northrup, who wrote of his experiences enslaved on a Louisiana plantation in the now famous *Twelve Years a Slave* (1859).

The anti-slavery movement also contained those who felt that the immediate emancipation of the enslaved people would cause too great a rupture for American institutions and society to withstand. This attitude was summed up by no less a figure than Abraham Lincoln, who believed that in their sudden "effort to eradicate it [Americans] ... might lose much of what they had already gained."² Like many of his countrymen, Lincoln believed that the consequences of emancipating millions of enslaved people could be mitigated by re-settling them in colonies in Africa and the Caribbean. He would retain those beliefs right up to the day before he issued the Emancipation Proclamation. Even as he prepared his speech to declare those enslaved in the Confederate-held territories "thenceforward and forever free," Lincoln was signing a deal with a Florida tobacco broker to ship 5,000 former slaves to an island off Haiti.

The episode is informative. It shows how deeply divided Americans were over the subject of emancipation. As Lincoln's last-minute dithering shows, while the central element in the abolitionist creed was slavery's fundamental inhumanity, there were a variety of reasons why the acceptance of humanity for the enslaved was consistently delayed. Some centered on the idea that the enslaved would certainly demand violent retribution for their years of abuse at the hands of their white tormentors. Could America withstand such a bloodbath? Others focused on class and

privilege. Leaving aside the sanctity of “property,” how could free white workers maintain their limited social standing when they were suddenly thrown into competition with four million recently freed enslaved?

Then there was the question of the political status of these frequently illiterate, largely uneducated, and dependent freedmen. Should they, could they, be incorporated into American democracy? If so, how? How would they be prepared for that? Should they be made full citizens? Immediately? If so, what would be the impact of four million new citizens in a country of 33 million? On the other hand, there was the question of the defeated South. If the evils of slavery were recognized, then how should those who held them enslaved be treated? What should happen to the political rights of the former elites – the slaveholders – of the South? Should they be paid for their loss of “property,” or should they be forced to pay compensation to those they had abused? How would that affect the nation as a whole? Might it precipitate another war?

Of course that was just the situation with those who supported abolition. The reasons to oppose abolition – in any form – were equally diverse. There were those who felt it would open the door to revolution. As one opponent of emancipation saw it: “The parties in this conflict are not merely Abolitionists and slaveholders, they are Atheists, Socialists, Communists, Red Republicans, Jacobins on the one side and the friends of order and regulated freedom on the other.”³ Freeing the enslaved would upset the “natural” order. It might well be apocalyptic, as it had proved in Haiti in 1804.

They had more than simple self-interest to justify this fear. There was the dread of divine retribution. Slaveholders and their supporters drew on Biblical references to justify keeping Africans in bondage. They interpreted the rather cryptic “Curse of Ham” (Genesis IX:18–27) as meaning that God ordained that the Ham and the Canaanites should be made black and become “servant of servants.” They used references to St Paul’s preachings (Ephesians VI:5–7) to extol obedience “to them that are your masters ... as unto Christ.” Surely, they argued, going against warnings like these was a sin? How could legislation deliberately defy divine commandments?

Setting these terrors aside, they pointed to the inherent “barbarity” of the enslaved. Advocates of slavery maintained that this was clearly illustrated by the slaveholders’ reactions to slave “rebellions.” Perhaps the one which lived longest in the slaveholders’ nightmares was Nat Turner’s rebellion in Southampton, Virginia, in August 1831. The killing of at least 55 white people shocked slaveholders and was, even after the atrocities and slaughter of the Civil War, depicted “as the most barbarous and brutal of all the human butcheries of the century.”⁴ The fact that this “butchery” included 14 women and 30 children made sure it would never be

forgotten. While many saw the violence as the result of the brutalization of the enslaved, there were also others who saw Turner's rebellion as showing how the enslaved would inevitably behave with regard to their former masters, should they be emancipated.

Slavery was to a great extent predicated on a pseudo-scientific racism which "proved" the inferiority of the enslaved Africans. It was a widely held belief. Even Lincoln himself saw the mixing of whites and Blacks in US society as harmful. Only three years before he took the fateful decision to plunge the nation into war, Lincoln believed that it was probably wisest to "ever forbid the two races living together on terms of social and political equality."⁵

As the Civil War broke out, one leading, Northern, physician pointed out how British abolitionists had set in motion a chain of events which would inevitably lead to their own annihilation. John Van Evrie combined the twin fears of Black barbarism and the racial inferiority of the enslaved population, arguing, "the process, beginning with the act of the British Parliament abolishing 'slavery', ends naturally and necessarily in the social immolation and final extinction of the white people of that island."⁶ Even after the Thirteenth Amendment became law, he still had no doubt it would also spell "the inescapable doom of the American people."⁷

The racially-based arguments of Van Evrie and many other supporters of slavery were largely proved to be correct by the frightening bloodshed of the 1804 Haitian Revolution. But it was not just racial destruction which came in the bloody birth of the first Black republic, the economic consequences of abolition seemed equally stark. In the late eighteenth century, Saint-Domingue had stood out as France's "Jewel of the Antilles" – a veritable Caribbean money tree – with its massive outputs of slave-produced sugar and coffee. But by the end of the 1820s, it was crippled with debt as a result of having to pay punitive annual reparations of tens of millions of francs to the island's former French planters. Added to this, the island saw the emergence of a peasant-style economy which produced only a fraction of valuable cash crops of the slave plantations they had replaced.⁸

Nor was it just Haiti that was held up as an example of the folly of abolition. Within a year of abolition, freeing the slaves had cost the British Exchequer nearly 40% of its annual income and 5% of its Gross Domestic Product – and that was just in compensation to the slaveholders. The fate of Britain's West Indian colonies presented even grimmer examples of the dangers of abolition. The lucrative sugar-producing islands of Barbados and Jamaica found themselves unable to compete with the slave plantations of Brazil, Cuba and the USA. As Americans fought to the death over the issue of emancipation, a British politician wryly observed, "If it is still impossible openly to advocate slavery in England, it has become a habit persistently to write down [condemn] freedom."⁹

The lessons were clear, especially in America where slave-produced cotton and other crops dominated the economy. According to one historian, in 1836, “almost half” of the economic activity in the USA was “derived directly or indirectly” from the production of cotton by the South’s rapidly growing population of slaves.¹⁰ While this figure has been disputed, there is little doubt that slavery underpinned the national economy. Slave-produced goods fueled the booming (and occasionally busting) Southern economy of the nineteenth century. Slave-produced cotton formed the foundation of many New England families’ fortunes, whether that was the result of slave trading or the cotton mills which thrived on the production of “white gold” from the brutal plantations of the South.

The enslaved provided the motive and muscle for Westward expansion. Pioneering entrepreneurs sought new ground to grow cotton and the slaves to clear that land, then plant and harvest the new crops. The enslaved gave the impetus to innovations from double-entry bookkeeping to the cotton gin and the combine harvester. And not only was trading in slaves a highly lucrative business, but the enslaved themselves were frequently treated as a form of capital. They could be used as collateral for mortgages and loans. They were easily “liquidated” and readily “transferable.” In short, its supporters claimed that abolishing slavery could only bring America to its economic knees.

Then there were those who objected to emancipation because they felt slavery had been a part of the American political landscape since the founding of the Republic – and they had a point. Famously, George Washington unapologetically held over one hundred people in bondage. Thomas Jefferson inherited six hundred enslaved men and women and fathered six children by his enslaved mistress, Sally Hemings. While arguing “all men were created equal,” he never went as far as to set Hemings or any of the others free.

And Washington and Jefferson were not alone. Of the 55 delegates to the 1787 Constitutional Convention, 25 were slaveholders. Twelve of the 15 Presidents who had held office before Lincoln had been slaveholders. One, Andrew Jackson, had been a slave-trader. Those who opposed abolition could rightly claim slavery had always been an American institution. Even those committed to the abolition of slavery knew that getting rid of it would never be easy.

The Influence of the Civil War

The American Civil War changed the nation’s attitude toward slavery – forever. When the war started, any hopes of preventing conflict had hinged on not interfering with the rights of Americans to hold slaves. Four years

later, when the war ended, the rebuilding of the nation focused on abolishing slavery. The American Civil War was fought over slavery. Some might argue that point and say it was actually fought over states' rights. Then there are those who would claim that it was a conflict to establish or preserve the freedom of states to break away from the Union. Another group might tell you it was a battle over individual freedoms and property rights.

To my mind, these issues would have been peripheral questions in 1861 had it not been for the contested issue of enslavement. The 11 Confederate States would not have left the Union if they had felt that the institution of slavery would be safe under the nation's first Republican administration. And war would not have followed if Abraham Lincoln had not abandoned the prevalent traditions of the Republic and refused to compromise with them over the issue of slavery.

The Civil War itself was crucial to abolition as well, and here perhaps the mood is best measured by the actions of the Union's commander-in-chief, not least because Lincoln's actions demonstrated that he felt abolition was a Presidential issue. Yet Lincoln himself seemed to flip-flop over the issue of emancipation during the initial stages of the Civil War. During his 1860 election campaign, Lincoln was portrayed as an "abolitionist" by a largely hostile South. But realizing the issue was so divisive, he essentially steered clear of making any statement which might justify that view. He was not allowed to. His past made such a stance difficult.

In the South, those promoting breaking away from the Union, the so-called "Fire-Eaters," kept harking back to his famous 1858 "House Divided" speech. They pointed to his assertion that:

this government cannot endure, permanently half slave and half free ... Either the opponents of slavery will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in course of ultimate extinction; or its advocates will push it forward, till it shall become alike lawful in all the States, old as well as new—North as well as South.¹¹

The statement seemed pretty unequivocal, but in reality, as a politician Lincoln was nowhere near as certain of the best course of action. He was fully aware that most of his constituents were not yet convinced of the wisdom of abolition. Laborers worried about the impact on their jobs. Those in the border states saw abolition as an unnecessary expansion of Federal powers and a threat to their property rights. Those connected with banking, textiles and shipping feared for the impact on their businesses. But most of all, the majority didn't see that they should risk their lives and prosperity by going to war for a group of people with whom they'd had no

contact and who they had been led to believe were only barely human. When war came, in April 1861, Lincoln's troops didn't march off to battle to free the slaves, they went to war to preserve the Union.

But the President's actions continued to betray his caution. In the first week of August 1861, he signed into law the First Confiscation Act. This measure nullified the 1787, 1793 and 1850 Fugitive Slaves Laws, making it illegal to harbor fugitive slaves throughout the Union and imposing an obligation to return them to their "owners." However, even this stopped short of removing the laws altogether. It only applied if those making the claim to "ownership" could be proved to support the Confederacy.

A further example of Lincoln's apparent indecision was made clear in the beginning of September. It centered around a decision of the US Commander of the Military Department of the West, Major General John C. Fremont. Fremont declared all Confederate-held slaves in Missouri free. Rather than agreeing with his subordinate, Lincoln quickly revoked Fremont's edict. He also took action to prevent any such action being repeated. In December, he deleted from the Secretary of War's annual report passages advocating the emancipation of slaves in occupied areas of the Confederacy and taking them on as laborers and even US soldiers.¹²

In early 1862, Lincoln still didn't seem to have made up his mind to abolish slavery as Garrison and others continued to demand. Instead, he appeared dedicated to the idea that the slaveholders needed to be induced to gradually free the slaves. What was more, he was still wedded to the idea that slaveholders must be compensated, discussing a figure of \$400 per slave for their loss of "property." In April 1862, he encouraged Congress to pass a measure to bribe States to "adopt gradual abolishment of slavery." Under this measure Congress offered "such State pecuniary aid, to be used by such State in its discretion, to compensate for the inconveniences, public and private, produced by such change of system."¹³ He then went on to support Congress' abolition of slavery in DC. But, while this seemed a major step, it still financially compensated the slaveholders for their "loss" and provisions were set up to export those previously enslaved to Liberia or other "colonies."

As the Union continued to suffer continuous military setbacks, Lincoln appeared to retreat from the issue of abolition. As he saw it, abolition was contingent on preserving the Union, and in turn that was contingent on defeating the Southern rebellion. He famously told the editor of the *New York Tribune*, Horace Greeley, in the summer of 1862:

If I could save the Union without freeing any slave I would do it, and if I could save it by freeing all the slaves I would do it; and if I could save it by freeing some and leaving others alone, I would also do that.¹⁴

In May 1862, in a repetition of his treatment of Fremont, he issued a Presidential Proclamation canceling Major General David Hunter's General Order No. 11. In this order, the Commander of the Department of the South had declared "the persons in these three States—Georgia, Florida and South Carolina—heretofore held as slaves [around 900,000 in total], are therefore declared forever free." Lincoln's response was swift and unequivocal. Ten days after General Order No. 11, Lincoln clearly stated his belief that it was essentially him, and him alone, who had the power

to make proclamations declaring the slaves of any State free ... [because these] are questions which, under my responsibility, I reserve to myself, and which I cannot feel justified in leaving to the decision of commanders in the field.¹⁵

It is clear that at this point Lincoln still retained a moderate mindset over slavery. He did not view slavery as a die-hard abolitionist, nor did he see it as a radical. He reiterated that he was the Commander-in-Chief of the US Army, and his primary objective remained to win the war and preserve the Union. He felt many in the army, and the country as a whole, were not ready for emancipation. As he told his Secretary of the Interior, Carl Schurz, he feared losing the support of loyal Democrats by being too radical while at the same time alienating Radical Republicans by being too cautious over the issue.¹⁶ On the other hand, there were noises coming from across the Atlantic that would nudge him toward a speedier public statement of emancipation.

Britain and, to a lesser extent, France, seemed to be on the verge of intervening on the Confederate side. As the Union blockade started to disrupt the supply of vital supplies of cotton, Britain was muttering about freedom of the seas. In the spring of 1862, the Confederacy looked ever more likely to hold off, or maybe even defeat, the Union. If the Confederacy could negotiate Union recognition of its separate status, it would benefit both countries to have good relations with the new state. Britain would secure its supplies of cotton.

Alongside Britain, France had its own reasons for potentially coming out in support of the Confederacy. In 1862, France's Emperor Napoleon III was making plans to embark on an imperial adventure in Mexico, supporting the ill-fated Emperor Maximilian. Although the scheme was pretty much a flight of fancy, Napoleon was shrewd enough to realize that any such action would be in breach of the sacrosanct Monroe Doctrine of the USA, prohibiting European intervention in the Americas. Given this, Napoleon felt that by supporting the Confederacy he might gain a powerful neighboring regional ally. However, neither Britain, nor France, would act without the other.¹⁷

Lincoln could not allow the Confederacy to negotiate treaties with foreign powers. Doing so would be a recognition of the “rebels” as having established themselves as a sovereign power. Lincoln also felt that turning the war from one to preserve the Union into one to outlaw slavery would put both Britain and France in a very difficult position. He knew that Britain in particular made much of its status as the policeman of abolition. They could hardly ally themselves with a “nation” fighting to preserve enslavement. Lincoln continued to wrestle with the issue. He concentrated on freeing slaves in the border states – Delaware, Kentucky, Maryland, Missouri, and (later) West Virginia – incrementally by persuasion and compensation.

But Lincoln once more shied away from freeing the enslaved, *en masse*, throughout the entire country by a blanket proclamation. He thought a direct assault on slavery within these states risked driving them to join the Confederacy and freeing those within the Confederacy could simply strengthen the resolve of the rebels. In Lincoln’s mind, it was a delicate balance. As he poetically put it, he wanted emancipation to “come gently as the dews of Heaven, not rending or wrecking everything.”¹⁸ At least not until the tide of war had turned in his favor.

On July 2, 1862, Lincoln announced to his cabinet he intended to emancipate the slaves. It came as a shock. Not least because they knew he could not do it. In spite of mobilizing the vastly superior resources of manpower and industry at its command, the North was still losing, or at least not winning, the war. As long as the Union was being bested by the rebels, it was immaterial what laws they passed regarding slavery in the South. They would be seen as of no consequence. It would be futile, and it might even strengthen the Southerners’ position. The rebels could simply ignore them, knowing Washington could do nothing to enforce them. Lincoln knew this, but it was Secretary of State, William Seward, who put it most succinctly. As he saw, it without a major turnaround in the course of the war, emancipation would seem like “our last shriek on the retreat.”¹⁹

Then, in September, came the bloodiest battle in US history. Some 22,720 Americans were killed or wounded in the fighting at Antietam in Maryland. Yet once again the ever-cautious Federal commander, General George McClellan, failed to grasp the initiative and let a war-winning triumph slip by. But the Confederacy’s huge casualties rolled back the flood tide of the Confederacy. The South had lost the initiative and the master politician, Lincoln, saw his opportunity and seized it. On 22 September, just 5 days after Confederate commander Robert E. Lee left the battlefield, Lincoln announced his “Preliminary Emancipation Proclamation.” In it, he pronounced that as of January 1, 1863, all those enslaved in areas controlled by the Confederacy would be free.

But it is important to realize that Lincoln actually set no one free with his Preliminary Emancipation Proclamation. In spite of its rousing language declaring the slaves “henceforth and forever free,” it was a war measure, not an abolitionist measure. But it was vital to the abolitionist cause. In the second week of July, Congress had approved the Second Confiscation Act. In this, it was made policy that when the Union regained control of an area, anyone aiding “rebellion against the United States” would have their property seized and sold. It also freed all slaves within that area. Since the Emancipation Proclamation extended that to emancipate slaves in territories still controlled by rebels, it had the effect of freeing all enslaved Africans – in theory. While it might just have been in theory, it still altered the entire direction of the war.

Lincoln realized that the idea of defending the Union was a somewhat philosophical war aim. It hardly rallied volunteers to the cause, especially when that cause was losing. Lincoln called for 300,000 volunteers on July 1, 1862 and the Secretary of War, William Stanton, called for a further 300,000 on August 1. The results had been nearly 100,000 less than requested and there was talk of forcibly drafting state militias.²⁰ While some objected to changing the war aims to emancipation, seeing freed slaves as competitors for jobs, most felt that fighting to free the enslaved had far more appeal. As one anonymous Union soldier eloquently put it: “We were no longer the soldiers of a political controversy. We were now the missionaries of a great work of redemption. The armed liberator of millions. The war was ennobled. The object was higher.”²¹

What was more, the Proclamation effectively ended the threat of European alliances with the Confederacy. As the influential British philosopher, economist and politician John Stuart Mill said:

The triumph of the Confederacy would be a victory of the powers of evil which would give courage to the enemies of progress and damp the spirits of friends all over the civilized world. The American Civil War is destined to be a turning point for good or evil in the course of human affairs.²²

Yet vital as it was, the Emancipation Proclamation did not mean freedom for the vast majority of slaves. It has been estimated that between three million and three and a half million of the around four million American slaves were still in Confederate-held territory at the end of 1862. That said, the measure did encourage the enslaved to run away from the plantations to freedom in the Union lines, but even then the numbers were relatively few – roughly 100,000.²³ Of course, the vast majority of slaveholders in the South supported the Confederacy – especially after Lincoln’s proclamation.

Slaves represented their workforce, a considerable part of their capital and an indication of their status, all rolled into one unhappy human form. They were extremely unlikely to emancipate their slaves simply because Lincoln now declared them “henceforth and forever free.”

Then there was also the problem of the legality of the measure. It was a wartime measure, taken using the powers granted to Lincoln in times of war. Would it stand up to legal challenges in peacetime? Lincoln, the lawyer, knew it probably would not. The Fifth Amendment rigorously protected private property. It categorically stated that no person can “be deprived of life, liberty, or property, without due process of law.” Since slavery was still legal until December 1865, the Fifth Amendment applied just as clearly in 1863 as it had done in 1856 when Chief Justice, Roger B. Taney gave his infamous opinion in the Dred Scott case.

Under the Dred Scott ruling, the enslaved were not deemed to be part “of the political community formed and brought into existence by the Constitution.” In other words, they were not citizens of those states which were yet to specifically give them that status. Essentially, it reinforced the status of the enslaved as “property” in states which hadn’t categorically abolished slavery. Lincoln was of course aware of this status and it was for this reason that he was so enthusiastic about giving compensation to slaveholders. On the day on which he gave notice of the Emancipation Proclamation (September 22, 1862), he reiterated his promise to help states with financial aid to cover gradual, compensated emancipation. He knew that the Fifth Amendment had within it a “Takings Clause” stating that “private property [couldn’t] be taken for public use without just compensation.”²⁴

Victory and Freedom

Wandering around the White House with some visitors shortly after the Emancipation Proclamation had gone into force, Lincoln proudly announced, “The Proclamation has knocked the bottom out of slavery.”²⁵ But he remained all too aware that it was still a wartime measure passed by a President flexing his muscles as wartime supreme commander. As the war progressed, and it became increasingly obvious that the North would emerge victorious, Lincoln was sure that he could get the border states to pass abolition measures. He was also committed to making abolition a condition for post-war readmission of the former Confederate States once the war was won. However, slavery was essentially protected by the Constitution and, as such, Lincoln knew that the only way in which he could ensure that slavery was abolished, once and for all, was to amend the Constitution.

As the war lurched on toward the Confederacy's surrender in 1865, it became increasingly plain that something needed to be done about the position of the freedmen. For the Army of the Potomac, fighting in the South remained a slog. The clashes were still fierce, the sieges still bitter and progress still slow. And even as the more numerous, better-equipped Federal forces edged toward their ultimate victory, the Confederacy obdurately refused to surrender. The position for the enslaved was equally difficult. When Federal troops took an area, they would free the slaves, who inevitably flocked toward their encampments. But since in some places the lines remained fluid into 1865, if the "rebels" retook a region, those slaves who had been freed might well find themselves re-enslaved, or worse.

As Lincoln explained to an Ohio Congressman the month after the Proclamation, he was unsure what to "do with these people – Negroes – after peace came."²⁶ To him and many others, the specter of hordes of freed black ex-slaves flooding northward to take jobs from local laborers grew greater as the war's end loomed increasingly closer. Numbers of Black troops in the Union forces grew, making it increasingly difficult for Lincoln and others to continue to advocate exporting the ex-slaves to colonies abroad. The position of the slaves seemed to be an intractable problem. Lincoln knew that to free them risked splitting his political powerbase. To leave them in bondage threatened to have equally dire consequences for the enslaved, and to leave them in limbo would negate the deaths of hundreds of thousands of Americans in the bloodiest conflict in American history.

Lincoln was also aware that winning the war would not necessarily make the problem disappear. Once Southern Congressmen and Senators were again sitting in DC, as he promised in his second inaugural address, the likelihood of an abolitionist Constitutional amendment becoming law would recede even further. The institution of slavery represented the very essence of the South. The enslaved weren't just the workforce that had made the Southern cotton states like Mississippi and South Carolina the wealthiest in the Union. They weren't just capital against which so much of that wealth had been leveraged. Nor was it merely that freed slaves might want vengeance. It went even deeper than that, even though many Southerners would argue that it wasn't the case slavery was *the* cause of secession. Essentially, to vote for the abolition of slavery was essentially to vote to dismantle the Old South and no "true Southerner" could even contemplate such a gross heresy.

But after the Emancipation Proclamation, the abolitionists were jubilant. They felt it was now simply a question of time before the slaves were freed: permanently and universally. Lincoln's "conversion" to the cause both inspired and depressed those who'd struggled for an end to slavery

since the 1830s. The indomitable William Lloyd Garrison, who'd been leading the charge for absolute abolition since 1833 shifted his opinion of Lincoln. In the 1860 Presidential election he told his readers he was "not seeking the elevation of any particular man, nor the success of any particular party." But in the 1864 election, Garrison advocated supporting Lincoln, describing him as "creeping in the right direction" in terms of emancipation and Black enfranchisement.²⁷

Garrison's support may have been grudging, but like most other abolitionists, he realized that in order to overthrow slavery, it was necessary to use violent action by the free states and/or violent action by the slaves. However, more importantly, like Lincoln, he saw as crucial the mobilization of "an enlightened and benevolent public opinion" behind his dream of immediate and universal abolition.²⁸ From 1864 onwards, he, like most of the leading abolitionists, saw Lincoln as his best bet to securing that all-important shift in American opinion.

By June 1864, around 500,000 of the nation's four million slaves had been freed. But as victory loomed, it was plain that if slavery was not abolished, regardless of the promise of the Emancipation Proclamation, most of them would probably be re-enslaved when the war ended. In April 1864, the US Senate had voted on a proposal that "Neither slavery, nor involuntary servitude ... shall exist in the United States." The Senate vote had surpassed the two-thirds majority required and the measure went to the House two months later. Here it stumbled. Northern Democrats, conservative Republicans and those from the border states rallied and voted the measure out, with the measure falling 13 votes short of the required two-thirds majority.

The arguments used by opponents had tended to avoid answering the moral outrage of the abolitionists. Instead, they went back to questions of individual property rights which they couched in terms of "constitutional liberty." One argued that abolishing the right to hold slaves would lead to the Federal government dictating and regulating marriage, parenting, as well as property rights. Others stressed the fundamental infringement of states' rights. New York Democrat, Fernando Wood, was convinced the amendment would set a precedent which might give the Federal government "feudal powers" that could make it "omnipotent."²⁹ But most opponents simply pointed to the amendment being the thin end of a revolutionary reservoir of votes for radicals into the future.

The abolitionist outrage at these arguments was summed up by a Republican Congressman from New York. He dismissed the Democrats' objections as defending the "civil liberty [that] consists of the right of one people to enslave another people."³⁰ Nevertheless, even with the Republicans' gains in the 1864 election, it was going to prove a struggle to get the

necessary support to edge the measure over the line. Fifty more seats in the House and three in the Senate would still not be enough to guarantee success. But here, once again, Lincoln proved his superiority as a political maneuverer.

What followed was an object lesson in lobbying. It began by identifying and persuading key hostile or undecided legislators of the moral, military and political reasons to back the proposed amendment. Then Lincoln's agents set out to get those men to change their minds. In speeches and articles fed to the press, the measure was constantly framed in terms of its key strategic importance to Union victory and how it was the only way to preserve the Union. Some methods drew on more worldly and self-interested promises and were distinctly more venal than moral. Holdouts were promised key jobs in the post-war government. Others got promises of ambassadorships when they left Congress.³¹

Whatever the methods, the measure was reintroduced in January 1865, using a loophole that allowed for its readmission. At the end of the month, it passed through the House, with a majority of 119 to 56. It was sufficient to enable the amendment to be passed to the states for ratification. Lincoln and his allies had got their way, they'd shepherded the measure through Congress before the Southern states were readmitted to the Union in sufficient numbers to block it.

By December 1865, the measure had been ratified by the requisite three-quarters of the states, and slavery was abolished in the United States.

Notes

- 1 See the pamphlet, William P. Leeman, *From Pen to Sword: Uncle Tom's Cabin, Abolition and the American Civil War* (Pell Center for International Relations and Public Policy, Newport, Road Island, n.d.).
- 2 Abraham Lincoln in a speech in Springfield, Illinois, July 17, 1858, cited in Roy P. Basler (Ed.), *The Collected Works of Abraham Lincoln*, vol. 1 (Rutgers University Press, New Brunswick, NJ, 1953).
- 3 James Henley Thornwell, *The Rights and Duties of Masters: A Sermon Preached at the Dedication of a Church Erected in Charleston, South Carolina, for the Benefit and Instruction of a Coloured Population* (Walker & James, Charleston, SC, 1850), p. 14.
- 4 Taken from the *Richmond Daily Dispatch*, August 9, 1867.
- 5 *Chicago Daily Press and Tribune*, October 15, 1858.
- 6 John Van Evrie, *Negroes and Negro "Slavery": The First an Inferior Race; The Latter its Normal Condition* (Van Evrie, Horton and Co., New York, 1861), p. 161.
- 7 John Van Evrie, *Abolition Is National Death* (Van Evrie, Horton and Co., New York, 1866), p. 28.
- 8 For a good, concise, breakdown of the consequences, see "Ransom: Haiti's Lost Billions," *New York Times*, May 10, 2022, and Eric Foner, *Nothing But Freedom: Emancipation and Its Legacy* (rev. ed., Louisiana State University Press, Baton Rouge, LA, 2007), pp. 12–38.

- 9 Charles Dilke, cited in Eric Foner, *Nothing But Freedom: Emancipation and Its Legacy* (rev. ed., Louisiana State University Press, Baton Rouge, LA, 2007), p. 30.
- 10 Edward E. Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (Basic Books, New York, 2014), p. 322.
- 11 Excerpt taken from "Speech of Hon Abraham Lincoln, At Springfield, June 17, 1858," *Political Debates between Hon. Abraham Lincoln and Hon. Stephen A. Douglas* (Follett, Foster and Co, Columbus, OH, 1860), p. 1.
- 12 See Abraham Lincoln Papers, Library of Congress Manuscript Division: Series 1. General Correspondence. 1833–1916: Abraham Lincoln to John C. Fremont, Wednesday, September 11, 1861. Available at: <http://hdl.loc.gov/loc/mss/ms000001.mss30189a.1159000>.
- 13 U.S. Congress, *Statutes at Large, Treaties, and Proclamations of the United States of America*, vol. 12 (Boston, 1863), p. 617.
- 14 Cited in the *Daily National Intelligencer* (DC), August 23, 1862.
- 15 Proclamation by Abraham Lincoln, 19 May 1862, cited in Ira Berlin et al. (Eds.) *Freedom: vol. 1, series 1: The Destruction of Slavery: A Documentary History of Emancipation, 1861–1867* (Cambridge University Press, Cambridge, 1986), p. 126.
- 16 Lincoln to Schurz, cited in Eric Foner, *The Fiery Trial: Abraham Lincoln and American Slavery* (WW Norton and Co., New York, 2011) p. 210.
- 17 See Allan Nevins, "Britain, France and the War Issues," in Allan Nevins, *The War for the Union: War Becomes Revolution, 1862–1863* (Konecky and Konecky, Old Saybrook, CT, 1960), pp. 242–274.
- 18 Abraham Lincoln, cited in Eric Foner, *The Fiery Trial: Abraham Lincoln and American Slavery* (WW Norton and Co., New York, 2011), p. 206.
- 19 William Seward to Abraham Lincoln, cited in James M. McPherson, *This Mighty Scourge: Perspectives on the Civil War* (Oxford University Press, New York, 2007), p. 74.
- 20 For details, see William Marvel, "Uncle Abe Needs You (Really, Really Bad)." Available at: <https://www.historynet.com/uncle-abe-needs-really-really-bad/>.
- 21 Cited in Dennis Gaffney, *The Civil War: Exploring History One Week at a Time* (Hyperion Books, New York, 2011), p. 193.
- 22 Cited in Cole Kingseed, *The American Civil War* (Greenwood Press, Westport, CT, 2004), p. 52.
- 23 See Colin Edward Woodward, *Marching Masters: Slavery, Race and the Confederate Army During the Civil War* (University of Virginia Press, Charlottesville, VA, 2014), p. 15.
- 24 See Roger Pilon, "Property Rights and the Constitution," in *The Cato Handbook for Policymakers*. Available at: <https://www.cato.org/cato-handbook-policy-makers-8th-edition-2017/property-rights-constitution>.
- 25 Lincoln, cited in Eric Foner, *The Fiery Trial: Abraham Lincoln and American Slavery* (WW Norton and Co., New York, 2011), p. 248.
- 26 Lincoln, cited in Eric Foner, *The Fiery Trial: Abraham Lincoln and American Slavery* (WW Norton and Co., New York, 2011), p. 258.
- 27 Horace Seldon, "Garrison's Political Activity, Moral Vision, Public Opinion and Lincoln," *The Liberator Files*. Available at: <https://www.theliberatorfiles.com/4-garrisons-political-activity-moral-vision-public-opinion-and-lincoln/>.
- 28 Horace Seldon, "Garrison's Political Activity, Moral Vision, Public Opinion and Lincoln," *The Liberator Files*. Available at: <https://www.theliberatorfiles.com/4-garrisons-political-activity-moral-vision-public-opinion-and-lincoln>.

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- 29 Joseph Edgerton (Democrat, Indiana), cited in *Congressional Globe*, 38th Congress, 2nd Session and Fernando Wood (Democrat, New York) *Congressional Globe*, 38th Congress, 1st Session.
- 30 Thomas Treadwell Davis (Republican, New York), cited in *Congressional Globe*, 38th Congress, 2nd Session.
- 31 For details, see Paul Finkelman and Donald Kennon, *Lincoln, Congress, and Emancipation* (Ohio University Press, Athens, OH, 2016) and Leonard L. Richards, *Who Freed the Slaves? The Fight Over the Thirteenth Amendment* (Chicago University Press, Chicago, 2015).

2

RE-ENSLAVING THE AMERICAN BLACK

Criminalization of the Freedman

In 2016, Netflix released Ava DuVernay's *Thirteenth*. It was nominated for an Oscar for the Best Documentary. It didn't get it, but it won that category at the Emmys, the BAFTAs and the NAACP awards. It went on to become one of the most watched and most influential documentaries of the decade. Critics raved about it. The *New York Times* said, "it will get your blood boiling and tear ducts leaking." *Rolling Stone* called it "a record of shame so powerful that it just might change things." Rotten Tomatoes gave it 97%.¹

The premise of the film is not that new. It is that a "loophole" in, combined with deliberate misinterpretations of, the Thirteenth Amendment has enabled the re-enslavement of America's Black population ever since 1865. The "get-out" this refers to is not hidden. It is clear and deliberate in the wording of first Article of the Amendment which states: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."² The "loophole" lies in that second clause: "except as punishment for crime ..." and DuVernay clearly shows how this has been used for over a century and a half to allow the re-creation of what amounted to chattel slavery for countless Black Americans. But in order to understand why this happened, we need to try to get inside the minds of those who drafted the amendment.

It is beyond question that the mood among most who opposed emancipation – as well as many who supported it – was one of fear of what the slaves might do with their new-found freedom. During the debate over the

amendment, one New York editorial warned of the consequences of ratifying the amendment without considering the longer-term consequences, when it told its readers that the measure would inevitably

deprive the people of the remaining fourth of the states [those states which would not ratify the amendment] of all their property in these persons [slaves], and turn them loose upon them and the whole community, to plunder, steal and murder for a living.³

There is also no doubt that there was a great deal of fear that the former slaves would turn on the former slaveholders and exact revenge for their years in bondage. There was also fear that emancipation would bring with it a crime wave.

Conservative newspapers in Louisiana in 1866 estimated that the Black population was responsible for three-quarters of all crime in the state and two-thirds of the murders.⁴ And there is no reason to suppose that this wasn't the view of most conservatives in the region. Added to this there was an age-old dread of Black men predated white women as well as an increase in miscegenation (inter-racial sex and marriage). Some feared this might even lead to the end of the white race. There was a sense that the libido of the African slaves knew few limits. In part, this was the result of the behavior of the ante-Bellum slaveholders.

As already discussed, many of the supporters of slavery argued that "the peculiar institution" was in, most ways, paternalistic and benevolent. Slaveholders in the American South prided themselves that conditions on their plantations were comfortable and healthy and that as a result they were easily able to replenish aged or sickly slaves by "natural increase" (i.e. a positive birth rate) from a relatively early date. Their argument was that happy slaves bred happy slaves, generation after generation in a virtuous and fertile circle. This, they argued, was in stark contrast to the situation on comparable plantations in Brazil and Cuba, where the high levels of slave mortality meant that they were constantly importing large numbers of slaves.

With the American abolition of the trans-Atlantic slave trade in 1808, that increase was encouraged. While there is historical debate about the extent to which the slaveholders "mated their human chattel as they did their stock," there are also arguments over whether states like Virginia, where the soil was depleted, actually turned into literal breeding grounds for exporting slaves to the Deep South. Over the last two decades the general view seems to be more of a happy coincidence of libido and fertility.⁵ It has been estimated that enslaved mothers on average gave birth to between six and seven children each. But still-births and infant mortality took a high toll, with at least half of these offspring dying at birth or in infancy.⁶