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This book is about the relationship between the Civil War generation and the founding generation. That is, it examines how Americans of the mid-nineteenth century understood the founders’ handiwork, the Declaration of Independence of 1776, and the Constitution of 1787. When the last of the living signers of the Constitution, James Madison, passed away in 1836, Abraham Lincoln, Jefferson Davis, and their contemporaries were well into their adult lives, and their generation possessed a keen sense of the legacy they had inherited. Whether political leaders or plain folk, Northerners or Southerners, black or white, most free Americans of the mid-nineteenth century believed in the efficacy of the American heritage of liberty and constitutional government, and this belief consistently animated the nation’s political debates. Social, economic, and cultural factors also shaped political development, and although the interests of the South and North diverged, a common commitment to constitutionalism remained.

War unleashed revolutionary changes—changes that were inspired, defined, and limited by Americans’ understanding of their founding texts. To some, the Declaration of Independence and its promise that “all men are created equal” represented the guiding principle of American political development, while for others, the Constitution—with its sharp demarcation of national and state authority—represented the ultimate expression of republican government. As Americans debated and fought over the meaning of these two great documents and how they related to one another, the war ultimately produced two significant outcomes: slavery ended and secession failed. In the years after the war, some hoped to bring about even more far-reaching changes—such as granting to African Americans all of the same rights as whites or establishing the unquestioned supremacy of the national government. But Americans’ commitment to the preservation of state power and persistent strains of white supremacy acted as countervailing forces, which ultimately contained and controlled the scope of change. Most Americans—more precisely, most white
Americans—came to believe that the end of slavery and the defeat of secession were revolutionary enough. Given that slavery had existed in North America for nearly two and a half centuries and that the shadow of secession had long loomed over the nation’s political landscape, these were surely revolutionary developments. However, incomplete these changes might appear from an early twenty-first-century vantage point, for those who lived through these momentous events, the question during and after the war was never whether a revolution was occurring. Rather, it was always how far that revolution would go.

A narrative history of the era of the American Civil War, this study flows into and out of three historiographical streams: Civil War history, US constitutional history, and African American history. Over the past several decades, historical writing on the Civil War has taken a number of turns. At one time, historians and popular writers conceived of the war almost entirely as a military and political conflict, as a brothers’ war—a white man’s war—largely devoid of ideological content but rich in examples of honor and heroism. During the past three or four decades, though, professional historians, in addition to adding new layers to our understanding of military events and political debates, have investigated the social and cultural history of the conflict—the lives of common soldiers, the influence of guerilla warfare, the effects of the war on women and gender relations. If the notion of heroism once lay behind most interpretations of the war, a disillusionment fed by American involvement in Vietnam and other post-Vietnam entanglements underlay many of these new interpretations. Emphasizing the horrors of violence, death, and social destruction, recent studies have served as a sobering corrective to earlier writing. Some historians, however, have taken this antiwar theme too far, describing the Civil War as “America’s greatest failure” and lamenting that it “watered the seeds of an American-led Christian imperialism.”1 Despite whatever contemporary unease we may feel about the blending of patriotism, religion, and violence, the fact remains the hard hand of war merged with nationalistic and Christian impulses to bring about the abolition of slavery—the greatest reform in American history and one of the central events in the history of the Western world. Rather than viewing the conflict through the lens of contemporary disenchantment, this book aims to understand the war on its own terms, in the context of its own time. The book does not intend to glorify war, but it does attempt to tell a more authentic story, one that acknowledges that, given the economic interests and ideological commitments of white Southerners, only war could have brought about American emancipation. It thus portrays the human cost in a realistic manner while also recapturing some of the heroic character of the conflict.
The second historiographical stream is the study of American constitutionalism. While for decades constitutional history seemed almost synonymous with the study of Supreme Court opinions, recent scholars have stretched well beyond examining appellate decisions. In particular, the notion of “popular constitutionalism”—the idea that “the people themselves” give meaning to the constitutional text—has dominated scholarship in the field. Many champions of popular constitutionalism are present-minded legal scholars, whose eagerness to find historical support for a popular understanding of the Constitution stems from their desire to counter contemporary decisions of the Supreme Court with which they disagree. This book takes a different, more purely historical, approach. It treats nineteenth-century Americans’ attachment to the founding texts not as a vehicle for mounting a democratic challenge to an unelected judiciary but as an expression of a larger nineteenth-century culture of constitutionalism. The existence of a constitutional culture was clearly evident in the newspapers, speeches, letters, and diary entries of those who lived through the war. To any scholar investigating the era, the words and ideas associated with the nation’s founding principles practically jump off the page. When white Southerners seceded from the Union, they cited their property rights in slaves and the right to revolt implicit in the Declaration of Independence. When military officers and enlisted men went off to fight, whether Union or Confederate, they frequently referred to their devotion to their country, their desire to protect their liberties, or the need to preserve the American experiment in constitutional government. And, of course, when presidents and members of Congress debated the best course for reconstructing the nation, they always did so by appealing to the dictates of the Declaration of Independence and the provisions of the Constitution. Quite simply, the founders and their handiwork hovered over the Civil War era. To be sure, other ideas were often at work as well—notions of race, beliefs about religion, and concepts of honor and courage—but constitutionalism served as a constant common language among Americans, both North and South. At times, this sentimental nineteenth-century language, laced with patriotism and principle as it was, sounds insincere or even silly to twenty-first-century ears. But as historian James McPherson once noted, if it is hard for us to fathom the deeply held ideals of nineteenth-century Americans, that is “more our problem than theirs.” At bottom, the Civil War was a war of principle, fought on constitutional terrain.

The book’s connection to the third historiographical stream, African American history, speaks to both the heroic and constitutional character of the war. Civil War historians of late have increasingly turned their attention to the African American dimensions of the conflict, while historians of the African
American experience have discovered in the mid-nineteenth-century struggle the crucible of black activism. These are significant scholarly developments. If the black experience proved critical to the war and if it demonstrated the deep desire for black liberty, then historians can never again tell the story of the war as simply a family quarrel between whites. Such a conception of the war is no longer tenable, given what we know about the African American experience. If four million enslaved people could have only secured their freedom through the tumult and violence of a civil war, an assumption borne out by the rest of American history, then the war and the accompanying triumph of black freedom was heroic indeed. Drawing upon this research, this study weaves the voices of African Americans into the traditional political narrative. Almost from the founding of America, black leaders claimed the words of the Declaration of Independence and used them to promote the rights of African Americans. Throughout the Civil War era, black people assembled in conventions, made speeches, drafted resolutions, walked off plantations, enlisted to fight for their country, and issued petitions—all in support of the advance of liberty. While historians have described black abolitionism, black self-emancipation, and black politics, they have missed what bound all these phenomena together—African Americans’ deep belief in the idea that “all men are created equal,” the idea that black people deserved an equal share of the American heritage of liberty. This theme of “black constitutionalism” runs throughout the book. To be clear, nineteenth-century African Americans—particularly those coming out of slavery—could have advanced a different agenda. They could have advocated and engaged in a race war, taking vengeance on their former masters, as many white Southerners at the time feared. They could have argued for racial separation within the United States, as many whites at the time, Northerners and Southerners, surely would have favored. They could have organized to leave the country in massive numbers, making the journey back to the continent of their ancestors, a position that a sizable minority of whites—even Lincoln—supported until early in the war. Instead, the dominant position within the black community was to claim all that they thought they deserved as Americans, clinging to the promise of human dignity inherent in their Christian beliefs and implied in Jefferson’s Declaration of Independence. While there is a great deal of truth to the arguments of early twenty-first-century commentators that American liberty was inherently flawed, born of and dependent on black bondage and oppression, nineteenth-century African Americans had a different, more idealistic perspective. They saw instead an America that, despite its flaws, possessed the potential to live up to its promises, and they were determined to make sure that it did so.

In engaging these historiographical debates, this study takes a long view,
examining the Civil War through a wide-angle lens. Ambitious in scope, the book surveys the antebellum era, the war, and the period of reconstruction in a single volume that devotes equal attention to the Union and Confederate sides of the conflict. It attempts to integrate political, military, and social developments into a readable narrative, with the thread of constitutionalism woven throughout.

While this book traverses a great deal of familiar territory, drawing on the vast body of scholarship on the war, it also delves into the published primary sources of the period—things well known and lesser known: congressional statutes, political speeches, and the official military records, of course, but also the decisions of state supreme courts, the proceedings of black conventions, and contemporary newspapers and pamphlets. While I hope I have contributed a new synthesis that engages and challenges historians in these three fields, I will be even more satisfied if I have produced an accessible narrative that speaks to an audience beyond the academy.

Finally, in the pages to follow, I hope that I have conveyed that the American founding planted the seeds of its own flowering, its own growth and expansiveness. Even if Jefferson had not intended to do so and even if the drafters of the Constitution were equally unconscious of their achievement, the founding generation produced a pair of remarkable texts that, over time, inspired millions to fulfill the promise of freedom and individual rights. In part because of the work of the nation’s black founding fathers—men such as Absalom Jones, David Walker, Frederick Douglass, as well as the 200,000 black soldiers and sailors who fought valiantly for the Union—the Civil War generation helped expand the definition of American liberty. The changes that resulted, I hope to show, were truly revolutionary and profoundly significant—and thus worth the price paid in blood and treasure. By the time it was over, the Union had become more perfect, and the Constitution had come closer to being a Constitution for all Americans.
Part I

SLAVERY AND SOVEREIGNTY
On March 4, 1845, James Knox Polk, the surprise victor in a close election four months earlier, outlined in his inaugural address the principles that would guide his presidency. A former speaker of the US House of Representatives, the forty-nine-year-old Democrat from Tennessee had become the eleventh president of the United States and the youngest man yet to assume the office. Humbled by his victory, Polk struck a cautious tone, invoking the aid of the Almighty and announcing a dutiful adherence to the law of the land. “The Constitution itself, plainly written as it is,” he stated, “the safeguard of our federative compact, the offspring of concession and compromise, binding together in the bonds of peace and union this great and increasing family of free and independent States, will be the chart by which I shall be directed.”

At numerous points, Polk praised and quoted the Constitution of 1787. He lauded it as “the most admirable and wisest system of well-regulated self-government among men ever devised,” and he cited its provisions as he described the relationship between the federal government and the states, the power of Congress to tax, and the nature of executive authority. Avoiding partisan rhetoric, Polk presented himself as a careful constitutionalist, bound by his presidential oath to uphold a sacred text. Although concerned about “sectional jealousies,” the new president expressed a deep faith in Americans’ ability to resolve amicably their disputes. “If our laws be just and the Government be practically administered strictly within the limits of power prescribed to it,” he confidently stated, “we may discard all apprehensions for the safety of the Union.” Polk’s constitutionalism reflected a national commitment to honoring the handiwork of the American founders, as well as a deep belief that doing so would prevent partisan factionalism or sectional strife from
undermining the republic. Yet by the time that Polk took the oath of office, the country had long been divided over issues that the founders had neglected to resolve.

THE FOUNDERS’ CONSTITUTION

The Constitution that Polk claimed could prevent dangerous divisions was itself the product of competing and often conflicting ideals. Launched during the late eighteenth century, at a time when Enlightenment thinkers emphasized human reason and progress and in a place where goods and ideas traveled in and out of busy Atlantic seaports, the Constitution grew out of intense political discussion and debate. Pamphlets, newspapers, handbills, speeches, and sermons all served as vehicles for expressing Americans’ dynamic and diverse beliefs about such concepts as liberty, property, taxation, rights, and the nature of government.

At least three ideological strains informed the thinking of the American founders. One mode of thought emphasized government by consent, private rights, and the right of revolution. Owing to the late-seventeenth-century British political theorist John Locke, this position stressed that people entered into civil society and formed governments in order to protect the fruits of their labor. Locke’s claims bolstered an evolving tradition that emphasized “the rights of Englishmen,” the idea that all Englishmen possessed certain fundamental liberties, including, for example, the right of trial by jury. If government became destructive of these ends, Locke believed, the governed possessed the right to change or reconstitute the governing authorities. Lockean thought particularly permeated Thomas Jefferson’s Declaration of Independence. In addition to being framed as a list of abuses carried out by the English monarch at the expense of the rights of colonists, Jefferson argued that “all men were created equal” and “were endowed by their Creator with certain unalienable rights,” including, borrowing from Locke, “life, liberty, and the pursuit of happiness.” Jefferson insisted in the Declaration that the American colonists possessed a right to separate themselves from England because English governance of the colonies had become destructive of the ends for which it had been established. A second, older way of thinking emphasized virtue and the common good. Drawing from classical political thought, many eighteenth-century British and American thinkers emphasized public virtue, or republicanism. Viewing the individual primarily as a citizen of the republic, this strain of thought warned against self-interest and emphasized the need for wise, virtuous representatives to look out for the good of the whole. The
emphasis on morality tapped into Americans’ growing religiosity coming out of the Great Awakening, and many of the most fervent republicans held strong religious-based communitarian views. In a political sense, the ideal of civic virtue served as a sort of middle way between the excesses of liberty and the threat of concentrated power, two forces that republicans believed always existed in tension with each other. Only in a republic, wherein virtuous citizens elected virtuous leaders, could liberty survive. A third way of thinking emphasized national glory, greatness, and power. Hoping to emulate the best in the British experience, some of the founders saw the chance to build a great American nation and empire. Alexander Hamilton in particular worked to ensure that the American people observed the “principle of strength and stability in the organization of our government, and vigor in its operations.”

Like-minded nationalists, including George Washington, looked to the imperial rather than the republican tradition in ancient history, focusing on “the moral, heroic, and self-realizing dimensions of the exercise and use of power.” Usually well-traveled and cosmopolitan in outlook, these nationalists often drew on their own experience of having waged a nearly eight-year-long struggle against one of the most powerful nations on earth. Aware that the American colonies lay on the periphery of the Atlantic world and that the British viewed them with condescension, nationalists sought to prove that America could survive—even thrive—on the international stage. The Constitution reflected in some measure all of these strains of thought.

In the most basic sense, by 1787 the founders clearly desired to increase national power. Although the thirteen American colonies had declared their independence from Great Britain in 1776, not until five years later, in the midst of the war for independence, did they ratify their first constitution, the Articles of Confederation. The Articles had definitively preserved the sovereignty of the states and granted few powers to a central government. Dependent on the states for revenue and hampered by a provision that required nine of the thirteen states to approve any significant legislation, the government under the Articles proved weak and ineffective, for it functioned more as a treaty among the states than as a blueprint for governing a nation. These shortcomings prompted a convention in May 1787, in Philadelphia, where all the delegates agreed that a stronger central government was necessary for the survival of their new country.

Still, they disagreed about exactly how much power to grant to the new government. While nationalists championed a vigorous government with an energetic executive, many at the convention, based on a republican reading of history and the experience of the British colonies, sought to disperse power in order to prevent its abuse. After months of debate and a series of compro-
mises, the new constitution provided for three branches of government, each of which possessed specific responsibilities and powers. Article I provided for a two-house legislature, the Congress, to perform the lawmaking function. States would have a variable number of members in the House of Representatives, based on population in a decennial census, while each state, regardless of population, would choose two members to serve in the Senate. Article I, Section 8 of the Constitution outlined the powers of Congress, including the power to declare war, to tax, to make rules regarding new territories, and to regulate interstate commerce. Article II provided for a chief executive with ambiguous but potentially far-reaching authority. The Constitution conferred upon the president the power to veto acts of Congress (although Congress could override the veto with a two-thirds vote in both houses), made him the “Commander in Chief of the Army and Navy of the United States,” and gave him the power to make treaties with other nations. Article III created a federal judiciary, with the Supreme Court at its head, with authority to hear cases and controversies arising under the Constitution, federal laws, and treaties. The new government, in short, possessed numerous powers that had not existed under the Articles of Confederation. Nevertheless, the framers carefully attempted to delineate and separate power so that no one branch dominated the others. Such a scheme decreased the likelihood that power would be abused and necessitated deliberation and compromise in lawmaking.

To protect the private rights of individuals, meanwhile, many delegates argued for specific guarantees regarding property and other liberties. Framers with a liberal orientation, for example, sought to prevent reckless state legislatures from interfering with private contracts and property rights. Viewing government in Lockean terms as a neutral arbiter among competing interests, James Madison and others believed that one of the primary aims of the new government was to “establish justice,” meaning to prevent the passage of state laws reflecting a popular “rage for paper money, for an abolition of debts, for an equal division of property.” This view found its way into the Constitution’s preamble (“establish justice”), as well as the Article I, Section 10 prohibition on state laws “impairing the obligation of contracts.” Those with republican sympathies, who believed that the national government posed the greatest threat to individual liberty, argued that the Constitution should contain an actual list of rights that would be protected from encroachment by the new government. After considerable debate, in 1791 Congress and the states adopted a bill of rights in the form of a series of amendments to the Constitution. The last of these amendments, the Tenth, declared that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”
Nationalism, liberalism, and republicanism, in other words, all influenced the writing of the Constitution. The dividing lines among these ideologies were not always clear, and what resulted from the discussions and debate was the product of a series of compromises. The founders were both traditionalists and innovators in that they derived many of their ideas from well-established political philosophies while they also attempted to apply these lessons in the American setting. The Constitution thus privileged no one ideological perspective. Rather, the founders created a constitutional order that protected liberal self-interest by preserving property rights while at the same time attempting to preserve republican virtue by dividing and separating powers. Although they established a stronger central authority than had existed before, the founders remained divided over the precise relationship between the central government and the states. Paradoxically, the document they created provided for popular participation in politics at the same time that it served as a fundamental law placed above politics.

THE PROBLEM OF SLAVERY

Slavery emerged as the great unresolved issue of the founding era. As early as the drafting of the Declaration of Independence in 1776, slavery had divided those who sought to create an American nation. Jefferson’s original draft of the Declaration had included harsh criticism of the slave trade. Referring to King George III, Jefferson wrote, “He has waged cruel war against human nature itself, violating its most sacred rights of life & liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither.” Perhaps more important to Jefferson and his fellow Americans was the fact that the king was, in Jefferson’s words, “exciting those very people to rise in arms among us, and to purchase that liberty of which he has deprived them, by murdering the people upon whom he also obtruded them.” This passage referred to Lord Dunmore’s Proclamation of 1775, which promised freedom to American slaves who sided with the British. At the urging of delegates from South Carolina and Georgia, the Continental Congress nixed Jefferson’s criticism of the slave trade, and the final version of the passage—“He has excited domestic insurrections amongst us”—highlighted only the threat of rebellion.

The Constitution ultimately contained three clauses that pertained directly to the institution of slavery. First, Article I provided that three-fifths of the total number of slaves in a state be counted when calculating a state’s popu-
lation for purposes of taxation and representation in Congress. Known as the Three-Fifths Clause, this provision resulted from a compromise about whether to count slaves when calculating a state’s population. The three-fifths ratio itself originated in a proposed amendment to the Articles of Confederation that had pertained to how much revenue each state would contribute, based on its population, to the Confederation government. In 1787, Madison reinitroduced the three-fifths ratio, or “federal ratio” as it was sometimes called, as a means of resolving a dispute between free and slave states under the new constitution. On the one hand, because slavery was rapidly disappearing from the North, few Northerners favored counting slaves at all for purposes of representation. On the other hand, Southerners maintained that accounting for slaves in this way reflected Southerners’ greater share of national wealth and ensured that this economic interest could not be ignored. The fact that the sides agreed on the three-fifths ratio reflected perhaps the founders’ ambiguity about whether population or wealth was being represented in the House of Representatives. Although Northerners reluctantly agreed to the three-fifths ratio, the practical effect of counting a portion of the slave population in addition to the free population was to increase the influence of the slave-holding states in Congress, to provide Southerners with a sort of bonus when it came to representation.8

Second, the Slave Trade Clause, also in Article I, stated that Congress could not prohibit the importation of slaves until the year 1808, twenty years after the ratification of the Constitution. This provision represented a compromise. Many Northern delegates at the Convention who opposed the slave trade as immoral sought its outright abolition, while representatives from Georgia and South Carolina saw no reason to place any limits on the practice. The possibility of a ban two decades in the future represented the moderate position between these positions. Moreover, the clause constituted a compromise on the larger issues of commerce and taxation. Most Northern delegates favored an unlimited power to regulate commerce with foreign nations and among the states, including the power to impose a tax on exports, while Southerners sought to limit congressional power over the slave trade and prevent any possibility of an export tax on Southern agricultural commodities. In essence, the Slave Trade Clause constituted an exception to Congress’s overall power to regulate commerce with foreign nations. The slave states, meanwhile, succeeded in writing a ban on export taxes into the Constitution. Third, the Fugitive Slave Clause—by far the most contentious of the slavery clauses in subsequent decades—generated virtually no debate at the Philadelphia Convention. Located in Article IV, this clause required that a runaway slave be “delivered up” upon the claim of a master. Introduced near
the end of the Convention's deliberations, the clause ensured that enslaved persons could not simply gain their freedom by crossing from a slave state into a free state. An obviously important provision for slaveholders, the Fugitive Slave Clause ensured that the newly added free territories north of the Ohio River would not become a haven for runaway slaves, and it seemed to imply that slaveholders possessed an affirmative property right to hold slaves that could not be interfered with by states. Other clauses also appeared to ease the minds of slaveholders who feared slave revolts, for Congress possessed the power under Article I, Section 8 to "suppress insurrections" and Article IV provided that the US government could protect states from "domestic violence."

Taken together, all of these provisions of the Constitution put slaveholders in a much stronger position than they had been under the Articles of Confederation. Some Southerners said so. Charles Cotesworth Pinckney of South Carolina seemed especially confident. "We have a security that the general government may never emancipate [slaves], for no such authority is granted; and it is admitted, on all hands, that the general government has no powers but what are expressly granted by the Constitution, and that all rights not expressed were reserved by the several states," he reasoned. "We have obtained a right to recover our slaves in whatever part of America they may take refuge," he correctly continued, "which is a right we had not before."9

Yet slaveholders had not won a complete victory at the Philadelphia convention. In at least two significant and related respects, the Constitution failed to protect the interests of slaveholders. First, neither the word "slavery" nor "slave" actually appeared in the text. Although delegates to the Philadelphia Convention routinely referred to "blacks," "Negroes," and "slaves" in the course of debate, the framers excluded such terms from the nation's founding document. Instead, the Constitution referred to a fugitive slave as a "person held in service or labour," while the Three-Fifths Clause referred to slaves simply as "other persons." Some Northern delegates, who undoubtedly hoped that slavery would eventually wither away and did not want to write it into the Constitution in an overt way, favored such ambiguous language. These delegates assured themselves that the abolition of slavery in the Northern states during the 1770s and 1780s and Congress's prohibition of slavery from the territory north of the Ohio River in the Northwest Ordinance of 1787 had placed the United States on an abolitionist trajectory. The slave trade, they figured, would probably come to a halt in twenty years, and they imagined that the institution of slavery in the Southern states would eventually end as well. In 1808, without controversy, Congress did in fact pass legislation banning the importation of African slaves. Certainly many of the Northern
delegates believed that they, by neglecting to mention it by name, had in an important way left slavery out of the Constitution. Second, and perhaps more important, Southern delegates failed to gain explicit recognition of their slaves as property. Despite his apparent satisfaction with the outcome of the convention, the South Carolinian Pinckney had actually sought specific language recognizing property in slaves, thus keeping it safe from the reach of federal power to emancipate. After debating the wording of the Slave Trade Clause, Madison declared in the convention that it would be “wrong to admit in the Constitution the idea that there could be property in men,” and his position won the day despite Pinckney’s repeated efforts to the contrary. Thus, although the Constitution implied that slaves were property, the document never explicitly said so, and the Fugitive Slave Clause even seemed to make slaves sound more like indentured servants, as “a person held to service or labour.” Enough ambiguity existed, in short, to allow for the development of sharply divergent opinions.

Within a few years of the Constitution’s ratification, a massive slave revolt in the French colony of Saint Domingue put white Southerners on edge. Beginning in 1791, the revolution just to the south of the United States convulsed the island in bloody conflict for several years. French, British, and Spanish forces all attempted unsuccessfully to put down the uprising, but eventually the revolutionaries proclaimed the creation of the Haitian Republic of 1804, the second independent nation in the western hemisphere. When some Northerners expressed sympathy for the black revolutionaries, white Southerners concentrated all the more on the guarantees they believed the Constitution provided with respect to slavery.

THE ISSUE OF SOVEREIGNTY

Slavery was not the only matter left unresolved by the founding generation. The ambiguous relationship between the central government and the states in the Constitution raised the critical issue of sovereignty. Republican political theory held that sovereignty—the supreme authority in any government—could not be divided. There could be only one sovereign, one ultimate authority. In England, after the Glorious Revolution of 1688, Parliament possessed supremacy. But the US Constitution appeared to break with this tradition by creating a federal system, one in which a central government and individual state governments overlapped and coexisted, each with specific powers. The establishment of a federal structure complicated the question of where authority under the Constitution actually lay. More than a matter of abstract
theory, the answer to this question had implications for how the new government would function.

The founders and the Constitution offered at least three possible answers to the problem of sovereignty. One answer was that the whole people of the United States—“We the People,” as the preamble put it—were sovereign. According to this nationalistic interpretation, the people of the United States acted in their collective capacity both in creating and ratifying the Constitution. In marked contrast to the Articles of Confederation, which explicitly affirmed the sovereignty of the states and mentioned the name of each state in its opening section, the preamble of the US Constitution began by asserting the sovereignty of the people without mentioning the states. Therefore, this way of thinking went, the Constitution established a “national government” that possessed the power to act directly upon the whole people. This theory offered justification for a vigorous central government at the expense of state power. Nationalists at the Constitutional Convention, led by Hamilton and James Madison, in some respects succeeded in advocating this position. In addition to creating new powers for the central government, the Constitution included the Supremacy Clause, which stated that the Constitution, federal law, and treaties, “shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.” The ratification process, moreover, seemed to lend credence to the belief that the founders had created a truly national government that issued directly from the American people. Article VII provided that popular “conventions” held in each state—rather than the existing state legislatures—would determine whether or not to adopt the new constitution.

A second, more moderate interpretation was that the Constitution had created a system of dual sovereignty in which both the people and the separate states retained authority. Under this formulation, which Madison ultimately accepted and later articulated in *Federalist 39*, the Constitution’s authority derived from the people, “not as individuals composing one entire nation, but as composing the distinct and independent states to which they respectively belong.”¹¹ The new government, therefore, was “partly national; partly federal,” as Oliver Ellsworth of Connecticut described it.¹² The founders had divided sovereignty in the sense that the House of Representatives, based on population and popularly elected, represented the sovereignty of the people, while the Senate, where each state had two senators sent by their respective legislatures, embodied the sovereignty of the states. Although the nationalists did not succeed in creating a congressional veto over the states, they did place limits on what state governments could do. Article I, Section 10 pro-
vided that states could not, for example, enter into treaties with foreign nations, coin money, or pass any law “impairing the obligation of contracts.” Still, while the central government had extensive powers, it could not properly be called “national,” Madison claimed, “since its jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects.” Under this theory of dual sovereignty, buttressed by the Tenth Amendment, states retained power over such matters as navigation, commerce, and taxation, so long as no explicit federal constitutional prohibition existed.

A third answer was that the states retained their sovereignty under the new constitution. Despite attempts to augment the powers of the general government and circumscribe state power, after all, the founders never considered abolishing the states. Jefferson’s Declaration of Independence had established the idea that the “United Colonies are, and of Right ought to be, Free and Independent States,” meaning “free and independent” of England but also “free and independent” of each other. Rejecting the idea that the language of the preamble had in any way diminished the sovereignty of states, this theory held that it had been the states, as states, that had come together in a compact to form a union and write the Constitution, just as they had in writing the Articles of Confederation. As parties to the compact, states retained their sovereignty and granted to the central government a set of specific and limited powers enumerated in the Constitution. Once the new government actually started to enact legislation, critics in the states found this theory particularly useful as a means of challenging federal power. In the late 1790s, extreme versions of the theory—advocated by Jefferson and even Madison (who in this instance believed that Congress had exceeded its powers)—held that state governments could interpose themselves between the federal government and the people of a state to protect the liberties of their people, or even nullify federal laws that states believed were unconstitutional. If this theory held sway—if states could nullify federal laws—then the argument that states could withdraw from the compact altogether would not be far behind. Given the range of possible answers to the question of sovereignty, the Constitution possessed more ambiguity than clarity on the issue. For this reason, finding the proper balance between the central government and the states would prove one of the central dilemmas of the fledgling nation.

Because the Constitution resolved neither the sovereignty issue nor the slavery problem, the union of the states remained a fragile one. Freed from British control for a brief time, only since the conclusion of the American Revolutionary War in 1783, the inhabitants of the thirteen states looked to an uncertain future. Although they had joined together to win their indepen-
idence, most had not surrendered their emotional loyalties to a new central government. The Union seemed more idea than reality, the Constitution a mere hopeful experiment. The latter’s fate, for all the founders knew, could very well end up the same as that of the short-lived Articles of Confederation. True, a succession of compromises at the Philadelphia Convention had eliminated many of the problems of the Articles and smoothed over some of the differences that divided Americans. But the actual operation of the federal system remained to be determined, and the founders’ divergent assumptions regarding the future of slavery held the potential for continued division. While many other matters also remained unresolved at the founding—the distinction between direct and indirect taxes, the definition of citizenship, the meaning of treason, for example—none shook the political system as profoundly and consistently as the issues of slavery and sovereignty.

POLITICAL CRISIS

Decades after the founding, in 1819–1820, a controversy over Missouri statehood first brought the issue of slavery to the forefront of American politics. In 1803, President Thomas Jefferson had led the United States to purchase the Louisiana Territory from France, thereby doubling the size of the country. Roughly defined by the Missouri and Mississippi river watersheds, these vast lands welcomed tens of thousands of settlers over the next several years, and many of these newcomers held slaves. In 1804, a minor controversy over proposed limits on slavery in Orleans Territory was settled in favor of proslavery interests, and in 1812 Congress admitted Louisiana to the Union as a slave state. As slavery spread, some Northerners in Congress grew concerned that this development ran counter to the designs of the founders, and just as many worried that the admission of new slave states eventually meant increased Southern influence in the halls of Congress, which would in turn lead to more slave states. During the War of 1812, a group of New Englanders, dissatisfied with the fact that the United States had entered a second war with Britain, protested what they viewed as the South’s unwarranted power over the direction of the country. All but one US president at that point had been a Virginian, Southerners retained key positions in Congress, and these very Southern leaders had championed a military conflict with a nation that most New Englanders saw as a trusted trading partner. The discontented New Englanders organized the Hartford Convention in 1814, where they argued for a host of reforms to reduce Southern influence, including a proposal to abolish the Three-Fifths Clause. This clause, they believed, unduly augmented
Southern power in Congress and the presidential election process. Though their proposed reforms had little influence beyond the convention hall, the question of the power of slaveholding interests in the national government lingered.

When Missouri Territory applied for statehood in 1819, it seemed a foregone conclusion that it would become a slave state. At that time, some ten thousand slaves already lived there, constituting about 16 percent of the total population. In February 1819, Representative James Tallmadge of New York raised the issue that nearly everyone believed was already settled. Hoping to restrict the growth of slavery and Southern power, the New Yorker proposed prohibiting the further introduction of slavery into Missouri and gradually freeing all slave children born after the date of admission when they reached the age of twenty-five. Because it did not affect slaves already living in Missouri, the Tallmadge amendment would have extended the process of abolition over a half century. A few years before, Tallmadge had helped his home state enact a gradual emancipation law, and the Missouri proposal was even more limited. The proposed law would have allowed blacks to be sold “down the river” into slavery before their emancipation dates, just as had happened in New York. It was hardly a radical proposal. Despite the limited nature of Tallmadge’s plan, Southern members of Congress reacted with alarm. Although the Tallmadge proposal passed in the House of Representatives (with the voting along sectional lines), the amendment failed in the Senate.

After months of stalemate, in the spring of 1820, Jesse B. Thomas, a Maryland-born senator from Illinois, proposed a compromise. Congress consented to the admission of Missouri without any restrictions on slavery and preserved the existing balance of slave states and free states by adding Maine (which had previously been part of Massachusetts) to the Union. Further, Congress enacted legislation providing that, in the rest of the Louisiana Purchase, slavery would be restricted to the region below Missouri’s southern border, the latitude line at 36 degrees, 30 minutes. Despite the passage of the so-called Missouri Compromise, members of Congress voted again almost wholly along sectional lines. On the critical question of admitting Missouri without any restrictions on slavery, every single member of Congress from the slaveholding states voted in favor, while most Northerners voted against. This aspect of the compromise, in other words, rested in the hands of a small group of Northerners who joined Southerners in admitting Missouri as a slave state. Southerners seemed perfectly willing to ban the institution of slavery in the lands to the north and west of Missouri, which they believed to be ill suited for slavery and plantation agriculture anyway. From the start, in other words, the crisis had been about possible emancipation in Missouri, and the matter
of slavery’s extension into the rest of the Louisiana Purchase engendered little debate.

By the time the Missouri crisis had subsided, one thing remained clear: sectional loyalties within the United States had begun to emerge. During the crisis, Northerners for the most part came together in their opposition to admitting a new slave state, while Southerners united in support of extending slavery into new territory. In particular, the crisis signaled the rise of a Southern political consciousness centered on the protection of the rights and interests of slaveholders. During the first three decades of the country’s history, Southerners had held the presidency for all but four years, held considerable power in Congress, and felt no threat from the North. During the Missouri crisis, in contrast, for the first time Southerners in Congress employed the rhetoric of disunion, looked with suspicion on national power, and took a firm stance in support of the rights of slaveholders. Confronted with the prospect of gradual emancipation in Missouri, Southerners took a hard line in support of the permanence of their peculiar institution.

Less than a decade after the Missouri crisis, a debate over sovereignty brought the state of South Carolina to the brink of secession. An increase in the federal tariff—the tax placed on foreign imports to the United States—triggered the four-year-long controversy. When Congress raised the tariff in 1828, many Southerners, particularly those with a stake in the cotton-export economy, expressed alarm. With a thriving plantation belt, South Carolina was particularly vulnerable to fluctuations in the price of cotton. The state’s planter class spearheaded the opposition to what some took to calling the Tariff of Abominations. Economic opposition to the tariff arose for two reasons. First, many Southerners believed that Congress had increased the tariff not simply to raise revenue but also to protect the manufacturing economy of the Northeast. A higher tariff, by taxing goods imported from other countries, assisted developing industries in the United States by effectively eliminating foreign competition. This meant that Northern manufacturers could increase output and sell their finished products at a higher price than otherwise. Southern agriculturalists, who reaped no benefits from this policy, viewed the higher tariff as pure favoritism. Second, the tariff hurt the South’s export-based economy. By reducing the volume of European sales to the United States, a higher tariff would eventually reduce the amount of plantation staples that Europeans could afford to buy. In the minds of Southern agriculturalists, the imposition of protective measures by the United States, moreover, could lead to the rise of similar trade barriers in Europe, which would further interfere with free trade. Southern states thus passed a number of resolutions against the tariff. For South Carolina, coming out of an economic slump in the late 1820s and