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My enthusiasm for this collection of materials is almost boundless for three reasons. The first has to do with Dwight Pitcaithley’s marvelous introduction. Let me simply say that I know of no comparable essay that so concisely and accessibly summarizes the constitutional issues raised by the decision of the Framers in 1787 and then afterward to make central compromises with regard to the institution of chattel slavery. There is obviously an extensive—and fine—literature on the subject, including Don E. Fehrenbacher’s *The Slaveholding Republic: An Account of the United States Government’s Relation to Slavery*. But for students looking for a shorter introduction to this extraordinarily important subject, they can literally do no better than to read the introduction to this volume.

Perhaps the central question of American constitutional history—and, for that matter, aspects of our constitutional present—is the extent to which William Lloyd Garrison, the notable abolitionist (who burnt the Constitution and advocated northern secession from the “slaveholders’ republic”) was correct in describing the Constitution as “a covenant with Death and an Agreement with Hell.” This is obviously no small matter. It is tempting, for example, to view Roger Taney, the author of the Supreme Court’s principal opinion in the notorious *Dred Scott* case, as exemplifying what Yale law professor Jack Balkin and I have labeled “judges on a rampage,” that
is, an “activist judge” who ruthlessly wrote his own political views into the Constitution. That view predominated at the time and thereafter. William Cullen Bryant at the time described it as a “perversion” of the Constitution; Charles Evans Hughes later described it as one of the three major “self-inflicted wounds” of the Supreme Court. But there is another point of view, held by scholars with no desire to defend the slave empire as such. Its most important articulation is Mark Graber’s *Dred Scott and the Problem of Constitutional Evil*. For obvious reasons, it is easier to denounce purportedly renegade judges than the Constitution itself if one is upset about slavery-protecting decisions like *Dred Scott*. No one addressing this problem can be said to have spoken the “last word” on it, neither long books like Fehrenbacher’s or the relatively short essay by Pitcaithley. But what I am confident in saying is that any careful reader of the latter will be fully prepared to consider the various points of view and to move on to the more extensive and detailed monographs.

The second reason for my enthusiasm is the fact that the book is laser-focused on a very short but all-important period of American history—the months between the November 1860 election of Abraham Lincoln as our first Republican president and his inauguration on March 4, 1861. It was during that time that the Union dissolved, beginning with the secession of South Carolina in December. By March 4, seven states had seceded (and four more would do so following Fort Sumter in April). Shelves of volumes have been written about whether this breakdown—and the bloody war that followed—was inevitable or whether sagacious statesmanship might have staved it off for a while longer. If it was inevitable, of course, the blame resides not so much with specific individuals as with the basic tension, what Lincoln would call the “house divided,” built into the 1787 Constitution between slavery and freedom. It took time for the house to implode, but there really was no plausible alternative. William Freehling, in his magnificent book *The Road to Disunion*, refers to what most historians call “the Compromise of 1850” as more truly an “armistice” that bought ten more years of bitterly divided Union. So, from this perspective, even if there was nothing inevitable about the war breaking out in April 1861, it was destined to happen.

The alternative view, of course, is that human agency was crucial, so that the war could have been avoided, perhaps forever, by suitable negotiation. Anyone inclined to this latter view should find the documents compiled in this collection especially valuable. The central question is obviously whether there existed the basis for a negotiated settlement. Students of negotiations
know that the last months—or, indeed, weeks and even days—are crucial before an irrevocable decision must be made. To be sure, it is helpful to put issues in a long-term perspective going back to their origin. But just as Samuel Johnson emphasized how the prospect of being put to death the next morning “concentrates [the] mind wonderfully,” the prospect of the actual dissolution of the Union has the same impact. Between November and March, politicians had to become far less polemical and to weigh the actualities of the situation. In turn, they had to decide what was most important to them and what, perhaps, was open to genuine negotiation.

The documents make it quite clear what the central issues were. The most important, certainly, was whether Republicans would recant their insistence on preventing the further expansion into American territories. Lincoln had made it crystal clear that he would not challenge the legitimacy of slavery where it already existed. He was not in any serious sense an “abolitionist” if this meant immediately moving to end slavery in the United States. Indeed, he clung to fantasies of “compensated emancipation” that would have ended slavery only at the turn of the twentieth century. But, for whatever reasons, there was no possibility even of returning to the Missouri Compromise and its acceptance of slavery in territories south of 36° 30’. Slave owners believed that this denied them recognition as truly equal members of the polity, entitled to take to the territories their lawful property from their state of origin. Republicans, on the other hand, viewed it as an acknowledgment of the legitimacy of slavery. And, no doubt, what they really feared was not slavery in the Dakotas but slavery in areas of northern Mexico or Cuba that might well be captured by a reinvigorated Union under the sway of a slavocracy that was constantly looking for new territory to which to expand. There was no doubt that Cuba, especially, lay well south of 36° 30’ and would make a welcome addition to a United States that saw no problems with chattel slavery so long as it didn’t invade the North.

But there were other issues as well, as revealed in the documents. Would “free states” like Ohio or New York recognize their duty to accommodate slave owners in transit with their slaves from one slave state (say, Virginia) to another (say, Missouri or Louisiana)? It was clear that slave owners could not expect to settle in free states, but what about “sojourning” for several days or even weeks while waiting for an appropriate ship going from New York to Charleston or New Orleans? And, of course, there was also the “duty” of free states to return ostensible “fugitive slaves,” themselves subject to a far more onerous law that was part of the Compromise/Armistice of 1850.
But Lincoln had also famously declared, in his “House Divided” speech, that *Dred Scott*, coupled with the *Lemmon* case before the Supreme Court in 1860, represented a conspiracy to “nationalize” slavery. No longer would the Union be composed of “slave” states and “free” ones (who had a duty, however, to return fugitives and to accept at least some measure of “sojourn”). Instead, *all* states would ultimately have to accept the legitimacy of settlement by citizens of other states and their slaves. A more “moderate” version of this argument was that states could prohibit slavery only by explicitly legislating to do so. Otherwise, the presumption would be in favor of slavery. As one might expect in such circumstances, it was antislavery forces that offered the most baleful interpretation of southern demands, while Southerners themselves attempted to appear more “reasonable.” One might wonder, of course, whether the Southerners were entirely sincere. Had they achieved their demand of expansion into the territories and, along the way, demonstrated the pliability of the Republican Party, would they inevitably have escalated their demands at some future date by threatening to secede if the nationalization of slavery were not accepted? Who knows? But at least one can say that these documents are likely to present the sincere offers and counteroffers that were available during a brief period when secession had indeed become fully real and war fully thinkable.

But, as suggested above, there is a third reason I am so enthusiastic about this book. Readers are necessarily forced to wrestle with the overarching issue of compromise itself. This was obviously presented in 1787. We often see references to the “Great Compromise” by which the Philadelphia Convention acquiesced to equal state voting power in the Senate. As a matter of fact, James Madison, writing as “Publius” in *The Federalist*, denounced this as an “evil,” but a “lesser evil” than would have been the case if Delaware and other small states had carried out their threat to walk out of the Convention. I suspect that most of us today are inclined to agree even if we are unhappy, as Madison definitely was, with a Constitution that gave Delaware and Rhode Island equal voting power with Virginia and New York.

But there was another compromise that rarely is described as “Great.” It, of course, involved slavery, the sin that dared not speak its name but was, nonetheless, accommodated in three important ways. First, maintenance of the international slave trade was guaranteed until 1808. Then there was the 3/5 Compromise that gave slaveholding states unwarranted extra representation first in the House of Representatives and then the Electoral College (and, consequently, in the Supreme Court as well). Finally, there was the so-called fugitive slave clause that required “free states” to return
poor wretches who, in the words of the Statue of Liberty, were “yearning to breathe free.” What do we think of these compromises? After all, it is not as if no one at the time objected to them. Antislavery movements were already far more present than, say, movements concerned about the patriarchal subordination of women. That would come, of course, but we are entitled to say that almost all conventional wisdom of the time accepted that subordination. That was not the case with slavery, even if the opposition would surely grow in the next seventy-four years before 1861. Instead, just as with the Senate, the winning argument, as it were, was that prices had to be paid in order to get the Constitution and the ensuing United States, given the very real differences that challenged any easy picture of national unity. One price was acceptance of chattel slavery and the power of slave owners.

But then we have to confront a really terrible question: If the Compromises of 1787, including the ones involving slavery, were “worth it,” according to some metric that we find satisfactory, then where does one draw the line? After all, the history of American slavery includes two subsequent “compromises,” whether or not we wish to describe them as “great.” The Missouri Compromise of 1820 accepted the legitimacy of slavery in that state and in all territories south of 36° 30'. And then there was the aforementioned Compromise of 1850 that included an enhanced, and even more tyrannical, fugitive slave law than the one originally passed in 1793, even as it admitted California as a free state and abolished the slave trade in the District of Columbia. So why not acquiesce to the southern demand in the winter of 1860–1861 for the largely symbolic agreement to accept slavery in any and all of the remaining territories? It should be clear from reading the documents that what defenders of slavery demanded was a full measure of respect as equal partners in the Union, and they believed, probably rightly, that adherents of the new Republican Party wished to deny them such respect. I am certainly not arguing that the slave owners were truly entitled to the respect they sought; I do not believe that is the case. But, then, I should also acknowledge my attraction to the Garrisonian understanding of the 1787 Constitution.

In our own time, we seem to be engaging in a near civil war, at least emotionally, over the respect owed the statues of Confederate “heroes” like Jefferson Davis and Robert E. Lee. I am not reluctant to see such statues removed from their places of honor, but we should recognize that not everyone agrees. It is disagreement over fundamental issues, whether slavery, abortion, or even the placement of public statuary, that elicits both the drawing of lines in the sand and the call by some to achieve some “compromise” that
will allow us to live in peace with one another. There is, alas, no algorithm that dictates when lines in the sand should be honored or when concessions to one’s adversaries should become the order of the day. “Compromise” does not require that one in fact change one’s underlying positions about the goodness or evil of what is at issue; instead, it requires that one prefers peace to the prospect of violent contention or, as with secession, civic divorce.

So I would hope that readers of this wonderful collection would use its materials first of all to understand the very specific politics of 1860–1861 and the positions being taken by leading (and not so leading) figures of the North and South and then to move on to the far more general topic of compromise itself. Should, in the language of an old adage, “justice be done though the heavens fall,” or should one be willing to sacrifice a certain measure of justice in order to prevent the heavens from falling?

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Although this nation has just finished commemorating the 150th anniversary of its nineteenth-century civil war, it is unclear whether that four-year effort shed increased light on the causes of the war and its long legacy. Arguments still rage over the nature of the Confederacy, the meaning of the Fourteenth Amendment, and the appropriate relationship between state and federal authority. Crucial to understanding the war is an understanding of secession. The election of the first Republican president in 1860 triggered the secession of seven southern states during the next several months. Following the Confederacy’s bombardment of a federal fort in Charleston Harbor and Abraham Lincoln’s call for 75,000 troops to put down the insurrection, four additional southern states seceded. Simply put, without secession there would have been no war. This book is designed to make sense of the South’s need to secede after Lincoln’s election.

A careful study of this period of political unrest reveals that contrary to contemporary notions that the South seceded to protect states’ rights, the primary motivation driving secession was the preservation of the South’s economic engine, slavery. By 1860, the slave South had convinced itself that the North was filled with abolitionists, that the Republican Party was, in fact, an abolitionist party, and that Lincoln’s election meant the end of the southern way of life. The southern response to the rise of the northern
antislavery party was not to demand an expansion of state authority but to argue for an expansion of federal sovereignty to protect the institution of slavery. *The U.S. Constitution and Secession* explains the centrality of slavery to the secession movement and slave states’ demand for increased federal authority to protect their “peculiar institution” in the run up to the war.

Although other compilations of documents produced during Secession Winter of 1860–1861 exist, none focus on the subject of secession and the efforts at compromise to heal the sectional rift. William Freehling and Craig Simpson have provided valuable insights into the secession conventions of Georgia and Virginia through the publication of the essential speeches. See *Secession Debated: Georgia’s Showdown in 1860* (1992) and *Showdown in Virginia: The 1861 Convention and the Fate of the Union* (2010). Jon Wakelyn’s *Southern Pamphlets on Secession, November 1860–April 1861* (1996) reproduced twenty speeches and sermons between November 1860 and March 1861 that illuminate southern discontent. James Loewen and Edward Sebesta compiled many important nineteenth- and twentieth-century documents in *The Confederate and Neo-Confederate Reader: The “Great Truth” about the “Lost Cause”* (2010). The Library of America’s *The Civil War: The First Year Told by Those Who Lived It* (2011) edited by Brooks Simpson, Stephen Sears, and Aaron Sheehan-Dean provides an extensive collection of primary sources from the first year of the war. This volume differs from these by digging deeply into the five-month period from Lincoln’s election to the firing on Fort Sumter.

This examination of the secession crisis provides a detailed accounting of the methodical separation of North and South over the issue of slavery from Lincoln’s election through his inauguration while providing sufficient historical context to make sense of the political debates during that period. I have attempted to slow down the action between Lincoln’s election in November 1860 and the bombardment of Fort Sumter in April 1861 to reveal through speeches, proclamations, reports, and proposed solutions the essence of secession as it slowly unfolded over that fateful winter. This volume reproduces the critical documents that encourage the careful reader to understand secession from the perspective of those involved. Speeches in Congress, declarations of secession from four of the first states to secede, and the sixty-seven compromise proposals designed to prevent additional states from seceding make up the core of this book. In total, the documents included here illustrate the central role of slavery and white supremacy in the fracturing of the nation over the winter of 1860–1861.
Acknowledgments

My interest in the secession phenomenon began over two decades ago as a result of lengthy conversations with my friend and colleague James O. Horton. This book developed out of conversations with historian Darrell Meadows of the National Historic Publications and Records Commission. His support and advice are greatly appreciated. I am also indebted to Tony Curtis, Patrick Lewis, and Matthew Hulbert of the Kentucky Historical Society for their encouragement and careful reading of selected documents as well as an initial draft of the introduction. This project could not have been accomplished without the extraordinarily efficient team managing the Interlibrary Loan Department at New Mexico State University. Jon Hunner, Laura Feller, and Marie Tyler-McGraw offered constructive comments early in the process for which I am most grateful. Sanford Levinson provided a critical review that strengthened the manuscript immeasurably while Timothy Huebner’s encouraging assessment validated my interpretation of the secession puzzle. Paul Finkelman’s incredible knowledge of case law helped pin down a very vague reference. William Eamon not only assisted by translating numerous Latin phrases but also asked sharp questions which helped me clarify my own thinking about secession as we cycled the beautiful
Mesilla valley. Ann Huston, of Taos, inspired me with her art. To Sabette, my wife of almost fifty years, I owe more than I can express for her faith in me, her sense of humor, and her keen grammatical eye.
The memory of the Civil War still haunts this country. Scholars continue to churn out monographs, biographies, and analyses relating to the war. The Ken Burns documentary repeats on PBS on a regular basis. Deep-seated racist convictions continue to taint conversations about the future of the country and even infest political discourse. The long shadow of the war intrudes (or lurks in the background) every time a conversation turns to the politics of race. Even today, generations after Lee’s surrender to Grant, the causes of secession and the significance of the Confederacy can prompt arguments about southern memory and identity.

Having just finished remembering the war on its 150th anniversary, the nation was again drawn into a debate over the Confederate battle flag and its links to violent racism in Charleston and Charlottesville. Defenders of the flag insist that the Confederacy should be remembered for its strong states’ rights stance and not for its perpetuation of slavery. The South had to leave the Union, they rationalize, because an aggressive federal government was usurping authority constitutionally given to the states. The Confederacy was created, in other words, to protect the rights of states and not the property rights of slave owners. Attempts to separate the purpose of the Confederacy from racist ideology are based on a generations-old effort to construct an alternative history of the war that posits the Confederate States
of America as an ardent defender of states’ rights, a rhetorical construction wholly at odds with the historical struggles over slavery that divided the nation between 1848 and 1860.

The contention that the peculiar institution was merely a pawn in a larger contest for political power had its literary genesis in the 1866 classic, The Lost Cause by Edward Pollard.1 Even more influential were the postwar writings of Alexander Stephens and Jefferson Davis. Stephens’s A Constitutional View of the Late War between the States (1868) was the first postwar account by a high-ranking official of the Confederacy to suggest that differences over the institution of slavery were but “minor” points of disagreement between North and South. The war was, instead, “a contest between opposing principles; but not such as bore upon the policy or impolicy of African Subordination.”2 The Confederacy’s vice president seemed to have forgotten that only seven years earlier he had proclaimed that slavery was “the immediate cause of our late troubles and threatened dangers.”3 Thirteen years later, Jefferson Davis published his version of the war in which he, too, sought to distance the Confederacy from the perpetuation of human bondage. Although many writers presented secession as an effort to “extend and perpetuate human slavery,” Davis wrote that they were wrong. Davis claimed alternatively that “to whatever extent the question of slavery may have served as an occasion, it was far from being the cause of the conflict.”4 The Confederacy’s president failed to mention that in his farewell address to the U.S. Senate, he took pains to announce that he agreed completely with Mississippi’s decision to secede, which was based entirely on perceived threats to the institution of slavery.5


Preferring to remember the war as a noble effort instead of one focused on preserving and protecting a brutal (although inordinately profitable) institution, southern heritage groups picked up the themes presented by Stephens and Davis and, over the decades, constructed a counterhistory more palatable to white Southerners who wanted to remember the war as a glorious cause. As historian David Blight so eloquently illustrated in *Race and Reunion*, the Sons of Confederate Veterans, United Daughters of the Confederacy, and other pro-Confederate advocates devoted themselves for more than a century to the Pollard/Stephens/Davis objective of separating slavery from the causes of the war.6

The historical evidence of the discussions and debates this nation’s elected officials conducted over the winter of 1860–1861 directly contradicts this contrived view of secession. Written history is based on evidence, evidence produced at the time of the event being studied. The evidence produced by Congress, state secession conventions, state legislatures, and other licit gatherings is extensive and detailed and provides the inquisitive student with vivid insights into the breakup of the Union.

The abridged account of Secession Winter, 1860–1861, is well known and oft-repeated. It begins with Lincoln’s election in early November followed by the secession of South Carolina on December 20. Six additional states then declare their independence before Lincoln’s inauguration on March 4. Five weeks later, Confederate artillery force the surrender of Fort Sumter, Lincoln responds by calling for 75,000 troops to put down the insurrection, four more states secede, and the war is on.

The retelling of those fateful five months between Lincoln’s election and the firing on Fort Sumter is often compressed in order to get on with the dramatic story of the war itself. Even when the narrative is slowed down, details of the South’s grievances are glossed over, and the string of events develops a pronounced sense of inevitability. The election of the first Republican president naturally led to the secession of the South, and secession naturally led to war. A greater understanding of this period can be attained when one accepts the advice of David Potter: “The supreme task of the historian is to see the past through the imperfect eyes of those who lived it and not with his own omniscient twenty-twenty vision.”7

When the November to April chronology is examined day by day and week by week, as it was experienced historically, a deeper sense of clarity emerges. One discovers that beyond the hyperbole and accusations from North and South, the sectional crisis was fundamentally a constitutional crisis. By 1861, the events of the previous decade had led Northerners and Southerners to interpret the U.S. Constitution in inherently different ways over the degree to which it offered protection for the institution of slavery. As the South Carolina secession convention finalized its separation, its delegates declared that “fourteen of the States have deliberately refused, for years past, to fulfill their constitutional obligations, and we refer to their own Statutes for the proof.”

Georgia echoed that belief by proclaiming that the northern states “have endeavored to weaken our security, to disturb our domestic peace and tranquility, and persistently refused to comply with their express constitutional obligations.”

Texas’s secession convention agreed by asserting that “the federal constitution has been violated and virtually abrogated” by the northern states. Disagreements over the return of fugitive slaves, the protection of slavery in the western territories, the carrying of slaves into free states and territories, the inciting of slave rebellions, and more were all reflected in these revealing pronouncements. By November 1860, the sectional crisis had moved well beyond Congress’s ability to resolve by legislative acts. For the advocates of slavery, nothing short of an amended Constitution would calm the roiling political waters.

President James Buchanan’s former secretary of the treasury, Howell Cobb, clearly framed the issue in an open letter to the “People of Georgia” the month after Lincoln’s election. The southern states believed, he argued, that the Constitution distinctly recognized the institution of slavery “as it exists in the fifteen Southern States,” guaranteed the right of Southerners to take their slaves into the “common territories of the Union,” and entitled the owner of slaves to “reclaim his property in any State to which the slave may escape.”

8. *Journal of the Convention of the People of South Carolina, Held in 1860–’61, Together with the Reports, Resolutions, Etc.* (Charleston: Evans & Cogswell, Printers to the Convention, 1861), 328.
By contrast, he asserted, the “Black Republican Party” claimed that slavery was not recognized in the Constitution, that the federal government was not “committed to its protection,” and that property in slaves was not “entitled to the same protection at the hands of the Federal Government with other property.” Republicans, he continued, believed that slavery was a moral, social, and political evil, that it was the duty of the federal government to prevent its extension, and that it was the responsibility of Congress to “prevent any Southern man from going into the common territories of the Union with his slave property.” In his passionate letter designed to expose Republicans as abolitionists intent on using the power of the federal government to destroy the institution of slavery, Cobb presented the image of northern corruption. “They [Republicans] have trampled upon the Constitution of Washington and Madison, and will prove equally faithless to their own pledges. You ought not—cannot trust them. . . . Nothing now holds us together but the cold formalities of a broken and violated Constitution.”11 It was this political divide that prompted historian Michael Kammen to observe that the “presidential election of 1860 involved, as no other election before it in U.S. history, a national constitutional debate.”12

To understand secession is to understand the degree to which interpretations of slavery’s presence in the Constitution divided the country between the end of the war with Mexico in 1848 and the election of Lincoln in 1860. It was within this context of constitutional crisis that James Buchanan delivered his last address to Congress in early December 1860 and referenced the Constitution forty-three times and slavery twenty-five times. It was in that same context that Abraham Lincoln delivered his first inaugural address three months later and invoked the Constitution twenty-one times. By the time of the presidential election of 1860, the problems besetting the country did not revolve around congressional acts, but focused instead on the very nature of the Constitution and its violation (from the perspective of white Southerners) by the states north of the Mason-Dixon Line. As the historian Robert Russel noted fifty years ago, “Historians should strive to understand

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these constitutional matters . . . and treat them neither lightly nor carelessly in their general accounts of the causes of secession.”

Indeed, to understand the causes of secession and the constitutional crisis that occurred during the months following Lincoln’s election, three areas of constitutional disagreement need to be examined: the future of slavery in the territories, the return of fugitive slaves, and the transportation of slaves by their owners through non-slave states and territories. Each of these topics deepened wedges between Northerners and Southerners, or more specifically between Republicans and Democrats, during the 1850s. The inability of the country to resolve these different perceptions of constitutional authority and rights led to the secession of the South and the onset of war in the spring of 1861.

Slavery in the Territories

Since the establishment of the Constitution, Congress had dealt with the subject of slavery in new territories in various ways. In 1787 and again in 1789, Congress asserted its right to prevent slavery from being exported into western territories. The Northwest Ordinance, which was originally authored by none other than Thomas Jefferson, prohibited slavery in the area west of Pennsylvania and north of the Ohio River by declaring that “there shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes.” A widespread belief in those immediate postrevolutionary years was that slavery was a blight on the new American political landscape and should be allowed eventually to die out. Preventing its extension westward was a first step in constricting its growth. Furthermore, no one in 1787 or 1789 seemed to have any doubts about Congress’s authority to prohibit slavery from a federal territory. The importance of the Northwest Ordinance was not fully appreciated at the time

of its passing. Hindsight, however, has led at least one scholar to label it the “premier anti-slavery document in American history.”17

Only a few years later in 1798, Congress displayed its sensitivity to regional differences on the subject of slavery by organizing the Mississippi Territory without reference to the institution because slavery already existed there. Congress again adopted a strategy of “nonintervention” when it organized the Louisiana Territory in 1805 for the same reason. With these beginnings, the federal government began a tradition of prohibiting the expansion of slavery into northwestern territories while tacitly allowing it to spread into southwestern territories.

This congressional “custom” continued until the middle portion of the Louisiana Territory—Missouri—petitioned to be admitted as a state. While it bordered, in its southern regions, the slave states of Kentucky and Tennessee, most of Missouri lay across the Mississippi River from the non-slave state of Illinois. Its existence as part of the Louisiana Territory and its location immediately north of the Arkansas Territory which had recently been organized without reference to slavery prompted many southern congressmen to presume that Missouri would be admitted to the Union as a slave state. Northern resistance, however, to the institution’s expansion manifested itself in the form of a rider to the statehood bill prohibiting the introduction of any additional slaves into Missouri and providing for the emancipation of slaves born after the date of admission when they reached the age of twenty-five.18

White Southerners angrily reacted to this attempt to limit the westward growth of slavery and fought back using, in part, testimonials from a few of the remaining southern Founding Fathers. Both James Madison and Charles Pinckney argued that the Constitutional Convention had not provided Congress with any special authority over slavery.19 Jefferson, the author of the exclusionary clause in the Northwest Ordinance, now decided that the expansion of slavery would have a salutary effect upon the slaves, “would make them individually happier and facilitate the accomplishment of their emancipation, by dividing the burden on a greater number of coadjutors.”20

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19. Ibid., 53.
In truth, 1820 was not 1784. The peculiar institution had grown well beyond the confines of the original thirteen states and had become increasingly profitable since Eli Whitney’s invention of the cotton gin in 1793. For many white Southerners, during the early years of the nineteenth century, there existed a strong belief that their fortune and destiny lay to the west. After studying westward movement by planters during this period, historian James David Miller observed a widespread belief: “To embrace mobility was to embrace the future. To reject mobility was to cling to the past.”

Regarding Missouri statehood, an impasse had been reached. Smoothing the ruffled feathers of southern congressmen was not easily achieved, but taken aback by the southern reaction to the motion to abolish slavery in Missouri, the antislavery faction suggested a compromise. Missouri would be admitted as a slave state, and Maine would be admitted as a free state. Congress agreed to the deal but only after accepting an amendment offered by an Illinois representative prohibiting slavery in the remainder of the Louisiana Territory north of latitude 36° 30', the southern border of Missouri. The so-called Missouri Compromise solved the immediate problem of gaining statehood for Missouri and effectively blunted antislavery rhetoric in Congress for several decades, but left white Southerners feeling wary of any form of antislavery expression from the non-slave states.

While arguments over other aspects of slavery sporadically occupied Congress during the next several decades, the territorial expansion issue did not arise again until 1846. Following his election in 1844 on a Democratic expansionist platform, James K. Polk ordered military units into the disputed boundary between Texas and Mexico in order to foment an international conflict. The subsequent clash between Mexican and U.S. forces gave Polk the excuse he needed to declare war. As Congress debated an appropriations bill to fund the effort, a freshman congressman from Pennsylvania named David Wilmot rose to offer an amendment: “That, as an express and fundamental condition to the acquisition of any territory from the Republic of Mexico by the United States . . . neither slavery nor involuntary servitude

22. Van Cleve, A Slaveholders’ Union, 231–266.
shall ever exist in any part of said territory.” With that suggestion, Wilmot reopened the “slavery and the territories” controversy that would not end until Confederate guns began their bombardment of Fort Sumter.

Many in the North supported the war (including Wilmot himself), but did not assume that territorial expansion to the Pacific implicitly meant the expansion of slavery to the Pacific. White Southerners, on the other hand, led by South Carolina senator John C. Calhoun and Mississippi senator Jefferson Davis, believed that “slavery followed the flag.” In short, the debate prompted by David Wilmot presaged several key constitutional questions once the 1848 Treaty of Guadalupe Hidalgo provided the transfer of most of the present-day Southwest from Mexico to the United States. Could Congress simply outlaw slavery in those lands as it had earlier with the Northwest Territory (and would in a few months with the Oregon Territory)? Did territorial legislatures have the constitutional authority to allow or prohibit slavery? Should Congress simply extend the Missouri Compromise line of 36° 30’ west to the Pacific? Or, as a growing number of Southerners believed, should the right of property in slaves be protected by Congress and under the Constitution (as all other forms of property were protected under the Fifth Amendment) until a territory applied for statehood? The Constitution, as it was understood and interpreted in 1848–1849, did not provide any definitive answers.

Return of Fugitive Slaves

The other slave-related issue dividing the country at the midcentury mark had also been discussed in Philadelphia by the Founders, and provisions for the recapture of runaways had been included in the Constitution. The “Privileges and Immunities” clause (Article IV, Section 2) contained critical language for the rendition of slaves: “No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.”

The clause was deceiving in its simplicity. It was clear that the new Constitution required that the fugitive be “delivered up,” but delivered up by whom? By what process? What proof of ownership would be required? Could each state develop its own regulations governing the rendition of slaves? These questions went unanswered in 1787. What was relatively clear was that the clause granted slave owners an extrajurisdictional privilege.\(^\text{26}\) At the same time that it contained nothing that specifically indicated the federal government would or should play a role in the recapture and return of fugitive slaves, the clause did impose a restriction on the authority of free states. While the institution of slavery was officially protected and governed by state power, the Constitution, by this clause, placed limits on non-slave state authority to provide sanctuary to runaways. On this issue, slave states were more sovereign than free states as property rights trumped states’ rights.

Although the return of runaway slaves during the early years of the nation did not amount to the critical problem it would become during the 1850s, the stage had been set. Under the Constitution, states could abolish slavery but still be required to accede to the legality of slavery in a neighboring state. For the time being, however, recapture remained the obligation of the owner or his/her agents. In 1793, Congress refined the clause somewhat by passing a Fugitive Slave Act in response to a dispute between Pennsylvania and Virginia over the kidnapping of a free black in Pennsylvania. The bill, signed into law by George Washington, provided only modest elaborations on the Constitution. Owners (or agents of the owner) could seize the alleged runaway and bring him or her before any judge or magistrate and present “proof” of slave status, which could simply be the word of the owner. The public official would then decide whether sufficient evidence had been presented to remand the defendant to slavery. In addition, any person who interfered with the owner or agent in pursuit of a fugitive slave could be sued by the owner.\(^\text{27}\)

The 1793 law stipulated only vague evidentiary requirements and specifically did not provide any judicial safeguards for the accused such as a right to a lawyer, protection against self-incrimination, or a trial by jury. Nor did it include a statute of limitations or any wording that would discourage

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pursuers from ignoring the process altogether.\textsuperscript{28} While the lack of clarity posed one problem, violations on both sides of the Mason-Dixon Line increasingly exacerbated sectional tensions. Some Southerners continued to reclaim their alleged property without involving judicial officials, and some northern state magistrates declined to participate in the recovery of slaves.

The continued kidnapping of northern free blacks became so commonplace that several states enacted laws aimed at the practice. New York became the first with the passage of “An Act to prevent the kidnapping of free people of color” in 1808.\textsuperscript{29} Pennsylvania followed suit in 1820.\textsuperscript{30} Because of Pennsylvania’s shared border with slave state Maryland, friction between the two over the issue of fugitive slaves became commonplace. To prevent its free black citizens from being kidnapped, Pennsylvania enacted a “personal liberty law” in 1826 that significantly limited the reclamation process for southern owners of slaves. It repealed earlier legislation that allowed an owner or agent to seize a slave without formal judicial process, it prohibited state judges from acting solely on the slave catcher’s testimony when authorizing seizure, and it made the owner’s oath inadmissible in the removal hearings.\textsuperscript{31} To no one’s surprise, the legislation only intensified already strained relations between the two states.

Because recapture involved a complex set of issues including the property rights of owners, the rights of states in adjudicating rendition claims, the constitutionality of the 1793 act, and the role of the federal government (if any) in the return of fugitive slaves, Maryland and Pennsylvania agreed to a test case. The result was the U.S. Supreme Court’s 1842 decision in \textit{Prigg v. Pennsylvania}. Named for Edward Prigg, a Maryland-based slave catcher who had taken an escaped slave from Pennsylvania to Maryland without adhering to the northern state’s established legal proceedings, the case complicated rather than simplified the return of fugitive slaves. Justice Joseph Story delivered a majority opinion that upheld the constitutionality of the 1793 Fugitive Slave Act and deemed Pennsylvania’s 1826 law unconstitutional.

\begin{thebibliography}{9}
\bibitem{29} Angela F. Murphy, \textit{The Jerry Rescue: The Fugitive Slave Law, Northern Rights, and the American Sectional Crisis} (New York: Oxford University Press, 2016), 21.
\end{thebibliography}
because it interfered with an owner’s right of recapture. Additionally, Story held that execution of the fugitive slave clause of the Constitution was exclusively a federal power, and thus the federal government could not require state officials to participate in its enforcement. The justice further allowed that states might properly prohibit their officials from participating in the return of runaway slaves. Ironically, the ruling led a number of northern states to enact more specific personal liberty laws.32

As a clash between those advocating for greater state authority and those arguing for greater federal authority, the Prigg decision continued a pattern of presumed sovereignty that would hold for the next two decades. As historian Angela Murphy observed, “In this case, Southern interests argued explicitly for the supremacy of the federal over state law, while a Northern state asserted its state’s right to institute protections for its black citizens.”33 From the 1842 Prigg decision until the firing on Fort Sumter, the pro-slavery South consistently argued for enlarged federal authority when the subject centered on the protection of the institution of slavery. Over that period, if the choice involved expanded property rights or expanded states’ rights, the South chose property rights every time.

White Southerners also favored a greatly expanded federal military over the decade of the 1850s. Between the end of the war with Mexico and the beginning of the Lincoln administration, Southerners dominated the positions of secretary of war and secretary of the navy, and over those years they significantly increased the size of the army and navy. Slave owners perceived a strong national military presence as being beneficial in the short and long run to the protection of slave owners’ interests. “A powerful, well-armed American state,” historian Matthew Karp recently observed, “at ease with Europe and dominant in its own hemisphere—this was the surest possible guarantee for both the South and its slave institutions.”34 It was, ironically, the U.S. military establishment constructed by Southerners that President


33. Murphy, The Jerry Rescue, 22.

Lincoln used so effectively between 1861 and 1865 to bludgeon the Confederacy and destroy those same slave institutions.

The northern response to Prigg took various forms. Massachusetts and four other New England states promptly passed legislation that prohibited local and state magistrates from agreeing to take on fugitive cases and forbade state law enforcement officials from assisting in the arrest or detention of alleged fugitives.\textsuperscript{35} New York simply left an existing law on the books that barred local magistrates from issuing arrest warrants and allowed them to provide fugitives with a jury trial.\textsuperscript{36} Generally, northern state governments evinced widespread resistance to the recapture of slaves partly because northern free blacks were often kidnapped when the subject of the pursuit could not be located and partly because of a growing distaste for the intrusiveness of a pro-slavery ideology into free states. Indeed, because of the slave South’s spirited defense of slavery following the Missouri Compromise and the introduction of David Wilmot’s proposed ban on slavery in the West, Northerners were increasingly becoming convinced that an evolving and maturing “Slave Power” was intent on restricting their political liberties. Slavery, in the minds of many Northerners, symbolized the antithesis of republicanism. For many in the North, as historian William Gienapp observed, the Slave Power was “interfering with northern society, seeking to circumscribe civil liberties and subvert the Constitution.”\textsuperscript{37} Because of its growing contentiousness, the issue of fugitive slaves would play a major role in the development of the Compromise of 1850.

**Compromise of 1850**

In the face of growing tensions involving fugitive slaves and the organization of the land acquired from Mexico in 1848, Congress faced major challenges during the spring and summer of 1850. Of all the issues that eventually formed the Compromise of 1850, the fate of the Mexican Cession proved most thorny. White Southerners, who had enthusiastically supported the

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\textsuperscript{35} Fehrenbacher, *The Slaveholding Republic*, 222.

\textsuperscript{36} Foner, *Gateway to Freedom*, 111.

war with Mexico and had provided the majority of troops, fully expected that the new territory west of Texas would and should be open to settlement by slave owners. During the debate over the compromise, Mississippi senator Jefferson Davis argued, “As a property recognized by the Constitution, . . . the Federal Government is bound to admit it [slavery] into all the Territories, and to give it such protection as other private property receives.” Historically, Congress had asserted that it could prohibit the introduction of slavery into federally controlled territories as it had demonstrated with the Northwest Territory, the northern portion of the Louisiana Territory, and, most recently, the Oregon Territory. Yet Davis and an increasing number of Southerners seeking to bypass this established congressional custom argued that under the Constitution slave property was no different from any other kind of property and was protected under the due process clause of the Fifth Amendment. Ownership of slaves, they believed, was a constitutional right that should adhere in territories as well as states.

As the debate over the western lands became progressively tempestuous, congressmen considered various solutions. At the margins, David Wilmot’s proposal to ban slavery from the new territory was balanced by John C. Calhoun’s belief that the Constitution required slavery to be allowed and protected there. Recognizing, however, that neither of those proposals would receive Congress’s favor, many opted for compromise. The practical solution (and one that had stood the test of time) was simply to continue the Missouri Compromise line west through the Mexican Cession to the Pacific Ocean. Slavery would then be formally permitted in roughly the lower third of present-day California and most of Arizona and New Mexico, but prohibited north of that line. While favored by many Southerners, the “practical solution” was not to be.

The agreed upon fix for the territorial imbroglio came in two parts. Excluding California, the remainder of the Cession would be divided into two territories: New Mexico to the south and Utah to the north. Congress would not decide the fate of slavery, but rather would leave that to the two territorial legislatures. This option, termed popular or territorial sovereignty, had become fashionable during the 1848 presidential election as a way of allowing the inhabitants of territories to decide for themselves whether they wanted to be slave or free. It also had the distinct advantage of getting

38. Quoted in Cooper, Jefferson Davis, American, 204.
Congress off the hook. California would be admitted directly as a free state according to the wishes of its 92,000 inhabitants, the majority of whom were drawn to the Pacific coast by the discovery of gold in the Sacramento valley in 1848 and did not want to compete with slave labor.\textsuperscript{40}

In addition to addressing the future of slavery in the land acquired from Mexico, the Compromise abolished the slave trade, but not slavery, in the nation’s capital and settled the ongoing boundary dispute between Texas and New Mexico. Even before the war with Mexico, Texas had claimed eastern New Mexico to the Rio Grande plus a narrow strip of land north of the river’s headwaters. The 1850 settlement established the boundary in its current location and, in return, Texas received $5 million from the U.S. government. The final piece of the contentious puzzle came in the form of a much strengthened Fugitive Slave Law. What the slave-owning South lost in the admission of California as a free state and in the reduction of the size of Texas, it gained in legislation governing the return of runaway slaves. Responding to southern concerns regarding escaped slaves, Congress enacted a fugitive slave law that greatly expanded federal authority at the expense of state authority. The alleged slave was specifically denied the right to a jury trial and the opportunity to testify on his or her own behalf. Furthermore, the legal process would be managed by a federal commissioner who would adjudicate each case. Additionally, the commissioner was to be paid a ten dollar fee in those cases when the alleged fugitive was returned to the claimant, but only five dollars when he or she was set free. More galling to antislavery Northerners was a clause that empowered federal marshals to enlist common citizens to aid in the enforcement of the act.\textsuperscript{41}

With the passage of the 1850 Fugitive Slave Law, the intrusiveness of overtly pro-slavery legislation on the lives of ordinary Northerners irritated many a resident of the non-slave states and confirmed their fear of an expansive Slave Power. The poet Ralph Waldo Emerson reacted angrily and spoke for many of his fellow citizens:

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I had never in my life up to this time suffered from the Slave Institution. Slavery in Virginia or Carolina was like Slavery in Africa or the Feejeees, for me. There was an old fugitive law, but it had become, or was fast becoming a dead letter, and, by the genius and laws of Massachusetts, inoperative. The new Bill made it operative, required me to hunt slaves, and it found citizens in Massachusetts willing to act as judges and captors. Moreover, it discloses the secret of the new times that Slavery was no longer mendicant, but was becoming aggressive and dangerous.42

While antislavery forces approved of other aspects of the compromise—the admission of California as a free state, the abolition of slave markets in the nation’s capital, and the settlement of the Texas–New Mexico line—the Fugitive Slave Law infuriated them.43 As historian Michael Holt has noted, “The law forced white Northerners to become slave catchers themselves, to act at the beck and call of southern slave holders. In short, they could be symbolically reduced to the status of slaves.”44 As was regularly the case in the years between 1848 and 1861, Southerners demanded federal intervention to protect their property interests even when that intervention clearly eroded the purported southern ideal of states’ rights.

Estimating Fugitive Slaves

Over the next decade, the subject of fugitive slaves continued to antagonize the South and exacerbate tensions between the two sections. In spite of the prominence the issue would play in the run-up to the war, the exact number of runaway slaves throughout the antebellum period is not known and largely unknowable. The statistics that do exist illustrate that the fugitive slave issue had several dimensions. First, slave owners presumably overstated their losses to inflate the claim that the North was “stealing” their slaves; or, conversely, they understated their runaways to reinforce the southern myth that slaves were docile and happy on the plantation. At the same time, the calculations from abolitionists tended to overestimate the

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44. Holt, *The Fate of the Country*, 86.
numbers to demonstrate a pervasive discontent among slaves.\textsuperscript{45} Second, the majority of slaves to run away never intended to escape to a free state but rather remained away from their plantation or farm for only a few weeks or months. Historians John Hope Franklin and Loren Schweninger calculate that this number could have reached 50,000 annually.\textsuperscript{46} Third, of those runaway slaves who left intending to reach freedom, only a small percentage were successful. For obvious reasons, those from the Upper South had a much greater chance than those from the Lower South. The 1850 U.S. census reported 1,011 fugitive slaves throughout the entire South. The state claiming the largest number of runaways, 279, was Maryland. The federal census ten years later reported only 803 successful fugitive slaves for that year, representing one-fiftieth of one percent of the South’s entire slave population of 4,000,000.\textsuperscript{47}

Estimates for the total number of slaves who managed to escape to the North throughout the antebellum period also vary. The New Orleans \textit{Commercial Bulletin} in December 1860 placed the total between 1810 and 1860 at 1,500 annually.\textsuperscript{48} Modern estimates for the number of escaped slaves for the period 1830 to 1860 range from 30,000 to 100,000 with the total number from 1800 to 1860 rising to between 100,000 to 150,000.\textsuperscript{49} Historian Fergus M. Bordewich calculates the probable loss of labor to the South was closer to 100,000. In 1860, the superintendent of the federal census reported that in the decade after the passage of the Fugitive Slave Law of 1850, the number of escaped slaves was greatly reduced both numerically and proportionately. Furthermore, the census took issue with southern complaints about the “insecurity of slave property” and northern interference with the recapture of slaves, labeling those grievances an evident “misapprehension.”\textsuperscript{50}

\begin{footnotes}
\footnotetext{46}{Franklin and Schweninger, \textit{Runaway Slaves}, 282.}
\footnotetext{48}{Quoted in \textit{Twenty-Eighth Annual Report of the American Anti-Slavery Society, by the Executive Committee for the Year Ending May 1, 1861} (New York: American Anti-Slavery Society, 1861), 158.}
\footnotetext{49}{Foner, \textit{Gateway to Freedom}, 4; Bordewich, \textit{Bound for Canaan}, 436–437; Sinha, \textit{The Slave’s Cause}, 382.}
\end{footnotes}
In an additional attempt to quantify the number of successful escapes to the North, the census analyzed the free black population in the North between 1820 and 1860. Factoring in the natural birthrate expansion, the census reported the 1820–1830 growth at 36.5 percent and the 1830–1840 expansion at just under 21 percent. For the period 1850–1860, the census calculated the rate of increase at less than 13 percent, including “slaves liberated and those who have escaped from their owners, together with the natural increase.”

The conclusion of the census office was that the overall loss to the South in escaped slaves was not only declining but was also “small and inconsiderable.” As it compiled its figures during the first year of the Civil War, the federal census office estimated that the South’s slave population would continue to grow and almost double by 1900.

For most of the slaveholding South, however, the issue was not one of numbers but of principle. Even though proportionately few slaves succeeded in escaping to free soil and the majority of those captured were returned to bondage, the South became increasingly alarmed over the image of fugitive slaves because, to their sensibilities, the northern states were ignoring their constitutional obligation to “deliver up” escaped slaves. To be sure, between 1850 and 1860, Northerners resisted the rendition of slaves in sometimes violent fashion. In Boston, Christiana, Pennsylvania; and Syracuse, New York, antislavery crowds successfully prevented alleged slaves from being captured. In Christiana, the incident turned deadly when the slave owner was killed and his son gravely wounded. Although these and other efforts at resistance had little practical effect on the economy of slavery, each was highly publicized and each, to the white South at least, became clear evidence that Northerners while not respecting “southern rights” were also guilty of stealing slaves. As John Tyler Jr., a Virginia lawyer, railed in 1860, “Time and again have they [Northerners] not only refused their assent to the law of Congress, commanding the rendition of fugitive slaves, but they absolutely nullified that law in various modes, although passed in obedience to the solemn requirements of the Constitution as wholesale and necessary to the public good.”

51. Ibid., 4, 12
52. Ibid., 12.
54. Ibid., Potter, Impending Crisis, 130–134; Foner, Gateway to Freedom, 126–150; McPherson, Battle Cry of Freedom, 80–88.
As far as white Southerners were concerned, the Constitution and the Fugitive Slave Law of 1850 clearly required that fugitive slaves be “delivered up” in a timely manner. The personal liberty laws while enacted by many northern states to protect free northern black citizens were often and increasingly designed to obstruct the rendition of runaways by flouting federal law. And although most Northerners respected the process, the resistance displayed in a few well publicized instances convinced the slaveholding South that Northerners in general were actively preventing their property from being returned to them.

Indeed, during the latter half of the 1850s, a number of northern states enacted legislation that provided greater legal protection for accused runaways. Wisconsin, Ohio, Michigan, and several New England states added personal liberty safeguards that included counsel for accused fugitives, jury trials, and increased penalties for kidnapping free blacks. The Wisconsin Supreme Court even formally declared the Fugitive Slave Law unconstitutional on three occasions. When it overturned the conviction of Sherman Booth, an abolitionist who had helped free a fugitive from jail, the case was appealed to the U.S. Supreme Court where Roger B. Taney wrote the decision for a unanimous court. In Ableman v. Booth (1859), Taney issued a ringing endorsement of federal judicial supremacy and affirmed the constitutionality of the Fugitive Slave Act of 1850. Over the decade, the countermanding of federal law had become an effective northern antislavery tool. As Don Fehrenbacher has observed, “The fugitive slave issue had produced mirror images in which slaveholding Southerners invoked national authority, while antislavery Northerners pressed the doctrine of states’ rights to the verge of nullification.”

The Georgia Platform

Southerners, like their northern counterparts, viewed the Compromise of 1850 as a mixed bag. They disliked the admission of California as a free state and the reduction of the size of Texas. They were relieved, however, that the hated Wilmot Proviso had not been enacted and that they had

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gained a much more muscular fugitive slave law. Ultimately, but only for the time being, they were willing to abide by the compromise. It was a grudging acceptance that was represented in the language of the Georgia Platform.

Following the passage of the Compromise of 1850 in September, southern states assembled collectively and individually to formulate responses to Congress’s action. The most important of these was a set of resolutions passed by Georgia in December. While Georgia did not “wholly approve” of the compromise, it would “abide by it as a permanent adjustment of this sectional controversy.” The approval, however, came with a warning. Georgia would resist aggressions by the North “even (as a last resort) to a disruption of every tie which binds her to the Union,” if Congress (1) abolished slavery in the District of Columbia or in any of the federal forts, shipyards, arsenals, and the like located in the slave states, (2) acted to suppress the slave trade between slave states, (3) refused to admit to the Union any territory because of the existence of slavery therein, (4) prohibited the introduction of slaves into the territories of New Mexico and Utah, or (5) repealed or modified the newly enacted Fugitive Slave Law. The final provision in this warning by the Peach State read, “That it is the deliberate opinion of this Convention that upon the faithful execution of the Fugitive Slave Bill by the proper authorities depends the preservation of our much loved Union.”

This moderated acceptance of the compromise effectively held southern secessionists at bay for a decade. The slave South accepted the federal administration of the Fugitive Slave Act because it worked to their advantage. Out of the 332 fugitive slave cases identified during the 1850s, 298 slaves (90 percent) were returned and only 11 (presumably kidnapping victims) released. During that same period, only 22 were rescued by antislavery Northerners. Even Georgia senator Robert Toombs could praise the enforcement of the act. In an 1856 article published in *De Bow’s Review* largely designed to defend slavery and white supremacy, Toombs claimed that “thousands of slaves have been delivered up” under the Constitution and subsequent fugitive slave acts. By 1860, however, Toombs had changed his mind and

demanded that, for the South to stay in the Union, Congress must pass an amendment to the Constitution guaranteeing the return of fugitive slaves without either a “writ of habeas corpus or trial by jury, or other similar obstructions of legislation by the States to which they may flee.”60

Kansas-Nebraska Act

As the country pondered the implications of the Compromise of 1850, Washington turned, yet again, to the organization of western federal territories. Congress had organized the Oregon Territory in 1848, outlawing slavery using exactly the same language it had used in 1789 for the Northwest Territory. Likewise, slavery had been banned (in 1820) from the Louisiana Territory north of the Missouri Compromise line of 36° 30’. The only remaining territories were those of New Mexico and Utah, and the Compromise of 1850 had provided that the inhabitants of those lands (through their territorial legislatures) were authorized to accept or reject the introduction of slavery. In his address to Congress in December 1850, President Millard Fillmore hailed the compromise as “a final settlement of the dangerous and exciting subject which they embraced.”61 In truth, this “final” settlement of slavery’s western march lasted less than four years.

While the Missouri Compromise had retained much of its popularity throughout the debate over the organization of the Mexican Cession, the admission of California as a free state shifted Southern Democratic votes toward the territorial sovereignty alternative.62 In 1854, as Congress debated the organization of the Kansas and Nebraska territories north and west of Missouri, Southern Democrats demanded that the federal ban on slavery north of 36° 30’ be replaced with the same territorial sovereignty option used for the Mexican Cession in 1850. The forthcoming Kansas-Nebraska Act reflected their wishes and reversed the prohibition placed by the 1820 Missouri Compromise. Not inconsequentially, it also prompted the formation of the antislavery Republican Party, which held that the Constitution


did not protect slavery and that the further extension of the institution must be opposed.63

White Supremacy

The organization of a purely sectional political party that supported freedom as the antithesis of the by now pro-slavery Democratic Party only increased sectional tensions and intensified the southern defense of slavery. Building on arguments by John C. Calhoun during the congressional debates over slavery in 1850, Georgia senator Robert Toombs penned a long defense of slavery in *De Bow’s Review* six years later. Titling his article “Slavery: Its Constitutional Status, and Its Influence on Society and the Colored Race,” Toombs presented the commonly held southern position that the Constitution possessed fundamental and incontrovertible protections for slavery and that the institution benefited both races. Regarding his first proposition, the senator argued that the Constitution contained no provisions that allowed the federal government “to abolish, limit, restrain, or in any other manner to impair the system of slavery in the United States.” On the contrary, he wrote, every clause referencing slavery inserted into the Constitution by the Founding Fathers was “so intended, either to increase it, to strengthen it, or to protect it.”64

The 1856 *De Bow’s Review* article manifested a trend that had been developing since roughly 1830 that rationalized slave owning as a moral and religious blessing to both owner and slave. The revolutionary generation had taken the stance that slavery was evil but necessary due to the perceived social and economic complications of emancipation. Thomas Jefferson aptly captured that sentiment with his 1820 remark: “We have the wolf by the ears, and we can neither hold him, nor safely let him go. Justice is in one scale, and self-preservation in the other.”65 The rise of a very vocal and condemnatory abolitionist movement, however, pushed the South into a defensive posture.66 Southern writers and politicians and ministers after