

THE PROBLEM OF RECONSTRUCTION:
THE POLITICAL REGIME OF THE ANTEBELLUM SLAVE SOUTH

by

FORREST ANDREW NABORS

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Student: Forrest Andrew Nabors

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This dissertation has been accepted and approved in partial fulfillment of the requirements for the Doctor of Philosophy degree in the Department of Political Science by:

Gerald Berk	Chairman
Deborah Baumgold	Member
Joseph Lowndes	Member
James Mohr	Outside Member

and

Richard Linton	Vice President for Research and Graduate Studies/Dean of the Graduate School
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Original approval signatures are on file with the University of Oregon Graduate School.

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DISSERTATION ABSTRACT

Forrest Andrew Nabors

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This project studies the general political character of the antebellum slave South from the perspective of Republicans who served in the Reconstruction Congress from 1863-1869. In most Reconstruction literature, the question of black American freedom and citizenship was the central issue of Reconstruction, but not to the Republicans. The question of black American freedom and citizenship was the most salient issue to them, but they set that issue within a larger problem: the political regime of the antebellum slave South had deviated from the plan of the American Founders long before secession in 1860-1861. The American Founders had attempted to establish natural rights republicanism in the nation. The slave South section of the nation had transformed into an oligarchic political regime. The higher aim of the Republicans was regime change and the re-union of the nation on the restored principles of natural rights republicanism.

To show this, I first recover the Republicans' common analysis of the slave South, drawing from the writings and speeches of Reconstruction Republican Congressmen. I present their overlapping points of analysis and organize their analyses by the traditional theory of political regimes. I divide their analyses into the form of the

oligarchic regime, the cause (slavery), and how the oligarchy historically developed since the founding period.

Secondly, I study the slave South in three institutional dimensions. According to the Republicans, the oligarchy depended upon specific institutional arrangements in education, property, and the organization of state government. Critically drawing upon a broad array of secondary scholarship, I test their claims by examining how education, property, and government supported oligarchic rule in the slave South.

My analysis concurs with the Republicans. My conclusion advances a two-regime theory of American Political Development. Reconstruction was a continuing act in a long 19th century inter-regime struggle between republicanism and a revolutionary oligarchy rising from the slaveholding South.

CURRICULUM VITAE

NAME OF AUTHOR: Forrest Andrew Nabors

GRADUATE AND UNDERGRADUATE SCHOOLS ATTENDED:

University of Oregon, Eugene
University of Chicago
Claremont McKenna College, Claremont, California

DEGREES AWARDED:

Doctor of Philosophy, Political Science, 2011, University of Oregon
Master of Science, Political Science, 2008, University of Oregon
Bachelor of Arts, General Studies in the Humanities, 1993, University of Chicago

AREAS OF SPECIAL INTEREST:

American Government
Political Philosophy

PROFESSIONAL EXPERIENCE:

Visiting Assistant Professor in Political Theory, Department of Political Science,
Oregon State University, Corvallis, Oregon, 2009-2010

Instructor, Department of Political Science, University of Oregon, Eugene,
Oregon, 2008-2011

Instructor, Department of Political Science, Linfield College, McMinnville,
Oregon, 2009

Instructor, Social Science Division, Lane Community College, Eugene, Oregon,
2009

Graduate Teaching Fellow, Department of Political Science, University of
Oregon, Eugene, Oregon, 2004-2008

Vice President, Sales and Marketing, Learning.com, Portland, Oregon, 1999-2004

Director of Product Management, Chrome Systems Corporation, Portland,
Oregon, 1997-1999

Vice President, Marketing, Western Reliance Corporation, Portland, Oregon,
1995-1997

GRANTS, AWARDS, AND HONORS:

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CHAPTER I

INTRODUCTION

Southern Oligarchy, The Problem of Reconstruction

This project, *The Problem of Reconstruction*, is a political analysis of the antebellum slave South from the point of view of congressional Republicans after the American Civil War. The purpose of this analysis is to explain how those legislators, charged with the responsibility of reconstructing the South, understood the South.

Circumstances burdened them with the responsibility of bringing the South back into the Union. To discharge that responsibility effectively, they had to know that political society well. They are a rich and informed source of analysis of the South. If the Republicans were right, a great deal of our understanding of early American political development may stand in need of reinterpretation.

First, I elaborate upon the Republicans' common understanding of southern political society, synthesizing their shared views into one detailed and comprehensive account. Slavery was the most salient and perturbing feature of the slave South, but the Republicans did not solely identify and attempt to change that feature in isolation from southern political society at large. They did target slavery, and did strive towards securing the equal citizenship of the emancipated. But the problem of slavery was set inside a larger problem: an anti-republican political society intimately related to the institution of domestic slavery. From the Republican perspective, the southern political regime - that is, its governments and way of life - had transformed into oligarchy long

before secession and Civil War. By oligarchy, or alternately, by aristocracy, they meant a form of government and political life in which the rich few ruled, for the advantage of the rich few. White did not rule over black in the South; a few rich whites ruled over the many, both white and black in the South.

The Republicans said that domestic slavery was a moral evil. But they often said it was more than a moral evil. In addition, slavery was an economic, social and political evil. In its political aspect, slavery bore a powerful, transformative effect on political life and government. This was the worst of all its evils, because the political regime created by slavery's effects in turn preserved slavery and all its other evils. Slavery's political offspring, the anti-republican oligarchic political regime in the antebellum South, was the Republicans' broad target. To them, that regime was the problem of Reconstruction, and its political destruction, and the re-founding of American republicanism in the South, was their higher aim. Their efforts to abolish slavery and establish black American citizenship took place within that larger project.

Second, I examine three institutional dimensions of the Republican analysis of the slave South: education, property and state government. I draw from secondary scholarship on the slave South in each of these dimensions to contrast free state and slave state institutional development. I conclude that the evidence supports the Republican analysis.

The remainder of this introduction explains why this study is needed and how it will proceed, in six sections. First, I show that Reconstruction scholarship has discounted the full Republican analysis of the antebellum South. Second, scholars studying the antebellum South have disputed the question of southern oligarchy or aristocracy, but

recent scholarship has again raised the question. Third, I explain my chosen methodological approach, which is to organize and present the Republican analysis of the slave South according to traditional regime theory. Fourth, I present a brief summary of Aristotelian regime theory, by which I have ordered my study. Fifth, I present a summary of the political regime that the American Founders established, to show the baseline from which the antebellum southern oligarchy deviated. Sixth and finally, I review the organization of the dissertation.

The Central Issue of Reconstruction in Scholarship

For a very long time, Reconstruction scholars have deemed the problem of Reconstruction to be the civil and political status of black Americans, that is, the moral dimension of slavery and its aftermath, usually stripped out of the context of the southern political regime. Breaks in scholars' own changing, principled views on the question of black citizenship have structured the historiography. Eric Foner's accepted division of Reconstruction historiography reckons three overall phases: the Dunning School phase, the revisionist phase, and the post-revisionist phase (1988, xix-xxviii). Each phase distinguishes itself by a marked shift in scholars' moral perspective, tilting increasingly towards more demanding standards of racial equality. The first phase deplored the Republican-dominated Reconstruction Congress for imposing black citizenship on beleaguered southern whites. The second phase of revisionists vindicated the Reconstruction Congress for attempting to affirm the citizenship of black Americans. The third phase of post-revisionists deplored the Reconstruction Congress for not doing enough to defend or advance black citizenship.

The first phase of academic scholarship is usually attributed to the work of the Dunning School, active around the turn of the twentieth century and named after Columbia University historian William Archibald Dunning (Foner 1988, xix). Scholars in the Dunning School, or scholars associated with its position, attacked the “Radical” Republican Congress for overreach, vengeance and incompetence. The political perspective of these scholars approximates the post-bellum, anti-black positions of Lost Cause Confederates, Unionist and Copperhead Northern Democrats. After the war, these political factions congregated on President Andrew Johnson’s “Union As It Was, The Constitution As It Is” political platform, encapsulating their views that the late antebellum version of state rights constitutionalism was proper, that the reversal of late antebellum racial discrimination against black citizenship was improper, and that the recently insurrectionary states had a constitutional right to resume their place in the Union with few to no conditions. Since general sympathy for this position against the Republicans unifies this group of scholars, they might be best-denominated “Union As It Was” scholars (e.g., Garner 1901; Wilson 1901; Burgess 1902; Fleming 1905; Dunning 1907; Rhodes 1920, VI; Bowers 1929; Milton 1930; Randall 1937). Woodrow Wilson captured the sentiments of these scholars towards the Republicans and the citizenship of black Americans. Emancipation had turned loose “slaves, now free... a host of dusky children untimely put out of school.” Northern carpetbaggers and the Reconstruction Amendments imposed on the rebel states made “the name of Republican forever hateful to the South.” The carpetbaggers used “the negroes as tools for their own selfish ends” and, according to Wilson, together they wrecked southern state governments (Wilson 1901, 6, 11).

In the twentieth century, black Americans were among the first to gainsay the Reconstruction accounts written by the “Union As It Was” scholars, and to credit emancipated blacks and the Republicans in Congress for attempting to build republicanism in the South. Former United States Representative John Lynch published *The Facts of Reconstruction* in 1913. In 1935, W.E.B. DuBois published *Black Reconstruction in America*, which precipitated wholesale revision of scholarship on Reconstruction and the Republican Congress. As the modern civil rights movement gained momentum, scholars began rewriting Reconstruction from the movement’s principled perspective (e.g., Beale 1940; McPherson 1964; Trefousse 1969).

Two revisionist studies of the Reconstruction Congress that still stand the test of time are John and Lawanda Cox’s *Politics, Principles and Prejudice* (1963) and Michael Les Benedict’s *A Compromise of Principle* (1974). These works investigate the finer points of everyday legislative politics, the differences among the politicians on policy positions, deal-making, and the influences of party patronage and personal ambition. The goal of their studies is to understand Reconstruction’s failure to permanently establish civil and political equality for black freedmen. Cox and Cox blame the combined opposition of President Andrew Johnson and Democrat and Republican conservatives in the 1866 elections; Benedict attributes the cause to some Republican factions’ lack of confidence in more expansive measures that they did not believe would hold.

Other revisionists focused on the Reconstruction Congress’s struggle with the constitutional questions entailed by their predicament. David Montgomery attributes the cause of Reconstruction’s failure to confusion over the meaning of equality (Montgomery 1967), while W. R. Brock ascribes the cause of failure to the constraints of the

Constitution (1963). The position of Herman Belz overlaps with Brock, but Belz emphasizes a different standard in measuring success. Belz denies that success, according to modern standards, was realistic, but he argues that, according to the standards of the Civil War Era, it was successful (1978). In the judgment of the revisionists, Reconstruction Republicans fare better than they did under the “Union As It Was” scholars. The Republicans did what they could to advance the political and civil rights of the emancipated, and if they failed, they at least deserved credit for fighting the good fight.

Although particular scholars and scholarship often overlap the revisionist and post-revisionist perspectives, post-revisionists are defined by their reaction to the free pass given to the Reconstruction Republicans. In their view, the Republican Congress was Conservative, not Radical, and it culpably abandoned black Americans. The post-revisionists’ high, uncompromising standard of racial equality compares with the standard of the radical abolitionists in the period. These post-revisionist scholars fault the Republicans for their self-interested maneuvers in politics (Franklin 1961), moral capitulation (Patrick 1967), moral indifference to federalism’s constraints on reconstruction (McKittrick 1968), racism or duplicity (Woodward 1966; Gillette 1979; Wormser 2003), and for sacrificing black citizenship to reunion (Blight 2001). To some post-revisionists, bourgeois pecuniary motives guided the Republicans more than human rights, and they therefore pronounce Reconstruction a federal policy blocking revolutionary change and a bourgeois counter-revolution (e.g., Gerteis 1973; Kerr-Ritchie 2003). Woodward addressed Reconstruction’s failure by denying the question’s premise; success was unrealistic (1989).

Representatives of all of these phases of reconstruction scholarship are still with us, to a greater or lesser degree, even the Dunning School. Thomas DiLorenzo maintains that, “In short, William Archibald Dunning and his students got it right” (2002, 160). Eric Foner’s study of Reconstruction still stands as the most cited, comprehensive account, drawing from all strands of research, but maintains the revisionist moral position on black citizenship. He points to southern violence for erasing Reconstruction gains but maintains that some advances stood (1988).

A new group of reconstruction scholarship is emerging that tends to avoid judging the Republican Congress, rather studying Reconstruction’s results from the perspective of state capacity. Richard Bensele argues that inherited political theory and practice constrained the national government from building and activating adequate state capacity necessary to reconstruct the South (1990). Pamela Brandwein shows how the Republican narrative of the Civil War failed to persuade judges in key cases, resulting in the subsequent protection of local government and discrimination. Had the Republican narrative won over the judges, they would have enabled the Republicans to build the national government into a stronger guarantor of the civil and political liberty of the emancipated (1999). Richard Valelly attributes the failure of Reconstruction to missing institutions. The emancipated could not count on institutions that the twentieth century civil rights movement counted on, guaranteeing them civic space to organize and rally for their civil rights. Black Americans’ Republican patrons in the late nineteenth century became disinterested in supporting them due to their party’s declining need for black party loyalty in order to maintain their successful political coalition. Without that support, black Americans’ civil rights could not advance (2004).

Michael Les Benedict claims that the influence of the modern civil rights movement, and the work of revisionist historians John Hope Franklin, Kenneth Stampp, John and Lawanda Cox, all “restored the question of racial accommodation to its central place in the conflict – ‘the issue of Reconstruction’” (Benedict 1974, 13). What Benedict indicates, however, is that the civil rights movement and these revisionist scholars altered the moral view of racial accommodation. In another sense, the question of racial accommodation, the question of black Americans’ freedom and citizenship, has been central to Reconstruction scholarship all along. The difference is that the early school deplored that accommodation, the revisionists acclaimed that accommodation, and the post-revisionists deplored the lack of fuller accommodation. Scholarship has been engaged in working out and advancing their moral perspective on black American citizenship. To put it a different way, for many years scholars have been fighting the moral battle of black American citizenship, divorced from the question of political regime.

To almost all scholars, the question determined by Reconstruction was the prospective expansion of American democracy, not fundamental change to a political regime that had fundamentally deviated from the standard of American republicanism. Often Reconstruction scholars use the terms “biracial” and “interracial” democracy to describe the goal of Reconstruction, indicating their assumption that white democracy in the South preceded the attempt to establish “biracial” democracy. If scholars agreed that the South had been an oligarchy, or the oligarchy had been part of their studies’ primary considerations, they would simply say that the Republicans attempted to change the South from oligarchy to democracy, which obviates the need to say “biracial.” They also

might have considered how the oligarchy mobilized its political resources to constrain the Republican Congress.

Antebellum Southern Oligarchy or Aristocracy in Scholarly Literature

John Lynch (1913) denied that the South was a democracy at all, not even a white democracy (or by his term, “republican”). He sets the Reconstruction question of black Americans’ freedom and citizenship within the larger context of an anti-republican southern political regime.

The problem of the southern oligarchic regime had called the Republican Party into life in the 1850s. At that time, Lynch wrote that “the slave oligarchy of the South” controlled the Democratic Party, and because “the Whig party had not the courage of its convictions,” the “Republican party came to the front with a determination to secure, if possible, freedom for the slave, liberty for the oppressed, and justice and fair play for all classes and races of our population” (1913, 292-293). In another place, Lynch clarified his meaning, indicating that he understood both black slaves and whites comprised the ruled element in southern political society beneath “the slave oligarchy of the South.” In his discussion of Reconstruction, he said the Republican plan was both “serious and radical” because it proposed to break up “the established order of things” in the South:

It meant not only the physical emancipation of the blacks but the political emancipation of the poor whites, as well. It meant the destruction in a large measure of the social, political, and industrial distinctions that had been maintained among the whites under the old order of things (101-102).

The enslavement of blacks was set amidst a political regime that oppressed many, both blacks and whites. The purpose of Reconstruction was regime change, and the problem

was that the oligarchic political regime had been a long established political order, hence more impervious to change. Lynch, a former southern slave and a member of the Reconstruction Congress, might have known well what he was talking about.

Among the early historians who deplored Reconstruction and black American citizenship, some, like James Rhodes, agreed with Lynch that “the political system of the South was an oligarchy under the republican form” (Rhodes, cited in Olsen 2004, 407n15). Rhodes admits here that southern republicanism was a sham front. Others, like Walter Fleming, downplayed the political influence of the aristocracy, while acknowledging its existence (Fleming 1905, 5).

Eric Foner does devote some attention to the planter class’s disproportionate political influence over the antebellum slave states, towards the beginning of *Reconstruction: America’s Unfinished Revolution, 1863-1877* (1988). Further on, his consideration of the oligarchy loses emphasis in his analysis of the question of black freedom and citizenship. In his study, as in most others, the problem of black citizenship is mostly regarded as separate from the problem of the ruling class’s regime, rather than central to the Republicans’ concern with the regime. The Republicans considered black citizenship both in its moral aspect and in the context of the oligarchic political regime. Charles Sumner, for example, frequently argued that the enfranchisement of the freedmen was both an act of justice to them, as well as an act of future security, preventing the revival of oligarchy and assuring the development of newly planted republicanism in the South (Sumner 1870-1883, X:98, 115, 124).

More typical is the treatment of aristocracy and/or oligarchy by historian John Hope Franklin in *Reconstruction: After the Civil War* (1961). He mentions the

“plantation aristocracy” in passing once (101), and then in one other instance discusses the successful efforts of the old “ruling clique,” the “oligarchy,” in preserving its power after the war (219). This latter discussion begins and ends in barely more than a paragraph – eight pages before the end of the book. In *Reunion and Reaction*, C. Vann Woodward mentions “oligarchy” in the body of his text precisely three times – to describe the Republicans in Congress (1956, 198, 201, 216). In this respect, Woodward follows Andrew Johnson’s congressional allies who returned Republican fire, turning the “oligarchy” charge back at the Republicans for having briefly superintended the governments of the insurrectionary states and for having disallowed their alleged right to freely transit from rebellion to the resumption of state self-government within the Union.

The reason why Reconstruction scholars hesitate in studying the Republican effort to break up the southern oligarchy as the central problem of reconstruction may be because scholarship is divided on the question of the nature of the antebellum South. Scholars recognize the terms aristocracy and oligarchy in the historical record, and address the issue in different ways. Many scholars use the label “aristocracy,” and less so “oligarchy” when referring to the slaveholding class, but they tend to regard the slaveholders as a social class – something more than an exclusive country club set, but something much less than a ruling regime that shaped the character of its political order. Others are dismissive of the substance of the charge, attributing crass political motives to antebellum Republicans for making sensational usage of the terms. Some outright affirm that the antebellum South was fundamentally democratic. Generally, scholars have not taken the terms oligarchy and aristocracy as invitations to seriously consider the regime question – that is, whether social and political life in the slaveholding South was

fundamentally constituted by a regime form, completely different and deviant from the plan of the American Founding. There are notable exceptions. Manisha Sinha's study of antebellum South Carolina does conclude that the planter class ruled over that state consistent with an aristocratic political creed, and rejected genuine republicanism (anti-democratic in Sinha's terms). In taking South Carolina out of the Union, the ruling class inaugurated a "counterrevolution of slavery" against the American Revolution (2000).

The Marxist or Marxian scholars are one class of scholars who have paid relatively more serious attention to the references to southern oligarchy in the historical record. To Charles and Mary Beard, Reconstruction constituted a "Second American Revolution," but they meant it in Marxist terms, or the victory of the northern industrial bourgeoisie over the semi-feudal barons of the South. In the oligarchy, they found the element needed to demonstrate the latent revolution from feudalism to bourgeoisie in America (Beard and Beard 1927). In his account of Reconstruction, DuBois also identified the southern oligarchy but then painted the northern capitalists in the same light (DuBois 1935). Since wealth is always power in the Marxist framework, the distinction between the southern planters and northern capitalists is blurred, raising the question whether the planter class could be accounted as oligarchic ruling classes outside the Marxist framework. That question matters to those of us who view wealth and rule as not always coterminous, but sometimes overlapping and sometimes apart. The Marxist research on the southern oligarchy, however, lends support to the Republican position (see also Allen 1937).

Many scholars who study white southerners outside the planter class, including the southern yeomen whites, poor whites or "plain folk," do tend to support the view that

an aristocratic class politically dominated the antebellum South (e.g., Shugg 1939; Hahn 1983; Bolton 1994). Some of these sometimes overlap with the Marxists. Perhaps the most famous scholar to identify the planter class as an economically and politically dominant class is Eugene Genovese, originally Marxist in perspective (1988; 1989; 1992). But his views are controversial. Weighing against these, many scholars follow Frank Owsley (1949) and George Fredrickson (1987), insisting that the South was fundamentally democratic for whites.

Another class of influential scholars dismisses the substance of the oligarchy charge leveled by antebellum free soilers and Republicans at the slave state planters, but this class also acknowledges the potency of the charge's political effect. According to David Brion Davis, a student of "Union As It Was" scholar J.G. Randall, northern political leaders were able to gull free state citizens into believing the charge that slaveholders threatened to take over the nation and doom American republicanism, due to Americans' susceptibility to a "paranoid style" of politics (1969). Maladjusted social psychology explains the fear of the slave power. Following Davis, Michael Holt acknowledges and discredits free state leaders' warnings to free state people that slaveholders were attempting to plant slavery in the territories to ultimately overcome and replace republican liberty with southern-style oligarchic rule in the entire nation (1978). Following Davis and Holt, William Gienapp acknowledges and dismisses the Republicans' explicit claim that they founded their party to counter encroaching oligarchy (1987). Garrett Epps points constitutional law scholars to the outstanding influence that fear of a regenerate slave power (i.e., the southern oligarchy) played in the Reconstruction Republicans' framing of the Fourteenth Amendment (2004; 2006). Epps

argues that by acting under the influence of this fear, the amendment framers did intend to restore the meaning of the original Constitution's Article IV, Section 4, guaranteeing republican government in the states, and intended to protect both white and black southerners' civil and political rights, to counter nascent anti-republican rule.

However, citing the aforesaid research, Epps sidesteps the explosive consequences to our understanding of American history, political development and constitutional law, by acknowledging the implausibility of the existence of the anti-republican slave power (2004, 183, 209).

The cornerstone of these antebellum and post-bellum accounts is the rejection of the Republican premise of slavery's political evil, that domestic slavery tended to raise up an oligarchic ruling class everywhere that slavery was planted and increased. But what if it were true that slavery had quietly raised up a rich few who had traduced the American Founder's republicanism in each slave state and had installed themselves as rulers over the South? Prior research then takes on a different character. In that case, the free northern common people had every reason to fear the new southern praise for slavery's positive good in the 1830s. They were reasonably and not irrationally alarmed by the Kansas-Nebraska Act and especially the *Dred Scott* decision's opening of the territories to slavery. If slavery produced oligarchy, then each new slave state and territory would increase the breadth and depth of the inter-state oligarchic class. The ruling slaveholders' common dependence on domestic slavery for their monopoly control of wealth and ruling power would keep them fraternally bonded together in an efficient, compact political unit. If all this were true, and the slavery crisis were to resolve in favor of slavery's interests, then common northerners could foresee the future loss of their republican

liberty, by observing the political condition of the ruled classes in the slave South. No matter “how much the great body of the Northern people” did “crucify their feelings” over slavery “in order to maintain their loyalty to the Constitution and the Union,” as Lincoln said – or no matter how much other northerners didn’t crucify their feelings over slavery, the northern people could be expected to vehemently protest against the spread of slavery, due to their self-interest in their own republican liberty (Lincoln 1989a, 361).

Decades before the crisis reached the boiling point, Tocqueville foresaw that slavery, natural inequality and oligarchy on the one hand, and freedom, natural equality and republicanism on the other, were inveterate enemies and could not coexist. In one part of *Democracy in America*, Tocqueville traced the development of the unique characteristics of southern aristocracy and inequality to expanding slavery (Tocqueville 2000, I.2.10, 326-79, esp. 328-35, 361). He also predicted that the growth of slavery-nourished, aristocratic inequality might lead to great revolution. Towards the end of the second volume of *Democracy in America*, he wrote, “If America ever experiences great revolutions, they will be brought about by the presence of blacks on the soil of the United States: that is to say, it will not be the equality of conditions, but on the contrary, their inequality, that will give rise to them” (II.3.21, 611). America was generally democratic in his view, but the growing aristocracy directly threatened democratic life. A great revolution would pit the growing domain of inequality against the domain of equality. Another passage clarifies Tocqueville’s meaning, in which he predicted possible civil war between republicans, who could not tolerate inequality, and slavery-supported aristocrats, who could not tolerate equality: “When a society really comes to have a mixed

government, that is to say equally divided between contrary principles, it enters into revolution or it is dissolved” (I.2.7, 241).

By “contrary principles,” Tocqueville meant more than a war of ideas, or what contemporary scholars call “ideology,” separate from the organization of political life. A political regime’s ruling principle may be found on the lips of its defenders and implicit in its concrete institutions. The political regime may be known by its principle because it is the distinguishing mark of the regime, unifying social and political life consistent with itself. Tocqueville espied that difference between the domain of slavery and the domain of freedom in the United States. The cleavage between these two domains was fundamental, inasmuch as the principle of equality that characterized political and social life in the free states, and the principle of inequality that characterized political and social life in the slave states, were fundamentally opposed. That fundamental division describes the political condition of the antebellum United States that Lincoln’s “house divided” metaphor describes. Both Tocqueville and Lincoln further maintained that the divided condition could not withstand the passage of time. One half of the nation would revolutionize the other: republicanism would revolutionize oligarchy, or oligarchy would revolutionize republicanism. The nation would cease to remain divided and would become consistent with respect to one or the other regime (Lincoln 1989a, 426). In stating his general rule on division of a society by contrary principles, Tocqueville included a prospect that Lincoln did not think possible in America: the nation might dissolve, and the divisions might separate and become independent of each other. Besides that one difference, they saw the United States in the 1830s and the 1850s, respectively, in the same way.

Recent scholarly work has uncovered new evidence lending proof to the slave power thesis, debunked by David Brion Davis. This new evidence again raises the question of the political foundation or source of the slave power, the hypothesized oligarchic political regime in the slave South. In the course of his career, historian Donald Fehrenbacher emphasized one theme in particular: the political strength of slavery interests in the antebellum nation. His book, *The Dred Scott Case* (1978), shows that the territories were more susceptible to slavery's ingress than previously understood. He also shows that Chief Justice Roger Taney wrote John C. Calhoun's theories on the territories requiring slavery's admission into constitutional law, defying the written Constitution and constitutional precedent. Fehrenbacher's early work underlines the contingency of events determining the future of the nation towards freedom or slavery. His final book, *The Slaveholding Republic* (2001), reinforces that prior conclusion, but this time he shows to a degree not yet appreciated that the national government had already become a proslavery government. Proslavery interpretations of the Constitution had accumulated, creating the impression that the original Constitution had favored slavery, which Fehrenbacher denies. Reinterpreted in this way, the late antebellum "living" Constitution repurposed political institutions and even directed the conduct of antislavery government officials in favor of slavery's interests. As the antebellum decades wore on, slave state representatives increasingly and successfully gained control of the national government and subordinated the national government to the interests of slavery. By the 1850s, American government appeared completely proslavery to the outside world.

Around the same time that Fehrenbacher published *The Slaveholding Republic*, Leonard Richards published *The Slave Power: The Free North and Southern Domination, 1780–1860* (2000), a direct revival of the slave power thesis. Richards agrees with the 1850s slave power charge and reviews how southerners enjoyed disproportionate influence over the national government, including their control of northern votes in Congress, just as Republicans claimed. Unlike Fehrenbacher, Richards notes that criticism of the slave power and criticism of southern aristocracy were joined. He quotes Republican William Seward on the stump warning his audience that they must battle the slaveholding aristocracy or “see our republican system fail.” The slaveholders enjoyed special privileges in the national government; in particular, they enjoyed additional representation as a result of the three-fifths clause, which gave them disproportionate power. The aristocracy ran the slave states and, increasingly, the federal government (7).

The intended inference was clear. Northerners were succumbing to slaveholders’ aristocratic rule through their control of the national government, just as the southern people had already succumbed to slaveholders’ aristocratic rule in the slave states through the slaveholders’ control of state government. Seward qualitatively distinguished the slave power from the power of an ordinary, democratic political coalition. The operators of the slave power sought rule, independent of democratic accountability. They had gained that rule over the slave states and were in the process of securing it over the national government. In harmony with Richards’ findings, Fehrenbacher argues that Lincoln’s free and fair election in 1860 offended the slaveholders’ habit and expectation of controlling the national government (2001). Consistent with the aristocratic sensibility, slaveholders perceived their control of the

national government as a right, just as they had become accustomed to their acquired rule over the slave states as a right. Rather than give up this right of aristocratic rule in deference to the democratic process that elected Lincoln, they seceded. If the slave power thesis does command new respect among scholars, I would suggest this new respectability of the thesis is an added inducement to investigate the question of southern oligarchy in the southern states from whence it arose.

Methodological Approach

The value of the Republican perspective on the antebellum South is that circumstances forced them to look back with a clear eye before they could move the nation forward. They could not beat a path towards national harmony and justice without taking into account the causes of the national disaster they inherited. Therefore, I have attempted to recover their comprehensive, backward look.

I circumscribe my study around United States Senators and Representatives who served at any point in the 38th through 40th Congresses (1863-1869). In this study, I have employed the time frame used Michael Les Benedict (1974) in his study of congressional Reconstruction. Unlike Benedict, I focus on congressional Republicans alone in order to specifically recover their perspective. The study is limited to any Senator or Representative who was affiliated with the Republican Party within that period. However, to fill out these Republicans' views on the national problem, I liberally draw from their writings and speeches dated before, during and after the time frame of their service in the 38th through 40th Congresses. To the best of my ability, I have included only views that overlap with other Republicans.

I have structured both the organization of the Republican analysis in Chapters II through IV and my test of their analysis in Chapters V through VII, according to the traditional theory of political regimes.

Traditional regime analysis has fallen into disuse among scholars of American political development. Contemporary scholars have brought back the term “regime” but not its traditional substance (e.g., Orren and Skowronek 1998; Plotke 1996). In this usage, a political regime resembles a political coalition. This runs contrary to how it was viewed by the originator of regime analysis, Aristotle, or by the subsequent long line of political scientists’ studies for which political regimes were central. This disuse may be explained by the fact that scholars in American political development mostly carry out Woodrow Wilson’s exhortation to study the administration of government, the state, as the central unit of study, and leave off studying “constitution” – Wilson’s equivalent word for political regime (Wilson 2005, 231ff). Yet earlier, pre-Progressive Era Americans, and certainly Civil War Era Americans, always discussed American politics within the traditional framework of political regimes. It can probably be demonstrated that it was the only analytical framework Americans knew when discussing politics. They usually used the term “system of government” cognizable as “political regime,” and frequently invoked the Anglicized Greek and Latin terms for regime types: republic, democracy, aristocracy, etc.

What this study requires is a regime theory that comprehends a whole political society in all of its dimensions and parts. Traditional regime analysis usually does this. What follows is a brief summary of Aristotelian regime theory and commentary on its application to the American situation, as found in the Republican analysis.

Summary of Aristotelian Regime Theory

In modern social science-speak, a political regime could be termed a primary independent variable; the dependent variable is human life. In Aristotle's *Politics*, a political regime is a system of government, broadly understood as encompassing both law and custom, both formal government and culture. Aristotle shows this by giving two definitions for a political regime.

First, a regime is the sovereign ruler or ruling body (III.6.1278b5-14). The ruler or rulers are the one or the number of persons who control the offices and institutions of government, and they are not equivalent to the officers of government. Ruling through those offices and institutions, the sovereign ruler orders, arranges and shapes the parts of political society, just as craftsmen work with materials to produce a finished product (III.1.1274b35-40; VII.4.1325b41-44). Therefore, the task of identifying the type of regime begins with identifying the sovereign rulers. In the model and practice of the natural rights republic established by the American Founders, the sovereign rulers were the people; in the southern oligarchy, the few.

Second, a regime is a way of life of political society (IV.11.1295a35-40). The conduct of all activity, most notably including the ruling activity of the sovereign, presupposes a superintending aim, or a generally discernible principle expressing the best or most choice-worthy way of life and a standard of justice (I.1.1252a1-6; IV.11.1295a35-40; VII.1.1323a14-24; VII.8.1328b13-14). All parts of political society, people and institutions, tend to assimilate the character of the ruling principle, which constrains and channels conduct. The ruling principle articulates the parts of political society together and produces a way of life common to the political society and

distinctive from others. Proximate territorial location, intermarriage, commerce and mutual defense are necessary but insufficient conditions for a political society's existence. These things do not constitute a political society. If walls were built enclosing the proximate but dissimilar political societies of Megara and Corinth, the walls would not transform and maintain these two as one political society. Only a regime, a common "way of life," maintains a multitude of people as one political society (III.9.1280a30-b40).

Therefore, to identify the character of a regime, the ruling principle must be identified. The ruling principle, or first principle, is the highest shared principle appealed to, directly or implicitly, to justify political action and institutions. In the natural rights republic established by the American Founders, that principle was the natural equality of humanity; in the southern oligarchy, it was the natural inequality of humanity. The frequent, direct invocations and repudiations of the natural rights claims of the *Declaration of Independence* during the antebellum period are convenient markers, usually showing alignment with the natural rights republic and the insurgent oligarchy, respectively.

Regimes are each distinctive, but they share definitive attributes across two dimensions – the number of rulers (one, few or many) and for whom the rulers govern – for their own advantage or for all (III.7.1279a25-1279b10). All regimes tend to approximate, but never perfectly resemble, one of the six regime forms. The reason for this is that every political society contains many parts, even though one part rules in each regime (IV.3.1289b26-30). Therefore, all regimes are alloyed with dormant or weak elements that, with greater strength, could change the regime (V.3.1302b34-1303a13;

V.4.1304a39-1304b4). For example, in an oligarchy, the few rule for their own advantage, but the many, who are sovereign rulers in a democracy or polity, are also present though ruled in an oligarchic political society. The stronger the people become in an oligarchic regime, the more the regime takes on popular characteristics and sheds oligarchic characteristics. The weaker the people become in the regime, the more pronounced the oligarchic character of the regime becomes. The relative weakness or strength of the nonslaveholder populations of the slave states amplified or limited the oligarchic character of each state.

Specific political institutions and offices bear upon the character of the regime because they tend to strengthen or weaken the participation of one part of political society in the regime. For example, a common mess for meals paid at the public expense is democratic; excluding laborers and artisans from citizenship is aristocratic; and fining citizens for not participating in juries is oligarchic (II.9.1271a27-37; III.5.1278a14-22; IV.9.1294a37-39). A regime might intentionally or unintentionally maintain an institution that possesses a regime influence different from the character of the ruling regime. A ruling aristocracy could, for example, maintain a democratic institution to appease the ruled people. The effect of some political institutions can be so powerful that they revolutionize the character of a regime. Athens had been oligarchic, but when Solon allowed the common people to serve on juries, the regime irretrievably changed course and developed into a democracy (II.12.1273b34-1274a11).

In order to identify the extent to which a particular regime is mixed, therefore, one must look within the regime for the presence of parts sufficiently powerful to prevent the regime from realizing its full character. America's new natural rights republic inherited

such an institution from the prior monarchic regime. The political effect of the institution of domestic slavery was that it undermined popular government. Slavery set forces in motion that eroded republicanism and reduced the number of sovereign rulers. The success of those forces depended upon the strength of slavery and the strength of counteracting forces, such as, for example, republican statesmanship, the republican way of life of American political society, and antislavery republican laws that limited slavery's strength.

Most regimes tend to develop towards two unjust forms: oligarchy (rule of and for the few) and democracy (rule of and for the many) (IV.11.1296a20-25). The ultimate cause of this tendency is a paradox in human nature. Human nature is a compound of equality and inequality; human beings are unequal with respect to individuals' natural abilities and what those abilities produce, but they are equal with respect to all being free by nature. The few and the many each tend to erroneously define justice in the one sense favoring their own cause, and excluding justice in the other sense. The few demand inequality in all things because human beings are naturally unequal in one sense; the many demand equality in all things because human beings are naturally equal in another sense (III.9.1280a7-25; V.1.1200a27-37). This chronic conflict between the few and the many is the ultimate source of factional conflict and all revolutions, that is, changes in regime form (V.2.1302a16-30).

To which faction, the few or the many, does the regime tend? The natural rights republic tended towards neither. The regime recognized compounded human nature; it recognized both the natural right of all to be free, but it also equally protected unequal

abilities to rise from among all, on the basis of merit. The southern oligarchy favored the partisan claims of the few, expecting inequality in all things, on the basis of place or rank.

Revolutions begin from small things, incremental changes that with quiet repetition eventually add up to great changes. But revolutions happen over the greatest of all things: the character of the regime (V.4.1303b16-20; V.8.1307b25-38).

What were the incremental changes that added up to great changes? Each additional slave and every additional territory permitting slavery during the antebellum period were the incremental changes that added up to great changes. Since slavery corresponded with oligarchy, the expansion of slavery corresponded with the expansion of oligarchic revolution against natural rights republicanism.

Revolutionary leaders can use force but also deceit as methods of persuading the existing regime's defenders that the changes they favor support and do not undermine the regime (V.4.1304b6-14).

How did the oligarchy's revolutionary leaders guide the revolution? Among the methods that might be classed as deceit included the practice of slave state statesmen during the antebellum period to lay claim to republicanism in word but to redefine it. They did this so that their regime form would appear to be the same as the natural rights republicanism established by the American Founders. This deception would assist slavery's spread and growth, deepening the foundation of revolutionary oligarchic rule until it was strong enough to openly defy partisans of the prior regime.

In some cases, the conservative forces that aim at preserving the existing regime and the revolutionary forces aiming at changing it, could be concentrated in different sections of the political society's territory. The sectional divide mirrors the regime

divide. If neither defeats the other, the political society would then subdivide into two regimes coextensive with the subdivided territories (V.3.1303b7-17). This was certainly the case in the antebellum United States. The sectional divide between slave and free states corresponded to a regime divide. The contest to make the territories free or slave was part of the inter-regime contest between natural rights republicanism and oligarchy, for ascendancy over the other.

What I call natural rights republicanism is alternately called democracy or just republicanism by historical actors, and what I call oligarchy is alternately called that and aristocracy by historical actors. The first set of terms describes rule by the many; the second, rule by the few.

Finally, I do not think it is necessary to prove that domestic slaves were ruled, but I do think it necessary to prove that southern whites outside the planter class were ruled. Therefore, my attentions focus on proving the latter, and I usually pass over the former as indisputable.

The American Founders' Natural Rights Republicanism

The American Founders separated from a monarchy and attempted to reshape the monarchy's colonial elements into a new political regime. In naming this regime, Michael Zuckert was, I believe, the first scholar to coin the name "natural rights republic," which differs from the term the founders themselves used, simply "republic" (Zuckert 1996). The value to us today of preserving Zuckert's annexation of "natural rights" to "republic" in talking about this regime, is that it forces us to keep in mind what the founders meant by "republic."

However diverse we may find the founders' views, an overlapping consensus on the principles of natural rights republicanism united them all. The scholarly debate in recent decades between the republican and liberal schools of thought has set back this understanding of the founders. One school claimed the founders for 'classical republicanism,' or independent self-government (Bailyn 1967; Wood 1969; 1992; Pocock 2003). The other school claimed them for "liberalism," or government guided and limited by the protection of the natural right to liberty (Appleby 1986, 1992; Nedelsky 1992; Kramnick 1990). The debate has settled on the position that both the republican and liberal traditions coexisted with the founders and influenced them in roughly equal measure (Rahe 1992, 2006; Banning 1998, 428n3).

Elements of both natural rights and republican thought may be found in abundance among the founders, and often the same founder expresses fidelity to both republicanism and natural rights principles. Adams wrote that "there is no good government but what is Republican" (Adams 2000, 484). But he also said that "through life" he had "asserted the moral equality of all mankind" (379). These sentiments more than coexist, are more than in accord; they form a unity. The founders' natural rights philosophy and their republican philosophy fused into one general philosophy of government, natural rights republicanism. Their natural rights republican regime model meant popular self-government, justified and limited by natural rights, as opposed to prior republican societies in which majority power justified majority rule, and the majority's rule was unlimited. Their conception of republicanism in terms of natural rights is the basis for why they thought they had improved the science of government.

In Query XIII of the *Notes on the State of Virginia*, Jefferson wrote, that republican majority government, the “*lex majoris partis*” is “the natural law of every assembly of men, whose numbers are not fixed by any other law” (Jefferson 1984, 251). That is, natural right conferred lawfulness on the will of the majority in self-government.¹ Jefferson repeatedly expressed the fusion of republican self-government and natural right. In 1800, he wrote that “the *lex majoris partis*” was “that fundamental law of nature by which alone self-government can be exercised by a society” (Jefferson 1984, 1074). In 1817, he wrote, “The first principle of republicanism is that the *lex majoris partis* is the fundamental law of every society of individuals of equal rights” (Jefferson 1892-1899, X:89). Similarly Madison defined republican government as “a government which derives all its powers directly or indirectly from the great body of the people” and not from “a favored class of it.” The equal natural rights of the people constituted the sovereignty of the people and morally required the derivation of powers from them (Hamilton, Madison and Jay 2003, 237).

However, the natural rights of the people also limit the use of those powers. In his first inaugural, Jefferson emphasized this point.

All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law must protect, and to violate would be oppression (Jefferson 1984, 492).

In other words, there are some things that a majority cannot rightfully do to a minority in a republic. The same natural rights that confer lawfulness upon the will of the majority also protect the minority.

¹ Jefferson cited Baron von Pufendorf’s *De Officio Hominis et Civis Juxta Legem Naturalem*, or *On The Duty of Man and Citizen According to the Natural Law* (cf. Tully 1991).

Were the natural rights of the people safe under republican government? The problem was that majorities had generally acquitted themselves poorly on this score. Though natural right justifies republican self-government, republican factions, especially majorities, had historically traduced the natural rights of fellow citizens. In doing so, these tyrannical majorities had violated the very same principle of natural rights that conferred lawfulness on their will.

In Federalist No. 9, Alexander Hamilton agreed with “the advocates of despotisms” that “the history of the petty republics of Greece and Italy” inspired “sensations of horror and disgust” because they too often alternated between “the extremes of tyranny and anarchy.” But, he continues, lessons drawn from “stupendous fabrics reared on the basis of liberty,” lessons “not known at all, or imperfectly known to the ancients” were “powerful means, by which the excellences of republican government may be retained.” Those lessons are the “regular distribution of power into distinct departments; the introduction of legislative balances and checks; the institution of courts composed of judges holding their offices during good behavior; the representation of the people in the legislature by deputies of their own election: these are wholly new discoveries, or have made their principal progress towards perfection in modern times.” Without making use of these lessons, “the enlightened friends to liberty would have been obliged to abandon the cause of that species of government as indefensible” (Hamilton, Madison and Jay 2003, 66-67).

In Federalist No. 14, he clarifies what he means by the “stupendous fabrics reared on the basis of liberty” from where those lessons came. He refers to modern Europe, “to which we owe the great principle of representation... this great mechanical power in

government.” The machinery of European government derived from European practice and from “celebrated authors” under “absolute or limited monarchy.” This machinery formed the “stupendous fabrics reared on the basis of liberty.” Modern Europe was the source of the natural right to liberty in practice and theory. But Hamilton criticizes the “celebrated authors” of Europe for not seeing how this machinery, developed to protect liberty, could be combined with republican government to cure it of its propensity for ‘tyranny and anarchy.’ This is what the proposed Constitution would do, and henceforth, “America can claim the merit of making the discovery the basis of unmixed and extensive republics” (95-96).

In Federalist No. 10, Madison also isolates the problem of self-inflicted tyranny, endemic to republics, and presents an additional solution. The source of this self-inflicted tyranny was faction, defined as a group of citizens “united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens.” If a faction could achieve a majority, it might oppress their fellow citizens through the government itself. Unique to republican government whereby the people are sovereign, and unlike monarchies or aristocracies, the judges of factional conflict are simultaneously the parties to factional conflict, and people make very poor judges in their own causes. Madison’s solution is to extend the sphere of the republic to impede a faction in its drive to achieve a majority and thereby thwarting the execution of its illiberal designs through its control of the government. By discovering and implementing this “republican remedy for the diseases most incident to republican government” the Americans could rescue the reputation of republicanism “from the opprobrium under which it has so long labored.”

Republicanism could then “be recommended to the esteem and adoption of mankind” (71-79, esp. 72, 75, 79).

Jefferson, Hamilton and Madison are all concerned with maintaining republican government, justified and warranted by natural right, while limiting republican majorities from violating natural right, consistent with the claims of the *Declaration*. This is why they were dissatisfied with establishing republican majority government simply, without developing means of protecting the natural rights of the entire political society from overreaching majority government. This explains the founding generation’s profusion of sentiments expressing fidelity to both republican and natural rights principles.

The Constitution established a plan for government that was simultaneously republican and embodied natural rights principles. On the one hand, in reviewing the principal features of the Constitution, Madison could conclude that “it is, in the most rigid sense, conformable” to the republican standard. Yet on the other hand, he, a framer of the Constitution, and Jefferson, the author of the *Declaration*, agreed that the *Declaration* was the new nation’s “fundamental act of union,” and primary among the “best guides” to the “distinctive principles” of the Constitution of 1787, the new political regime’s blueprint for government (Hamilton, Madison and Jay 2003, 238; Jefferson 1984, 479).

Also, Madison and Jefferson could align the sentiments and character of the American people to both republican and natural rights principles, without contradiction. On the one hand, Madison could say in defense of the Constitution, that no other form of government “would be reconcilable with the genius of the people of America; with the fundamental principles of the Revolution” than a “strictly republican” government

(Hamilton, Madison and Jay 2003, 236). But on the other hand, Jefferson felt warranted in claiming that the *Declaration*, which stated “the fundamental principles of the Revolution,” expressed nothing that Americans in his generation would find new or strange, but rather was an “expression of the American mind” (Jefferson 1984, 1501). Were, then, the American people and the American Founders partisans of republicanism or liberalism? The question assumes a division between republicanism and natural rights principles that the founders did not recognize. They were neither and both: they were natural rights republicans.

The founders did more than express their fondness for natural rights republicanism in their writings and speeches, did more than state its principles in the *Declaration*, and did more than blueprint national political institutions in the Constitution, providing the brick and mortar of the new political regime. They required that all state governments conform to the model of that new political regime, on pain of correction by the national government. Article IV, Section 4 of the Constitution stated, “The United States shall guarantee to every State in this Union a Republican Form of Government.” This clause did not give the national government license to intermeddle with state governments at fancy. The Tenth Amendment confirmed that, “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.” With these residuary powers, state governments could and should govern themselves as they wished without national government interference, *as long as those state governments were republican in form*.

In his widely cited book on the that clause, *The Guarantee Clause of the US Constitution* (1972), constitutional historian William Wiecek obscures the founders’

American definition of republicanism. He claims that the definition of ‘republican’ in the guarantee clause is unclear, and anchors that claim in another, that the founders, both federalist and antifederalists, were uncertain of its meaning (3-4, 12). Wiecek’s claim begs an answerable question, why the Constitution framers included the guarantee clause. He mistakes disagreements over the institutional form of the republican national government that attended the ratification of the Constitution, for disagreements over the principled regime idea of natural rights republicanism. But even the antifederalists generally professed the same political principles as the federalists, and even Brutus acknowledges that, on the question of the type of government the American people wanted, “It is here taken for granted, that all agree” (Storing 1981; 1985, 113). Most unfortunately, he suggests that the word “republican” may

have had no meaning at all. John Adams complained late in life that “the word *republic* as it is used, may signify anything, everything, or nothing.” He insisted that he “never understood” what the guarantee of republican government meant; “and I believe no man ever did or ever will” (Wiecek 1972, 13).

These quotations of Adams are misleading. Adams wrote voluminously on republicanism and was quite sure of his command of the subject. If he did not know what a republic was, then it would appear strange that he accepted the 1779 Massachusetts convention’s assignment to draft a constitution for a “Free Republic,” which he did, and which the convention and the people of Massachusetts accepted by their votes (Adams 1850-1856, IV:213-218). The fuller context of these remarks quoted by Wiecek tells a different story than Wiecek tells.

In one of the quoted letter Adams writes, “In some writing or other of mine, I happened, *currente calamo* [i.e., off-hand], to drop the phrase, ‘The word *republic*, as it

is used, may signify any thing, every thing, or nothing” (Adams 1850-1856, X:378). He did not say that *he* didn’t know what a republic was, but that *others* misused the term, “signifying any thing, every thing or nothing.” In another letter to the same correspondent one month earlier, he writes, “I have always been convinced, that abuse of words has been the great instrument of sophistry and chicanery, of party, faction, and division in society,” and he singled out the word “republic” as one much abused word (377). He says that “the *customary* meanings” of the word republic “have been infinite,” and “applied to every government under heaven; that of Turkey and that of Spain, as well as that of Athens and of Rome, of Geneva and San Marino” (377-378, emphasis added). But this was a *European* error that he and the Americans objected to, and had worked to correct in theory and in practice. Indeed, his *A Defence of the Constitutions of Government of the United States of America*, attempts to instruct Americans and the reading world on the subject of natural rights republicanism, and to distinguish that American version from prior versions. In that work and others he writes prodigiously on *Europeans’* misuse of the words “republic” and “republican.” No doubt, Adams did understand that there were many sub-types of free republics, the variety depending upon their institutional structure, but the defining characteristic of a free republic then being established in America, was its foundation upon natural rights.

In the other letter quoted by Wiecek, Adams describes the development of the American governments after the moment of Independence. Referring to himself and his fellow delegates to the Continental Congress, he said, “We all acknowledged the right of the people to frame their own governments, and we knew they would not think of any other than Republican governments. The most of us, and myself among the rest, neither

wished or thought of introducing any other; nor have I wished for any other to this moment” (Adams 1878a, 352). When continuing Adams remarks that he “never understood” what the guarantee clause meant, and that he did not believe any man “ever did or ever will,” he was complaining about the lack of specificity in the text of the guarantee clause. The well-intended drafters of the Constitution should have added more specificity because, “The word Republic has been used, it is true, by learned men, to signify every actual and every possible government among men,—that of Constantinople as well as that of Geneva” (353). In other words, Adams objected to these erroneous usages of the word “republican” and worried that the word in the guarantee clause would be subject to misinterpretation. He wanted more specificity to protect their American meaning.

Hamilton and Madison also distinguish their American republican understanding and professions from definitions advanced by Europeans. Part of Hamilton’s criticism of European authors in Federalist No. 14 specifically admonishes them for their mistaken definition of “republican” (Hamilton, Madison and Jay 2003, 95). Madison, in Federalist No. 39 worries, like Adams, that *others* might misunderstand or falsely appropriate the proper definition, their American definition, of republicanism. If an answer to the question of what constituted a republican form of government were

to be sought, not by recurring to principles, but in the application of the term by political writers, to the constitution of different States, no satisfactory one would ever be found. Holland, in which no particle of the supreme authority is derived from the people, has passed almost universally under the denomination of a republic. The same title has been bestowed on Venice, where absolute power over the great body of the people is exercised, in the most absolute manner, by a small body of hereditary nobles. Poland, which is a mixture of aristocracy and of monarchy in their worst forms, has been dignified with the same appellation. The government of England, which has one republican branch only, combined with an

hereditary aristocracy and monarchy, has, with equal impropriety, been frequently placed on the list of republics. These examples, which are nearly as dissimilar to each other as to a genuine republic, show the extreme inaccuracy with which the term has been used in political disquisitions (Hamilton, Madison and Jay 2003, 236-237).

Madison was quite sure that he knew what the word “republican” meant. Once, in a debate in the House of Representatives in 1794, a member proposed that naturalized citizens swear an oath to support a republican form of government. When another member questioned the certainty of its meaning, Madison interposed, saying, “that the word was well enough understood to signify a free Representative Government, deriving its authority from the people, and calculated for their benefit” (*Annals of Congress*, 3 Cong 1, 1022).

Adams further explained what distant consequences he feared might follow the guarantee clause’s lack of specifying the meaning of the word republican. He thought the lack of specificity might be of service to those interested in the overthrow of genuine republicanism. He wrote:

The word is so loose and indefinite that successive predominant factions will put glosses and constructions upon it as different as light and darkness; and if ever there should be a civil war, which Heaven forbid, the conquering General in all his triumphs may establish a military despotism, and yet call it a constitutional republic.... The only effect of it that I could ever see is to deceive the people.... (Adams 1878a, 353).

Clearly, Adams distinguished between proper and improper usages of the word “republican,” usages as different as “light and darkness.” He feared that in time some state governments might revolutionize into anti-republican governments under a false guise. With greater specificity, the guarantee clause might have exposed these prospective revolutions away from republicanism, to the people. Without that specificity,

the leaders of these anti-republican governments might yet claim their revolutionized governments to be republican. Not learning precisely from the text of the Constitution how their state governments had deviated from its natural rights republican model, the people could be successfully deceived by those leaders.

Nevertheless, the framers and ratifiers understood that the clause forbade innovations in state government away from republicanism. In the North Carolina ratification debate James Iredell explained,

The meaning of the guaranty provided was this: There being thirteen governments confederated upon a republican principle, it was essential to the existence and harmony of the confederacy that each should be a republican government, and that no state should have a right to establish an aristocracy or monarchy. That clause was therefore inserted to prevent any state from establishing any government but a republican one. Every one must be convinced of the mischief that would ensue, if any state had a right to change its government to a monarchy. If a monarchy was established in any one state, it would endeavor to subvert the freedom of the others, and would, probably, by degrees succeed in it (Elliot 1861, IV:195).

They understood that the guarantee clause was a critical preventative measure, guarding against these innovations. But by burying the founders' natural rights republican meaning and this intention, Wiecek does not recognize the general stability of the idea during the founding and early national periods, and later, among free state republicans and abolitionists through Reconstruction. Nor does he recognize slave state leaders' eventual public departure from the founders' natural rights republicanism. The validity of southern leaders' republicanism is equally defensible as the abolitionists' republicanism, in his view (Wiecek 1972, 5). Had Wiecek better appreciated the founders' natural rights republicanism, and better appreciated Adams's fear that the guarantee clause might *protect* anti-republicans in their revolutionary schemes, Wiecek

might have subjected the slaveholders' republicanism to greater scrutiny, as the case warranted.

Between the *Declaration*, stating the principles of government, and the Constitution, presenting the plan for government, it is easy to see that the sovereign rulers of this republic were meant to be, as Madison said, "the great body of the people." Were all the people actually sovereign?

Today, we measure sovereignty by the extent of suffrage (Keyssar 2000, xvi). By that standard, the United States fell short at its origin, since the founding generation did indeed countenance restrictions. Therefore, Keyssar opens his book, *The Right to Vote: The Contested History of Democracy in the United States*, thusly: "At its birth, the United States was not a democratic nation – far from it" (xvi, 2). He presents the arguments attending their restrictions, but does not explain why John Adams, nevertheless, felt justified in saying, "Our people are undoubtedly sovereign..." (Adams 2000, 132). To Keyssar, a government faithful to the natural rights principles of the *Declaration* is a democracy measured at least by universal suffrage, and so he expresses his mild incredulity thus:

Even Pennsylvanian James Wilson, a signer of both the *Declaration of Independence* and the Constitution, and one of the more democratic of the founding fathers, described suffrage as a "darling privilege of free men" that could and should be "extended as far as considerations of safety and order will permit (Keyssar 2000, 9).

The founders' test for measuring the actual sovereignty of a republican people is by measuring the actual proportionality between the whole people and government. Adams explains, "The perfection of the portrait consists in its likeness" (Adams 2000, 109). He continues, "It should be in miniature an exact portrait of the people at large. It

should think, feel, reason, and act like them” (484). How does one create such a portrait?

Adams suggests:

The first necessary step, then, is to depute power from the many to a few of the most wise and good. But by what rules shall you choose your representatives? Agree upon the number and qualifications of persons who shall have the benefit of choosing (484).

In other words, the electors who choose the officers of government are a qualified number – the most wise and good from among the many. Neither the representatives nor the electors are the whole people themselves. However, since nature diffuses unequal talent equally throughout humanity, the most wise and good may be found in every part of political society. Having been drawn out of all these precincts of the whole people, these wise and good electors would each “feel, reason and act” like others from their part of political society. Suffrage qualifications are the devices by which these electors may be drawn out of every part of society, both insuring that the whole people is represented in miniature and that provision is made for the prudent administration of government (147, 372-373).

Among possible devices, a modest property requirement might effectively sift for an adequate level of talent requisite for suffrage, but this depended upon social conditions. If social conditions were such that talent combined with industry could acquire modest property, then the requirement might produce a prudent republican government without compromising proportionality. However, if social conditions were such that talent could never meet the property requirement, then the effect of the property requirement in that state would be different. It might lodge control of the government in the hands of the wealthy few, thereby creating an oligarchy.

These wise and good individuals drawn out of the people comprise the “natural aristocracy . . . , the brightest ornament and glory of the nation, and may always be made the greatest blessing of society, if it be judiciously managed in the constitution” (Adams 2000, 147; cf. Eidelberg 1976, 73-105). By natural aristocracy, Adams does not mean aristocracy in the ordinary sense, or that class is distinguished by “artificial inequalities of condition, such as hereditary dignities, titles, magistracies, or legal distinctions” (Adams 2000, 142). This is the “artificial aristocracy,” as found in Europe. An artificial aristocracy is a ruling class set apart from the whole people and invested with rule without regard to wisdom or goodness but with regard to artificial distinctions that have no relation to excellence at ruling. A natural aristocracy administers the government on behalf of a sovereign people from whom it is broadly drawn; an artificial aristocracy is sovereign. The contrast is best illustrated by modifying Aristotle’s analogy to music: in the one case, chorus members are chosen for having the best voices from among all the people; in the other case, chorus members are chosen for having the richest families (III.12.1282b35-1283a1). The first is obviously the better chorus. Likewise, a government consisting of officers and electors selected for wisdom and goodness from among the whole people is a superior government than a government consisting in officers and electors selected for artificial distinctions that are unrelated to governing excellence. Because American governments respected both natural equality (rights) and natural inequality (talent), Adams remarked that they “have exhibited, perhaps, the first example of governments erected on the simple principles of nature” (Adams 2000, 117).

In order to provide for the natural aristocracy, a government must yet partake of an admixture of democracy. Adams writes, “There can be no free government without a

democratical branch in the constitution” (115), because “Where annual elections end, there slavery begins” (487, 493). The end of elections would mean that the administrators of government would become the government’s de facto rulers. But universal suffrage, or democracy, would reproduce the state of nature and still lack government, rather than produce the prudent administration of government. The establishment of democracy unleashes the same process that commences in state-of-nature anarchy. Political history shows that state-of-nature anarchy usually ends with rule of the few. Formal and actual democracy would become nominal democracy and actual rule by the few, probably ending in formal and actual rule by the few (377-399). To protect the republic, therefore, one must take care in framing rules for suffrage.

In determining where to set the suffrage bar, the founding generation had to consider both insuring proportionality between the whole people and government and the prudent administration of government. Excessively expanded suffrage might more efficiently produce proportionality, but it might also ignore the requisites of prudent government. Excessively constricted suffrage might risk proportionality therefore violating the natural right of the people to submit to government only by their consent. The devil was in the details. Any specific suffrage qualification, however meritorious the principle behind it, could seem arbitrary. The principle that an elector must have a mature mind is more plausibly defensible than an age limitation set at 21 rather than 22 or 20. This problem contributed to the acrimonious character of the suffrage debates in the Revolutionary Era. Despite the acrimony, in 1778 Adams could boast, “Our people are undoubtedly sovereign,” because the American governments were “the most adequate,

proportional, and equitable representations of the people, that are known in the world” (130).

Dissertation Organization

Chapters II through IV present the Republican analysis of the political regime of the slave states. These three chapters demonstrate how the southern regime deviated from the natural rights republican plan of the American Founding. Chapter II examines the rulers, the ruled and the key institutions that supported the rulers’ control. Chapter III examines how Republicans understood slavery’s political effects worked. Chapter IV traces slavery’s historical transformation of the South to the point of inter-regime conflict between the republican free states and the oligarchic slave states.

Chapters V through VII comprise a test of the Republican analysis. I study the southern political regime along three institutional dimensions, education, property and state government. The Republicans specifically identified those institutional supports of southern oligarchy. Each of these chapters corresponds to a different aspect of a political regime. Chapter V on education examines the quality of the oligarchy’s rule; Chapter VI on property examines the source of the oligarchic regime’s character; Chapter VII on government examines the question of who ruled.

Chapter V examines education and shows that the policy of southern government bears the marks of control by an elite, ruling by the principle of inequality. Their education policy served the advanced education of the few, and spurned the basic education of the many. Chapter VI on property shows that the oligarchic regime took its unique character from the institution of property. Relative wealth determined one’s place

in the political regime; property inequality determined political inequality. Chapter VII examines how slaveholding coincided with rule by slaveholders. The slaveholders controlled state government, and comprised the actual sovereign power. They tended to exclude or limit popular influence in government.

In all three of these chapters, the principle of inequality was the common principle by which education policy was shaped and carried out, political place was determined and participation in ruling permitted. That principle was the first principle of the political regime of the slave South. My analysis concurs with the Republicans. The slave South constituted an oligarchy, as the Republicans claimed.

Chapter VIII presents my conclusions. First, I propound a two-regime theory of American Political Development. Second, I examine why the southern oligarchy has escaped its verdict by scholarship.

CHAPTER II

THE GENERAL CHARACTER OF SOUTHERN OLIGARCHY

The Problem of Reconstruction Officially Expressed by the Republican Congress

Immediately After the Civil War

The 39th Congress that convened in December of 1865 was the first to sit since Lee's surrender at Appomattox. Upon his election to the office of Speaker of the House, Republican Schuyler Colfax delivered a short address to the House of Representatives on the great task Congress faced:

Its duties are as obvious as the sun's pathway in the heavens... [I]ts first and highest obligation is to guaranty to every State a republican form of government. The rebellion, having overthrown constitutional State government in many states, it is yours to mature and enact legislation which, with the concurrence of the executive, shall establish them anew on such a basis of enduring justice as will guarantee all necessary safeguards to the people, and afford – what our Magna Charta, the *Declaration of Independence*, proclaims is the chief object of government – protection to all men in their inalienable rights (*Congressional Globe*, 39 Cong 1, 5).

He specified what the “first and highest obligation” of Congress is: to “guaranty to every State a republican form of government.” In specifying this obligation, Colfax quoted directly from Article IV, Section 4 of the Constitution: “The United States shall guarantee to every State in this Union a Republican Form of Government....” That is, the “first and highest obligation” of Congress, warranted by the Constitution, is to guarantee the establishment and maintenance of a certain kind of political regime in all the several United States. Immediately next, he said that the governments of the insurrectionary states were not constitutional. But by quoting from Article IV, Section 4

immediately previous, Colfax showed in what respect the governments in and among the insurrectionary states were not constitutional. They were not republican in form, and were, rather, in violation of Article IV, Section 4. They had deviated from that form of government; they had revolutionized. They were not republican governments that had seceded to form a separate republican existence; they were un-republican governments that had seceded. Following the defeat of the combined insurrectionary states in war, the yet-unchanged, fundamental political condition of these states encumbered Congress with the duty to exercise its “highest obligation,” to fulfill and maintain the constitutional guarantee of republican government. To fulfill its duty to the Constitution, Congress had to establish state governments “anew” in the rebel states.

But those new state governments’ prospective renunciation of rebellion would not by itself meet the standard of constitutional or republican government. More was expected, and Colfax explained how those states could meet the standard. When Congress enacted legislation reorganizing the state governments so that they met the “chief object of government - protection to all men in their inalienable rights,” those state governments would be regarded constitutional, i.e., republican in form, as per Article IV, Section 4. Colfax read the *Declaration* and the Constitution together; the principles of the former informed the meaning of the latter. A government that protects inalienable rights is one that meets the definition of “republican,” as laid out by the standard of Article IV, Section 4. The extant governments in the insurrectionary states did not meet that standard.

After Congress successfully discharged its duty,

Then we may hope to see the vacant and once abandoned seats around us gradually filling up, until this Hall shall contain Representatives from every State and district; their hearts devoted to the Union for which they are to legislate, jealous of its honor, proud of its glory, watchful of its rights, and hostile to its enemies. And the stars on our banner, that paled when the States they represented arrayed themselves in arms against the nation, will shine with a more brilliant light of loyalty than ever before (*Congressional Globe*, 39 Cong 1, 5).

The insurrectionary states' loyalty to the Union would be expected to follow the establishment of true republican government in those states, not before. Colfax linked the states' prospective loyalty, the desired effect, to the successful establishment of republican government, the cause. In so doing, he tacitly linked the cause of those states' disloyalty to the absence of republican governments in those states. Difference between the political regime in and among the insurrectionary states and the political regime in and among the loyal states accounted for national division and disharmony. Composed of dissimilar, geographically separated political regimes, national union could not hold together – "a house divided against itself cannot stand." A national union organized by the republican principle could not attract the bonds of affection, and rather would repel a sectional political regime organized on an un-republican principle. Therefore, future national harmony depended upon changing those states' political regimes into republican governments. Colfax was pointing Congress in the direction of changing the political regimes of the insurrectionary states before political re-union could be contemplated. Failure at this endeavor might preclude these states' loyalty to the republicanism of the Union and national harmony.

Colfax did not identify the form or forms of the un-republican governments in the insurrectionary states. This, the Speaker-elect did not need to explain to his colleagues or to the nation. The insurrectionary states' deviation from the form prescribed by the

Constitution called the Congress to exercise its duty, and that duty was “as obvious as the sun’s pathway in the heavens” (*Congressional Globe*, 39 Cong 1, 5). That is, Colfax knew that the insurrectionary states’ fundamental political character, and the duty of Congress to change that character, was obvious to the nation and to the overwhelmingly Republican House that had elected him Speaker, 139 to 36 votes.

But if constitutional state governments, that is, republican governments, did not exist in the rebel states, what kind of governments existed there? That question received an official answer from the joint committee on reconstruction.

Within days of convening, the 39th Congress established the joint committee on reconstruction by a resolution of both houses, and directed the committee to report on the condition of the insurrectionary states and whether they were entitled to federal representation. The committee report named the kind of government that had developed in the insurrectionary states and contrasted that kind of government with republican government: “Slavery, by building up a ruling and dominant class, had produced a spirit of oligarchy adverse to republican institutions, which finally inaugurated civil war” (*Report of the Joint Committee on Reconstruction* 1866, xiii). The first step to restoring the insurrectionary states to the Union, the committee reported, “would necessarily be the establishment of a republican form of government by the people” (xiv). By requiring the “establishment” of republican government in the insurrectionary states, the committee recognized, like Speaker Colfax, that republican government was not already established there. The report said that slavery had “produced” the spirit of oligarchy and had “built up” the oligarchic ruling class, which suggests that republican forms of government in substance or in spirit might have prevailed in the insurrectionary states for some extent of

time between the American Founding and the Civil War. At an undefined moment prior to the war, oligarchy had eclipsed republicanism. In view of these circumstances, the committee recognized the constitutional duty incumbent on Congress, “to guarantee to each state a republican form of government” (ix), the report quoting Article IV, Section 4, of the Constitution, as did Colfax. The insurrectionary states’ governments had to be reconstructed at their foundations, from oligarchic to republican. Reconstruction meant regime change. To provide a firm foundation for regime-changing reconstruction, the committee proposed to amend the Constitution. That proposal became the Fourteenth Amendment.

The Republican-led Union had recently defeated the oligarchy’s armies on the battlefield, but the problem was that the oligarchy remained and republican government was absent. The task of reconstruction policy was to *politically* destroy the oligarchy itself, thereby forever removing that cause of civil discord and oppression within the Union, and to re-plant true republicanism in the insurrectionary states.

These officially expressed understandings of the problem of reconstruction, and the higher aims of reconstruction policy to deal with that problem, did not need greater elaboration. The nineteenth-century American audience had heard all this before and would continue to hear it. Before, during and after serving in the Reconstruction Congress, the Republicans elaborated these views. They presented detailed analyses that complemented and cohered with each other in isolating southern oligarchy as the root cause of all the major political difficulties of their national era. In their analyses, the institution of domestic slavery was closely related to, and the most salient feature of, the oligarchy. They often proscribed slavery as a moral evil. But in itself, slavery was not

the primary political evil, although slavery was the *source* of the primary political evil. Slavery's effect created the primary political evil, which was oligarchic government.

The Ruling Class

From the moment the Republican Party of Massachusetts formed in 1854, Senator Charles Sumner argued that the southern states were oligarchies, ruled by a “caste” or “privileged class” of the few, for the advantage of those few. Their governments were not republican in form but were captive to those few, who had possessed most of the slaves and monopolized the best land in the slave-holding south. The oligarchic governments shaped the character of political and social life, in every respect. During his twenty-three-year senatorial career, Sumner reprised this theme so often and so forcefully, that his colleague Senator Fessenden said, “If the brain of the honorable Senator from Massachusetts should ever chance to be dissected, I think those words [oligarchy, aristocracy, caste, and monopoly] would be found very strongly impressed on it” (39 Cong 1, 1280).

In 1855 at Boston's Faneuil Hall, Sumner explained how slavery politically endangered the nation (Lester 1874, 202-224). He separated his denunciation of slavery as a moral evil from his denunciation of slavery as a *political* evil, as many other Reconstruction Republicans often did. The political evil of domestic slavery consisted in the institution's public effect, its tendency to generate oligarchy, government by and for the few.

At his Faneuil Hall speech, Sumner demonstrated that this is what had happened in the slave-holding South. A small slave-holding class filled the offices of the southern

governments, which they alone controlled. But he pointed out that the members of the slave-owning class did not want the nation to know how small it numbered, to better conceal their political domination in the slave-holding states. They exaggerated the diffusion of slaves among white southerners to mask their ruling class's small size. Sumner disputed their statistics.

What was at stake in the dispute over slave-owning statistics was whether the southern state governments were ruled by the people or by the few, essentially whether those governments were republican or oligarchic. There could be no question that the slaves were ruled despotically on private plantations. But what of the rest of the population? Did self-government exist among white southerners? Or did a small white, slave-owning minority rule both slaves and the white majority?

To illustrate how and why southern statesmen fought the political battle over slave-owning statistics, Sumner recalled an event in Congress involving Massachusetts Representative Horace Mann. When Mann was presenting figures showing that few southerners owned most slaves, a member from Alabama "rudely interrupted" him to demand attention to the fact that three million southerners owned slaves (Lester 1874, 207). Nobody knew the truth of the matter well enough, Sumner said, to confirm or refute a counter-claim like that. But the recent 1850 census had removed all doubts, and had removed the faux face of republicanism in the slaveholding South. Ninety thousand families owned the great mass of slaves, and they controlled southern government and society. They constituted the ruling minority. Reconstruction Republicans often produced statistics of this kind to buttress their argument that the southern state governments were oligarchies.

At Faneuil Hall, Sumner identified the inter-state southern class that owned most of the slaves:

Yes, fellow-citizens, it is an Oligarchy – odious beyond precedent; heartless, grasping, tyrannical; careless of humanity, right or the Constitution; wanting that foundation of justice which is the essential base of every civilized community; stuck together only by confederacy in spoliation; and constituting in itself a *magnum latrocinium* [vast thievery] ... (Lester 1874, 207-8).

Throughout the speech he insisted upon regarding the rulers of the slave state regimes together as the “slave oligarchy.” The character of this ruling class featured an aggressiveness for power, an expectation to rule *over* and not *with* others in majoritarian self-government. In the next calendar year after his Faneuil Hall speech, Sumner denounced the “slave oligarchy” three times in his more famous “Crime Against Kansas” speech on the floor of the United States Senate, when few dared apply the offensive word “oligarchy” to the South in the presence of southerners sitting in Congress (34 Cong 1, Appendix, 529-544). Two days later, South Carolina Representative Preston Brooks famously caned Sumner nearly to death for insulting in that speech one of the members of the “slave oligarchy,” South Carolina Senator Andrew Butler, who happened to be Brooks’s uncle . While Sumner lay bloody and unconscious under the continued blows, Brooks’s assistants, Representatives Edmundson of Virginia and Keitt of South Carolina menaced anyone coming near. Keitt yelled at one man, “Let them alone, God damn you!” (Sumner 1870-1883, IV:257, 266). The caning event paradoxically proved an element of Sumner’s analysis of the South at Faneuil Hall. The event exhibited the oligarchy’s determination to rule, to enforce obedience, and to punish challenges to that power.

Massachusetts Republican Senator Henry Wilson, had long argued that southern government had revolutionized during antebellum times into an oligarchic or aristocratic

regime. In speeches before the war, he said that a “relentless despotism” had been established in the slave states (35 Cong 1, 570), and that an “aristocratic few” ruled “the people of the South with a rod of iron” (38 Cong 1, 506). These aristocratic few formed an inter-state ruling class “[b]ound together by the cohesive attraction of a vast interest,” by which he meant slavery (35 Cong 1, Appendix, 172).

Writing retrospectively in 1875, Wilson showed that he never departed from these views. He wrote that within the slaveholding states, the powerful antebellum southern slaveholders “had transformed the self-government of freemen into the hardly disguised despotic control of an oligarchy, contemptible in point of numbers, and more contemptible in the spirit, purposes, and means of its long-continued and fearful domination” (Wilson 1874-1877, II:673).

In an 1860 speech to Congress, Republican Representative James Mitchell Ashley (OH) claimed, “In all these fifteen slave States, a class is dominant which fills all the offices, and controls the legislative, executive, and judicial departments of the government” (Ashley 1894, 46). Writing a public letter in 1861, Ashley described this class’s political domination of the southern states, and called the rulers an “infamous oligarchy” (Ashley 1894, 167). Again, in Congress in 1868, he spoke of this class “numbering but a few hundred thousand slave-owners, the most offensive and infamous oligarchy in history” (490).

In St. Louis in 1862, Charles Daniel Drake delivered an address that included an account of the contrary antebellum political developments in the North and the South (Drake 1864, 98). Prefacing this part of his speech, he said that he expected his audience,

as well as the people of the United States, to understand and agree with what he was about to say, indicating that he was elaborating common knowledge:

You know, and all candid observers know, that the people of the United States present two distinct, and in some respects, uncongenial developments. ... [I]t is enough for this occasion to refer to their bearings upon our political organization as a nation, under a common government. Of the two developments one is in its nature and principles essentially democratic...; the other, in those points, essentially aristocratic; the former belonging to the Northern States, the latter to the Southern... [In the slave-holding South, he] that was born to authority, and has been accustomed to implicit obedience from large numbers of dependents, may ever be expected to become, in a greater or less degree, tenacious of power, ambitious for its increase in his hands, impatient of restraint, and imperious in subjecting others to his will (Drake 1864, 104-5).

In 1866 Representative Isaac Newton Arnold (IL) wrote that before secession and the war, “The slaveholders in the slave States had practically subverted the Constitution and established a despotism on its ruins.... The despotism of the oligarchy was supreme” (Arnold 1866, 41).

Writing retrospectively, Republican and former Speaker of the House James Gillespie Blaine (ME) also depicted antebellum southern government as “in short, an oligarchy.”

The South was the only section in which there was distinctively a governing class. The slave-holders ruled their States more positively than ever the aristocratic classes ruled England. Besides the distinction of free and slave, or black and white, there was another line of demarcation between white men that was as absolute as the division between patrician and plebeian. The nobles of Poland who dictated the policy of the kingdom were as numerous in proportion to the whole population as the rich class of slave-holders whose decrees governed the policy of their States (Blaine 1884-1886, I:257).

In other words, the size of the Polish ruling class in proportion to the Polish political society equaled the size of the southern American ruling class in proportion to its southern political society. This comparison served the purpose of showing that the

antebellum political regime in the American slave-holding south was comparable in form to the Polish regime ruled by nobility. Although the southern American ruling class lacked formal titles of nobility, their power and control over the majority population was comparable to the power of ruling classes that did possess titles of nobility.

In 1886, Republican Senator John Sherman (OH) delivered an address on “Grant and the New South.” The theme of the address was Reconstruction. He broached the fundamental problem of reconstruction at the top of his address:

We know what the old south was. It was an oligarchy called a democracy. I do not speak this word in an offensive sense, but simply as descriptive of the character of the government of the south before the war.... Less than one-fourth of the population were admirably trained, disciplined and qualified for the highest duties of manhood. The south was very much such a democracy as Rome and Greece were at some periods of their history; a democracy founded upon the privileges of the few and the exclusion of the many. Very much like the democracy of the barons of Runnymede, who, when they met together to dictate Magna Charta to King John, guarded fully their own privileges as against the king, but cared but little for the rights of the people (Sherman 1895, 949).

Sherman meant that if democracy did exist in the antebellum slave-holding south, it did in a very qualified and misleading sense – only among the equal members of the small ruling class. This kind of equality was the kind that ruling noble peers shared among each other, as among those nobles who ruled Poland. But political equality in the antebellum South did not extend further than that, as it must in a democratic political regime. Outside the ruling class in the South, all others, black domestic slaves but also whites, were unequal and were ruled.

When Reconstruction Republicans applied the term oligarchy or aristocracy to the antebellum slave-holding states, they were not referring to the ownership of domestic slaves. The simple proof of this is that they continued to apply the terms to the southern

states after the Thirteenth Amendment constitutionally abolished slavery. Although ownership of slaves was a salient characteristic of the political leaders of antebellum slave state government and the salient characteristic of southerners holding office in the national government, private ownership of domestic slaves defined the term “mastery” in the precise terms of Republican thought, but not oligarchy or aristocracy. The Republicans reserved the latter terms for the southern political regime and for the inter-state class of the few who ruled the regime and gave that regime its form. The Republicans understood that the form of government in the antebellum slave-holding South consisted of the few over the many, and not all whites ruling over all enslaved blacks. In evidence of this, the Republicans often specifically addressed the oligarchy’s rule over non-slaveholding or poor whites in the South.

The Southern Oligarchy’s White Vassal Class

In 1852, Indiana Representative George W. Julian recognized and described three political classes in the slave states: the rulers, the slaves and the poor whites. The rulers were:

the slaveholders of the country, numbering, say two hundred and fifty thousand, making a liberal estimate, and many of these are women and minors. The entire white population of the slave States, according to the late census, is six millions one hundred and sixty-nine thousand four hundred and thirty-eight. The slaveholders, therefore, constitute only about *one twenty-fifth* of this number, or in other words, for every slaveholder there are twenty-five non-slaveholders, or twenty-four twenty-fifths of the people having no direct connection with slavery. If we include the whole population of the South, white and colored, bond and free, the slaveholders will only amount to about *one fortieth* of the aggregate, thirty-nine fortieths of the whole being non-slaveholders (Julian 1872, 67, original emphasis).

These few constituted a “wicked and domineering oligarchy” (68). This “squad of despots” ruled

the three millions and more whom they hold in bondage, and who, of course, are opposed from the very depths of their hearts to the system under which they suffer. Denied that principle of everlasting justice, a fair day’s wages for a fair day’s work, sold like merchandise to the highest bidder, despoiled of their dearest rights and the holiest relations of life, and plundered even of their humanity by law, is it not inevitable that they are brooding in secret over their wrongs, and nursing in their bosoms long-cherished, deep-seated, and implacable hatred of the rule of their tyrants? Let no man regard lightly, either the moral or physical power of such a people; for every ray of light which dawns upon their minds, every kindling passion which fires their hearts, is the sure prophecy of their deliverance. Well may the slaveholder tremble, when he reflects that “God is just, and that his justice cannot sleep forever” (Julian 1872, 68).

In addition, the oligarchy ruled over a separate class, “millions of their own race in the South, who hold no slaves.”

Multitudes of these feel that they are crushed to the earth by this heartless aristocracy, degraded to a condition which slaves themselves need not envy, and that all hope of bettering their lot is denied them, so long as the reigning order of things continues. This hostility to slavery will increase just in proportion as its hands are strengthened and its exactions multiplied, thus hastening a fearful crisis, by the action of causes that must inevitably produce it, were the millions in bondage to continue quiet and submissive. We have good reasons for believing that at this time there are thousands among the non-slaveholders South, ... smarting under the relentless power of slavery, and meditating schemes of resistance... (Julian 1872, 68).

In 1860, James Ashley similarly distinguished the ruled classes of domestic slaves and poor whites. He also contrasted the liberties of the people in the free and slave states to show where republican government did and did not exist. In the free states, “an untrammelled press and free speech are guaranteed, and public schools and a free church are secured to every inhabitant.” He continued:

These institutions the free States have, to an extent unknown to any government or people on earth; and to them, more than to any other cause, are these States

indebted for their unsurpassed development, and for that prosperity and growth which have made them the wonder and admiration of the world (Ashley 1894, 46).

But in the fifteen slave states, “practically, the reverse of all this is true.” In “all the slave States the constitutional rights of an American citizen are not respected, the constitutional guaranty for free speech and a free press is a mockery, free schools and an enlightened Christianity an impossibility” (46-7).

First, Ashley addressed the oligarchy’s political oppression of the class of domestic slaves:

The laborers upon whose toil these States exist are slaves, and have been declared not to be citizens, though born upon the soil, but simply persons, with no moral, social, or natural rights, that the dominant race are bound to respect, if the mere IPSE DIXIT of the Supreme Court is to be regarded as law. Their obedience and subjugation are secured by enactments and usages the most barbarous and tyrannical ever known to man (47, original emphasis).

Immediately following, Ashley separately addressed the oligarchy’s oppression of their white political vassals:

A reign of terror secures the obedience and co-operation of the poor whites; and because of this submission, they are claimed as loyal friends of the institution of slavery. But their loyalty is, in fact, a humiliating submission to the privileged class — a submission as abject in most of these fifteen States, as is the submission of the most spirit-humbled slave. The guaranties of the national Constitution, so far as they affect the individual rights of an American citizen, are denied alike to all men who are not of this privileged class or their open allies; and to be an American citizen secures no protection from insult and outrage, unjust imprisonment and terrible punishments, or even death. So complete is this reign of terror, that no man can print, or speak, or preach, or pray, unless he does it in the manner prescribed by this privileged class (Ashley 1894, 47).

Early in the war in 1862, Representative John P. Shanks (IN) accused the southern slaveholders of having degraded poor whites, the “poor and laboring masses who constitute the majority.” These poor had “been ignored in elections” and lacked a

“voice in affairs” of Government. The slaveholders’ “teachings and practices,” he said, “are at variance with the principles of liberty and genius of free government.” Among their aims was the “the subjugation of the poor of all classes.” Not only because the slaveholders led their states into a rebellion against the national government, but also because they had taken away self-government from the people in the states, Shanks believed, it was the duty of the national government to enforce Article IV, Section 4 of the Constitution, guaranteeing a republican form of government to the people of those states (37 Cong 2, Appendix, 197).

In 1864, Representative Daniel Morris (NY) claimed that those who owned most of the slaves and best lands “for years have wielded the civil and the political influences which have controlled these States,” and that “the white population, not owning lands, are as dependent and subservient to these ‘lords of the manor’ as are the slaves” (38 Cong 1, 299).

Reconstruction congressmen who represented low-slaveholding districts in the border slave states before the war were particularly instructive on the character of southern government and the plight of poor whites under those governments. These congressmen stood in a unique position. Unlike congressmen drawn from the free states, they lived in close proximity with slaveholders, giving them a unique view of the character of slave state political society. Unlike the congressional delegations from other slave states, they were not always drawn from the ruling slave state class. The border states from whence they came (Virginia (before its partition), Kentucky, Missouri, Tennessee and Maryland) might also be termed “cleft” states in the antebellum period, because neither the minority class of slaveholders nor the people appeared to be firmly in

control of rule. Those states were divided between high slave-density and low slave-density regions. Unlike low slave-density northern Alabama, the up-country of South Carolina, etc., the low slave-density sections of the cleft border states were sufficiently strong and politically cohesive that they were still able to send representatives aligned with the interests of ruled non-slaveholding poor whites to the antebellum Congress. These members of Congress brought their personal knowledge of the character of slave state government from their proximity to the slaveholders in state politics. Often, this class of Representatives presented the most trenchant criticisms of southern oligarchy, whose rule they and their oppressed constituents resisted when they could. These representatives sometimes expressed sympathy for other slave states' non-slaveholding people whose free speech was silenced and whose political representation was denied by the minority class of rulers. These congressmen would have known better than most about the character of slave state governments.

One of these congressmen was Representative Francis P. Blair, Jr. of Missouri. He was, as Henry Wilson told the Senate, "a champion of the rights of the non-slaveholders of the South. Let the oppressed poor whites heed the voice and follow the councils of such a leader, and the day of their deliverance from their galling degradation will soon dawn" (35 Cong 1, Appendix, 172). In 1858, Blair spoke on the admission of Kansas as a slave state. He began, "There is... one point of view in which it has not been treated in this hall." He proposed to speak for "a large class of citizens of the southern States -- the non-slaveholding people of those States" (35 Cong 1, 1282).

He quoted from southern accounts on the terrible condition of non-slaveholders in Alabama, South Carolina and Virginia. This picture "is not true, where slavery obtains

nominally, or where the slaves are few; and especially it is not true of the city and county which I represent upon this floor,” but it was a true account where slavery obtained decisively. That is, in proportion with the increase of slavery, the condition of non-slaveholders living in proximity to slavery worsened. Blair represented a district where slaves were few in number and the conditions of the non-slaveholders were better there than in other slave states. However, since his district was located in the slave state of Missouri, Blair lived closely enough to the slaveholders to believe he understood them – and he denounced them with a vituperation unsurpassed by the most radical free state Republicans but typical of border state Republicans. These “oligarchs” degraded “the man who lives by daily labor, and the whole class of manual laborers and operatives.” They preferred their “slaves to the citizens of the Republic, and would have the latter deprived of the right of elective franchise, as his negro slaves” (35 Cong 1, 1283). Blair claimed that the ruling class was intent on destroying the political liberty of the non-slaveholding class in order to reduce them to the level of the slaves. In the three pages of the *Congressional Globe* that recorded his speech, the term “oligarchy” recurs seven times; “oligarchs,” twice.

Another “cleft” state congressman was Senator Waitman T. Willey (WV). In an 1864 Senate speech, he also arraigned the southern oligarchs for crushing out the liberties of other southerners as an adjunct and necessary aim of their regime. The territory comprising Willey’s West Virginia belonged to the slave state of Virginia before the war, when Willey was already engaged in politics. He claimed to know the character and aims of the Virginia oligarchy, which he deplored.

Willey said that the ultimate purpose of secession, rebellion and the founding of the Confederacy was to formally establish its oligarchic regime as an independent political nation. Of these secessionists,

[t]heir dissatisfaction went further than hostility to the Union; it consisted, in fact, in hostility to the fundamental principles of republican government. It was a revolt against popular institutions – a repudiation of democracy. The ultimate result contemplated was and is the establishment of an oligarchy, if not a monarchy (38 Cong 1, 1230).

This new nation, the Confederate States of America, would complete “the destruction of the equal rights and liberties of the southern people” (38 Cong 1, 1230). Similarly, in 1865, Representative Henry Winter Davis blamed the rebellion on an “oligarchy of slaveholders” who had “brought on this war” (Davis 1867, 313-15). Davis represented a district from the “cleft” border state of Maryland.

Willey quoted oligarchic southern statesmen to prove their un-republican character and intentions. He recalled sitting in the Virginia convention of 1861 that debated amendments to the state constitution. A committee appointed by the convention explicitly denounced democratic republicanism in its report. The report stated that, in democratic systems of government in which common laborers participated equally with others, “the tendency is to what Mr. John Randolph graphically described as ‘the despotism of king numbers’” (38 Cong 1, 1230). The committee believed that the state government should consult common laborers’ interests but not be controlled by their votes. The report blamed “unlimited suffrage” for the insecurity of property (the most prominent species of property in the South being slaves and land). Willey quoted the report’s example of agrarian (“socialist”) misappropriation of others’ property under democratic forms of government:

This tendency to a conflict between labor and capital has already manifested itself in many forms, comparatively harmless, it is true, but nevertheless clearly indicative of a spirit of licentiousness, which must, in the end, ripen into agrarianism. It may be seen in the system of free schools, by which children of the poor are educated at the expense of the rich.

Willey and the Republicans knew that the Virginian aristocracy's attacks on "agrarianism" were rational and typical of the ruling class, because the common people's suffrages aiming at undermining the aristocracy's land monopoly, ownership of slaves and provisioning common school education were likewise rational. The Republicans knew that education monopoly, land monopoly, and especially slavery were institutional supports of oligarchic rule.

Institutional Basis of Oligarchic Rule in the South: A Dearth of Common Schools

"KNOWLEDGE," Thaddeus Stevens said in 1835, "is the only foundation on which republics can stand" (Stevens 1835, 7, original emphasis). This theory and its opposite, that ignorance is the only foundation on which oligarchy can stand, runs through the Republicans' criticism of the slave states' abstention from establishing a healthy common school system.

The Republicans often paid notice to the suppression of common education in the southern states, in contrast to the thriving common schools of the free states. For example, in 1858, Senator Zachariah Chandler of Michigan quoted from the annual message of South Carolina Governor Whitemarsh Seabrook:

Education has been provided by the Legislature but for one class of the citizens of the State, which is the wealthy class. For the middle and, poorer classes of society it has done nothing, since no organized system has been adopted for that purpose (35 Cong 1, 1093).

In 1860, Charles Sumner noted,

Virginia, an old State, and more than a third larger than Ohio, has 67,353 pupils in her public schools, while the latter State has 484,153. Arkansas, equal in age and size with Michigan, has only 8,493 pupils at her public schools, while the latter State has 110,455. South Carolina, three times as large as Massachusetts, has 17,838 pupils at public school, while the latter State has 176,475. South Carolina spends for this purpose, annually, \$200,600; Massachusetts, \$1,006,795 (36 Cong 1, 2594).

In 1864 Representative John F. Farnsworth (IL) produced his own statistics:

In Massachusetts, in 1850, there were but one thousand and fifty-five native white persons over the age of twenty years who could not read and write; or about one to every seven hundred and seventy-eight of the entire white native population. At the same time there were of the same class in Alabama thirty-three thousand six hundred and eighteen who could not read and write or one to every twelve and a half of the entire white native population; and that is about the average in the slave States. Why, sir, in the slaveholding States to-day, from eighteen to twenty per cent, of all the free white native voters cannot read the ballot they cast, nor sign their own names to a poll-book (38 Cong 1, 2979).

The Republicans generally attributed this under-development of common education, in Farnsworth's words, to the "baneful" effects of slavery (2979). But the Republicans were more detailed in explaining the immediate cause. They believed that the dearth of common schools was no accidental effect of slavery. It was, rather a policy calculated to produce a desired and certain outcome: the ignorance of the majority population of the South. By promoting low public intelligence, the slave-holding oligarchy could better control the ruled majority and check challenges to the regime's power.

In 1860 Representative Charles Van Wyck (NY) charged southerners in Congress: "Your despotism is as galling upon the whites as the blacks" (36 Cong 1, 1032). The despotism depended upon the denial of common school education to poor whites, which was the policy of the southern state governments. Van Wyck quoted a

principled defense of this policy by his colleague in the House, South Carolina

Representative Laurence M. Keitt:

Mr. KEITT adds:

“It is also incontrovertible that all the inhabitants of a State cannot be educated; the ordinance of God condemns mankind to labor, and certain menial occupations are incompatible with mental cultivation.”... (36 Cong 1, 1031).

Van Wyck first excoriated Keitt’s blasphemous denial that God’s ordinance to work fell upon *his* class, comprised of those who did not labor, and then called the governing ways of the slave states, “a system whose corner-stone is the ignorance of the people.” He added that wherever that system spread, it “will establish the policy that labor ‘is incompatible with mental cultivation.’” This policy to perpetuate non-slaveholders’ ignorance, combined with a policy of censorship, rendered the non-slaveholders’ more easily controlled and ruled: “Slavery must prescribe what books they shall read. Your population is about eight million; yet you control their destinies, and compel their opinions” (36 Cong 1, 1031).

By “Slavery” and “you,” Van Wyck meant the slaveholders; by “they,” he meant the southern non-slaveholders. Van Wyck understood that the southerners he was presently addressing in Congress were all slaveholders. Van Wyck correlated the southern non-slaveholders’ lack of access to education with their political powerlessness, which Van Wyck measured by their invisibility in federal office: “How many men from the South on this floor are non-slave-holders? How many in the Senate, and among the foreign appointments? ... [Y]our own people feel more keenly than we, that ‘The badge of the slave is the scorn of the free’” (1032).

In 1861, one of the oligarchs' "own people" who felt this scorn, western Virginian Waitman Willey, directly explained why the oligarchy opposed free schools:

Sir, great astonishment has been expressed at the hostility of southern statesmen to popular education. But, sir, we ought not to be surprised at it. Knowledge is power; and to keep the masses in ignorance is a necessary precaution to keep them in subjection. To maintain the oligarchy of the few owning the capital, it is necessary to bind down with the slavish chains of ignorance the many who perform the labor.... Sir, the true reason of this hostility to popular education is hostility to democratic institutions (37 Cong 2, Appendix, 36).

In 1862, Willey's colleague from western Virginia, Representative Kellian Whaley similarly denounced the policy of the slaveholding aristocrats in eastern Virginia, and imputed the same motive. The eastern Virginian aristocracy jealously guarded their power over the state. "For eighty years," the people of western Virginia had petitioned the state government for the "oppression, insult, and contumely of eastern legislation without redress and without relief" (37 Cong 2, 3269). Forty years earlier, Whaley said, western Virginians had even attempted to separate from Virginia and escape the rule of the "eastern aristocracy," without success.

One of the greatest injuries sustained by our western people has been an organized opposition to a system of free schools and popular education, by which the bright but untutored minds of our mountain ranges and humbler classes have not been developed, while colleges and seminaries for the rich have been fostered by eastern legislation. To keep the people in ignorance is a part of the policy of *their masters*, the forty thousand slave-owners of East Virginia (37 Cong 2, 3269, original emphasis).

Whaley indicated that the non-slaveholding whites in the western part of the state were effectively slaves to "*their masters*," the eastern aristocrats. Immediately next, he tabulated western Virginians' lack of representation in the state government, linking the eastern aristocrats' education policy to their political domination: "Since 1776, Virginia

has had thirty-three Governors, of whom West Virginia has had five, and twenty-four United States Senators, of which West Virginia has had but three” (37 Cong 2, 3269).

Markedly different results on public intelligence flowed from free states’ and slave states’ contrary policies on education. In 1861, Massachusetts Representative John B. Alley noted this difference to explain why the southern majority did not thwart the secessionists:

Freedom and free institutions rest upon the intelligence of the people, and free constitutions can never exist upon any other basis. Our American Constitution and our free institutions are but the evidence of the intelligence of the American people; not the cause, but the effect of that intelligence; and if this Constitution and Government are overthrown, it will be by one section of the Confederacy, because its people were not sufficiently intelligent to appreciate their blessings or comprehend their value; and for them a military despotism may be demanded by the necessities of their condition. But the freemen of the North could no more be subjected to despotic rule than could the lightning of heaven be curbed. Such a rule would be as pack-threads upon the arms of an unshorn Samson (36 Cong 2, 585).

Lower public intelligence was an aspect of the southern people’s “condition,” and all of those peculiar aspects or “necessities” taken together, “demanded” a “military despotism.” Alley’s analysis aligned to the thought behind a phrase from the *Declaration of Independence*: “A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free People.” A corollary claim is that tyranny or despotism is a fit ruler of a people whose character is not free. To Alley, the difference in public intelligence highlighted the difference between the un-free condition or character of the southern majority who were ruled despotically, and the free character of the free state people who ruled themselves.

In 1860, Maine Senator Lot Morrill made the same theoretical point on education or the lack thereof, and the fitness or unfitness for self-government, albeit in a different

context. Morrill objected to southern statesmen's pressure to conquer new territories not yet encompassed by the nation's boundaries, particularly Cuba. Among his reasons for countering "the acquisition of new territories and foreign inhabitants," he argued:

Our Government is founded upon the intelligence and virtue of the people, and there is no other basis which can make Democracy or Republicanism possible for a day. Our theory has no inherent vitality which makes it practical in Asia or South America. It is the character of our people which supports our form of Government: Destroy that character, or dilute it until it has lost its savor, and the nation will decline and fall as have those in other times.... It is not necessary to point out the fatal defects in the character of Cubans or Mexicans, to show their utter unfitness as associates upon a footing of equality in the Union. However we rhetorically gravitate toward these nations, there is and can be no assimilation of character.... In these countries, individuals may be found of rare virtues and rare accomplishments; but the mass are untrained by education, and disqualified by habits and prejudices for the adoption of American ideas and the American forms of government... [L]et us have no more territory to hold in pupilage or by chastisement. It will require all the wisdom our country will be likely to send to Congress to manage our present possessions (36 Cong 1, Appendix, 389-390).

Morrill understood that an un-free people would have to be held either in "pupilage," to be trained in the arts of liberty and self-government, or by "chastisement," that is, despotically ruled. But these deficits in the condition or character he observed in foreign, despotically ruled people also applied to some degree to the majority population in the southern states. In 1862, he claimed that the southern majority had been "deceived and misled" (37 Cong 2, 1077) to support secession, the purpose of which was "to overthrow republican institutions, and to erect on the ruins of the Republic an oligarchy" (1075); that is, to change the form of the national government into one that reflected the form of government prevalent in the slave states. Looking to the successful conclusion of the war, Morrill counted free schools among the new institutions that the national government should plant in the South, to counter the oligarchy's deception with an elevated popular intelligence. "[U]pon return to allegiance," the government should:

give the assurance of amnesty, protection, and the privileges of free institutions, free schools, homesteads, even-handed justice, and equality of political rights – privileges that ennoble and elevate the masses into the dignity of a sovereign people, and give to popular government a secure support.

Sir, it would be a libel on human nature to suppose that the great body of the people of the South enter with alacrity into the purposes of the conspirators to overthrow this popular government and to found a government on slavery. I would therefore discriminate in their favor, and seek to establish in those States a commonality, with the privileges and immunities which make the people truly sovereign, in the place of an odious aristocracy (37 Cong 2, 1077).

Morrill did not believe that the majority of southerners could have wittingly supported the ultimate designs of the secessionists, since those designs were aimed at formally establishing the national independence of an oligarchic regime that had already ruled over and oppressed that majority in the southern section. To claim that the southern majority had wittingly supported the further entrenchment of their own domination would be “a libel on human nature,” since nobody aware of their natural right to self-government could consent to that right’s greater suppression. The only way the secessionists could gain the support of the southern majority was through deception, and deception’s antidote was education, which the southern people lacked.

Anticipating the war’s end and reconstruction, in 1864 Henry Wilson addressed the need to educate the common people of the South. This was one important task subsumed by their pending mission, “the establishment of a pure Republic” (38 Cong 1, 507). An educated southern people would stand as a bulwark against the regeneration of the oligarchy after the war:

We expect to labor for the elevation of that people, and [we know] that the first step toward that elevation is the destruction of that aristocratic and semi-feudal system which has heretofore existed in the South....

Sir, we are laboring to the ultimate elevation of the “common people” of the southern States. We expect to make them a power in opposition to that which has heretofore crushed their spirit and made them political slaves. We expect our policy to result in the establishment of those great industrial, economical, and educational principles which have made the free States supreme in this great contest between despotism and liberty. We expect to realize as the fully ripened fruit of our policy the perfect establishment of a republicanism which has ever lived in theory but never enthroned itself on the continent of America except where the sway of freedom was perfect and no slave appealed to the God of justice. We look forward to the time when the school-house, the academy, the college, and the church shall in the South measure numerical strength with the same great guardians of republicanism and morals in the divinely-favored land of the North. We look forward to the time when the child of the “poor white” of the South shall possess the same educational advantages which the free spirit of the North has accorded to the offspring of the rich and the poor in common. We are looking to the advantages of a whole people, and not merely to the privileges of a caste.... (38 Cong 1, 507).

In the same year, Iowa Representative William B. Allison echoed Wilson’s emphasis on the need to provide for the southern people’s education, adding Morrill’s point to his analysis. By keeping the poor southern whites in ignorance, the southern oligarchy easily swayed their opinions, in order to more easily use them for the regime’s purposes: “The wealthy and intelligent few have controlled and directed the poor and ignorant many, and have thus led them into the vortex of a revolution causeless as it is wicked” (38 Cong 1, 2115). The antidote to the oligarchy’s political misuse of the southern people was education. The southern people’s “oppressors conquered, the Government should extend to them its fostering care and protection; should encourage labor and protect all in the enjoyment of its fruits. We must restore the great body of that people by the establishment in those States of free schools and free churches” (38 Cong 1, 2115).

To successfully replant republicanism in the South and to guard against the designs of the oligarchy to reestablish itself, the Reconstruction Republicans did attempt to establish improved common school education in the South. In 1866, James Garfield drew up a bill establishing the National Bureau of Education. In his speech urging his colleagues to vote for the bill, he said, "I will not trouble the House by repeating such commonplaces, so familiar to every gentleman here, as that our system of government is based upon the intelligence of the people" (Garfield 1882-1883, I:129). Then, he attended to the need for the development of education in the South:

When the history of the Thirty-ninth Congress is written, it will be recorded that two great ideas inspired it, and made their impress upon all its efforts; namely, to build up free States on the ruins of slavery, and to extend to every inhabitant of the United States the rights and privileges of citizenship. Before the Divine Architect builded order out of chaos, he said, "Let there be light." Shall we commit the fatal mistake of building up free States, without first expelling the darkness in which slavery had shrouded their people? Shall we enlarge the boundaries of citizenship, and make no provision to increase the intelligence of the citizen? I share most fully in the aspirations of this Congress, and give my most cordial support to its policy; but I believe its work will prove a disastrous failure unless it makes the schoolmaster its ally, and aids him in preparing the children of the United States to perfect the work now begun (142).

The schoolmaster would remove a key institutional support of the southern oligarchy: the ignorance of the majority.

Institutional Basis of Oligarchic Rule in the South: Suppression of Civil Liberties

The Republicans frequently attacked the restrictions of civil liberties by the southern state governments, and associated these restrictions with the oligarchic regime form prevalent in the southern states. They cited examples of the southern state

governments and southern statesmen suppressing free speech, free press, *habeas corpus*, religious expression and political association.

While the slave state governments refrained from establishing common school education, they actively promoted censorship. Republicans attributed censorship policy to the same proximate and ultimate causes that motivated the oligarchy to refrain from establishing common schools. Censorship aided in perpetuating low public intelligence among the white majority of the South, so that the slaveholding minority might more easily perpetuate their rule.

For specific abridgments of civil liberties, the Republicans almost always pointed to proscriptions of sentiments and associations that were antislavery in character. But Republicans understood that domestic slavery was the basis for the oligarchy's power over the whole political community. Therefore, they did not view these restrictions of civil liberties, as they pertained to antislavery speech and associations, as exceptional to an otherwise free or democratic society. Since slavery was integral to the ruling oligarchy's power, the proscriptions of antislavery speech and associations were integral to the preservation of the regime governing the southern states.

In 1856, Henry Wilson contrasted the freedom of speech in the free and slave states. On the one hand, Georgia Senator Robert Toombs, "whose views upon this question of slavery are known to be extremely ultra," had recently visited Boston, gave a lecture, and was "received by all with that courtesy." At that very time, Thomas Benton was in the North lecturing without any threat to himself, "although he holds views in regard to slavery that not one man in ten thousand in that section approves" (34 Cong 3, Appendix, 66). On the other hand, northerners could not safely visit the slave states and

speaking their views without encountering threats and censorship. Wilson concluded, “In the slaveholding States free speech and a free press are known only in theory. A slaveholding, slavery-extending Democracy has established a relentless despotism” (34 Cong 3, Appendix, 66). By “Democracy,” Wilson used the contemporaneous term used for the national Democratic Party, controlled by the slaveholders. Ironically, the “Democracy” had so limited free speech that no Northerner could safely utter antislavery sentiments. This suppression of free speech aided in establishing despotic government coextensive with the boundaries of slavery.

As many Republicans did until the war, Wilson detailed several examples of prominent southerners who had affiliated with or had shown sympathy towards his Republican Party and were driven from the South. He commented:

Sir, I have said that you have no freedom of speech at the South. Senators have denounced us as sectional, because we have no votes in the South. That reminds me of the Dutch judge, in old Democratic Berks who kicked the defendant out of doors, locked the door, and then entered a judgment for default. [Laughter.] Your native sons stand on electoral tickets, or vote our principles, at the peril of life. Then, when you are able with your iron despotism to crush out all there who would go with us, you turn round and tell us we are getting up a sectional party. I assure you, there are tens of thousands of men in the South whose sympathies are with us, but they have no opportunity so to vote (34 Cong 3, Appendix, 67).

Wilson might reasonably have inferred that “thousands of men in the South” – probably with reference to the vassal class of non-slaveholders – might have voted Republican, from available evidence that this class resented the boot and spur of their rulers whom the Republicans opposed. In Missouri, a “cleft” slave state where the non-slaveholding class still maintained their political strength, the people did show their inclination towards Republicans, which Wilson pointed out:

In the city of St. Louis, nearly three thousand Germans, to show their devotion to liberty, went to the ballot-boxes, when they could get up no State ticket for [Republican presidential candidate] Fremont, and voted for Millard Fillmore, the Know Nothing candidate, with the word "Protest" printed on their ballots, an act which illustrates your despotism, and shows that these men who were true to liberty in the Old World will not be false to their cherished convictions in the new (34 Cong 3, Appendix, 67).

In 1860, Wilson presented more examples of southern governments' disrespect for civil liberties and rule of law. He held up an enactment in South Carolina by which free colored persons arriving on ship-board from the North were to be incarcerated without recourse to a writ of *habeas corpus*. Others in the North believed this law was unconstitutional, and so, in 1843:

Massachusetts sent to South Carolina one of the foremost advocates and men of our State. He went to that State to have this law tested in the judicial tribunals of the country... [a]nd he was forcibly expelled from that State; and to add to that indignity, a law was passed imposing the highest penalties if any person came into that State for the purpose of obstructing this law by any legal process... On the 18th December, 1844, the Legislature of South Carolina passed a law to prevent any person thereafter coming into the State for the purpose, or any attorney or other person in the State, from instituting any proceeding that should test the constitutionality of her law of 1820, which imprisoned and sold into perpetual slavery the free colored persons of the North coming into the State in merchant vessels or otherwise; visiting any such person with the most fearful penalties (36 Cong 1, 594-596).

Wilson read aloud a summary of each section of the enactment to show that the South Carolina government blocked a fair legal process to try the constitutionality of state law. He then referenced a Virginia law similar to South Carolina's 1820 law, authorizing warrantless searches of any vessel for fugitive slaves and imposing a tax on the vessels for the cost of the search.

According to Representative Isaac Arnold, the chief magistrates of antebellum southern state governments approved of censorship and openly flouted due process of law

in order to attack antislavery men. Some slave state governors had offered “large pecuniary rewards” as bounties “for the persons of prominent men in the free States, because of their opposition to slavery.” Virginia Governor Wise had said, “the best way to meet abolitionists is with powder and cold steel.” South Carolina Governor McDuffie “recommended that abolitionists be punished with death without benefit of clergy” (Arnold 1866, 39). These executive actions accorded with the anti-republican character of the slave state political society:

Neither at the bar, nor in the pulpit, neither from the newspaper, the stump, nor from the bench; among the people, before the courts, nor in the legislative halls, was the voice of liberty secured by law, permitted to be heard. Negroes, fugitives from slavery, were scourged, whipped, and in some cases burned to death. The literature of the English language, school books, and books upon religion, literature and painting, were expurgated, and the generous, manly, eloquent utterances of liberty, stricken from their pages. Such was the dark despotism which settled over the land of Jefferson and Washington (Arnold 1866, 41).

The power behind these oppressions, Arnold said, was “an aristocracy of slaveholders.”

Leading up to the 1860 presidential election, Republicans again heard the charge that they were a sectional party. They replied that they would not be a sectional party if southern governments respected civil liberties. Illinois Representative Owen Lovejoy addressed the “sectional party” charge in 1859: “Oh, we have no delegates from slave States to attend our national nominating conventions! Why have we none? Mark! because, if delegates attend these conventions they are mobbed and driven into exile” (35 Cong 2, Appendix, 197).

Lovejoy then illustrated the contrast between the freedom of political association in the free states enjoyed by minority Democrats and the political intimidation faced by would-be Republicans in the slave states. He presented this hypothetical: “What if we, in

the free States, should say to the [northern] Democrats, ‘if you attend the [Democratic national] Charleston convention we will hang you,’ and thus keep them all at home, and then reproach them with being a sectional party, because only the slave States were represented?” The answer Lovejoy predicted would be, “Well, you have no votes in the slave States; your principles do not circulate with us at all; you dare not even proclaim your doctrines among us.” The reason why Republican principles did not circulate in the slave states was because southern governments violated other civil liberties:

And why do not our principles circulate in the slave States? They used to, for they are the principles of Washington and Franklin and other founders of the Republic. The reason why our principles do not circulate in the slave States is, that this despotism has, like another Napoleon, crushed out the freedom of speech and of the press. Allow us free access to the minds of the non-slaveholders of the South, and in one year we would have more Republican votes, in proportion, in the slave States, than there are Democratic votes in the free States (35 Cong 2, Appendix, 197).

In the South, the slave state governments had crushed out the liberties of the American Revolution, just as Napoleon had crushed out the liberties of the French Revolution. In early 1860, Representative Charles Van Wyck (NY) made the same argument as Lovejoy:

Remove the despotism of opinion and anarchy of violence from your own people and an unfettered judgment in your own States would rally thousands around the [Republican] standard of free labor, free schools, and free soil. See the once proud State of Virginia laying her hands on the mails and authorizing some prejudiced justice to sit in judgment and condemn to the flames all publications that excite his ire. And this, beyond all things, shows the outrage and enormity of the system, which cannot be sustained, except upon the destruction of all those rights which should be the boast of a free people (36 Cong 1, 1031).

In the debates over the upcoming 1860 election, Massachusetts Representative Daniel Gooch contrasted freedom of speech and association in the North and the South. He called on Southern leaders to “frame your platform as you please; present it, with your

candidates for office, to the people.... We [Republicans] will do the same. If we are beaten, we will acquiesce, live in obedience to the Constitution and the laws, and see to it that the Union is preserved” (36 Cong 1, Appendix, 295). “We intend to act in good faith,” said Gooch, but he needed assurances that southern statesmen would act in the same good faith, asking them to “pledge yourselves anew to the same course,” and promised that they “will not question that you intend to do the same.” The Republican Party intended to canvass “every portion of the American people where free speech is tolerated and the rights of the citizen under the Constitution respected.” Gooch doubted that constitutional rights were respected in “every Community in the land.” If those rights were breached in the coming canvass, “we have only to say to you, perform your constitutional obligations.” He and his Republican Party proposed “to appeal to the reason and judgment of the people, not to their fears, prejudices, or passions. We hold that threats are poor arguments, and that he who addresses them to any portion of the American people fail to appreciate his audience.” At this point, Gooch balked at directly accusing southerners of suppressing civil liberties, and instead addressed the issue indirectly, as many did, obviously trying to preserve sectional amity and Union, if it were still possible.

But secession having commenced, Gooch shed circumlocution. Less than one year later in 1861, he directly blamed secession on the suppression of civil liberties in the South; for if the state governments had respected the rights and liberties under the Constitution, the southern people would have directed their governments away from that course. He framed the difference between North and South as a conflict between “two systems of labor,” as many did: between “free labor and slave labor” (36 Cong 2,

Appendix, 261). These two systems “had existed since the beginning of the Government,” and the conflict between them “is no more irrepressible now than it has been for the last half century.” Gooch borrowed from the popular phrase “irrepressible conflict,” coined by New York Senator William Seward in 1858. Sectional conflict between these two systems had been and was still irreconcilable, but the Union had always seemed to survive intact. Why secession now? Gooch noted that some political radicals in both sections were making demands to amend the Constitution in opposite directions – some, to abolish slavery, and some to nationalize slavery. He said it was not strange to find radicals in both sections of the country.

But it is strange that in the one section of country they should lead and control the whole mass of the people, while in the other they are wholly unable to exert any influence over the people; that in one section they should be able to organize open rebellion against the Government, while in the other they can scarcely disturb the loyalty of any citizen to the Government, or excite the least hostility towards the people of the other section of the country. Why this difference? The people of the North know and understand everything that pertains to the South. Your newspapers are found in all our villages, and are read by all classes of men. Southern men speak freely their opinions at the North, both in public and private. Freedom of speech and the press, liberty of thought and action, are everywhere protected. We ask no safeguard against error, but truth. Not so in the South. Your people do not understand the feeling, principles, and motives of the people of the North. No northern man, who honestly represents the sentiments of the North, is permitted to speak to your people. No northern newspaper, representing the political sentiments of the North, is permitted to enter or be read in your States. All that your people know of the principles and intentions of the Republican party they have learned from our political opponents. The more of that kind of knowledge they have the less they know of us. Freedom of speech and the press is everywhere in the South denied, and the passions of your people are so constantly inflamed against the people of the North that a northern man, when in one of your States, is under the same surveillance and restraint that he would be in an enemy's country. Any expression of thought or opinion not satisfactory to your people exposes him to indignity, and sometimes to death.

If freedom of speech and the press had never been denied by you, the disunionists in the South would be no more numerous or powerful today than they are in the North. They would not now be an appreciable quantity among the political forces

of the country. Here, I think, we find the origin and cause of the evils which are now upon us. Had freedom of speech and the press been maintained with you as with us, it would have been as impossible to make the people of South Carolina revolt against this Government as it would the people of the most loyal State in the North. The principles and intentions of the men of the Republican party would then have been understood by your people; and although there probably would have been a difference of opinion in some respects as to what the action of this Government should be in relation to slavery, still that difference would never have led the people of the South into rebellion against the Government.

All your people would have known, as you, their Representatives, know, that we claim not the right, and have not the wish, or intent, to interfere with slavery or any other institution in your States.

Under our system of government, freedom of speech and the press is as essential to the safety of the Government as to the protection of the rights and liberties of the citizen. The evils that are now upon us might have been foreseen as the natural consequence of the suppression of freedom of speech and the press, for many years, in almost one half of our country.

Distrust and fear of the Government, and hostility towards the people of the other section of the country, are its natural fruits (36 Cong 2, Appendix, 261-262).

In 1860, Massachusetts Representative Thomas Dawes Eliot contrasted free speech in the free and slave states. As an apparently conciliatory gesture, he conceded to southern representatives that states in each section limited absolute personal freedom in its own way, peculiar to the condition of its section. But he denied that individuals in the South had recourse to due process of law when charged with violating the laws peculiar to each section. The sections were not equal in sustaining the right of a fair trial, and through this legal development, southern governments had delivered a crushing blow to civil liberties. When observing the general cause of the contrasting character of the laws in each section, Eliot withheld his moral criticism of the substance of the difference between the free and slave sections, saying, "The right of free discussion is claimed in every State within our Confederacy. The exercise of that right must, perhaps of necessity,

be affected, qualified, controlled, in a degree, by the character of the social or domestic institutions within the State” (36 Cong 1, 258).

The peculiar character of peculiar state institutions affected the different ways that laws limited free speech. If a slave state legislature enacted a law prohibiting the utterance of antislavery opinions in order to prevent “insurrectionary violence,” Eliot acknowledged he had “no right to violate that law. It is plain enough that free speech is to that extent controlled.” But a free state legislature might, “for reasons of State policy or necessity,” decide to “prohibit the dissemination of doctrines subversive of the laws of God.” Likewise, “to that extent the right of free speech would also be controlled.” The difference between the two sections that Eliot wanted to highlight was this:

But if, in a northern State, a man should disobey, claiming that the law itself was in violation of his constitutional rights, he would act at his peril, but it would be a peril under the law. He might discuss its constitutionality with perfect safety. If the law were sustained, punishment would follow his offense. That he would expect. If not sustained, his right of free speech would be vindicated. No gentleman will say, I think, that a like security would be afforded in a southern State.

Well, sir, let it be so. Forbid discussion by law, if it be thought best; punish discussion by summary administration of Lynch law, if you will; deny, if you choose, all appeals by which the constitutionality of prohibitory laws may be tested (36 Cong 1, 258).

Like Wilson, Eliot doubted that southern governments upheld due process of law, essential to republican rule of law and the protection of civil liberties. In this respect as well, southern governing principles were hostile to republican government. Eliot believed that “the courts of the South” were not open, “as those of the North always are, to the freest inquiry and the fullest latitude of examination.” Because of this, “the rights of free discussion and of free speech” in the South” were not acknowledged “in deed and

truth,” but only “by word of mouth.” He understood the ultimate motive behind these restrictions on free speech regarding slavery. Arguing for confiscating and liberating slaves in the rebel states during the war, he said:

Slavery is the cause of this rebellion; slavery is the power and strength of our enemies: have we not the right to remove the cause of the rebellion? Have not we the right to weaken the power of our enemies? Slavery lies at the root of this treason: can we not eradicate the treason? ...

Why, sir, from the beginning of this rebellion we have heard it stated by the traitors that they have a power peculiar to them in their institution of slavery. It was stated here in Congress. We have heard it from Mr. Keitt and Mr. Stephens here, and from Mr. Keitt and Mr. Stephens there... (37 Cong 2, 80).

Those leaders of the rebellion depended upon slavery for their “power and strength,” but that statement equated the minority class that owned most of the slaves as the possessors of political power. Any threat or blow to that institution sapped “the power and strength” of those who possessed political power, and this explained how and why the restriction of civil liberties concerning slavery supported the maintenance of that minority’s power.

Southern statesmen attempted to counter the Republicans’ arguments that poor whites were oppressed. In 1860 James Ashley took up an argument by a South Carolina representative who “boasted not only of the happiness of the people, but of the contentment and fidelity of the slaves to their masters; as also of the loyalty of the poor whites of the South to the institution of slavery; and stated that out of a large number who volunteered to go to Virginia and aid Governor Wise during the John Brown troubles, but five or six were slaveholders; and instanced this fact as proof of their loyalty” (36 Cong 1, Appendix, 374). At this claim, Ashley countered that slave state governments had restricted freedom of the press, and he directly explained why those restrictions were not

accidental, but were, rather, a necessary consequence of the kind of southern government established in the South:

If it be true that they are thus loyal – and I do not intend to controvert the fact as stated – why is it that this class of poor whites are not permitted to read whatever they may prefer to read, as the slaveholders do themselves? I will say nothing about the penal enactments, prohibiting, by fine, the lash, and imprisonment, any and all classes of persons – white or colored – whether Christian or not, from teaching their slaves to read or write; for such laws are inseparable from the system. It is well known that the loyalty of the slaves can only be depended on while they are deprived of the power of communicating with each other. But if the poor whites are loyal, why are they also proscribed? Why are they deprived of the pleasure and profit which they would derive from reading that staunch old Democratic paper, the *New York Evening Post*; or that invaluable paper, the *New York Tribune*; or that first of all religious journals, the *New York Independent*? Why is it that they are forbidden to read such a book as *Uncle Tom’s Cabin*, or the *octoroon*, or any paper, whether Republican or independent of party, that is unfriendly to slavery; or even to receive and read private letters from the free States, unless first subjected to a censorship by the privileged class? There can be but one answer to these questions; and that is a distrust on the part of the ruling class of the fidelity of the poor whites, and fear of their political power, should they unite, as they might do, and, at any time, take possession of all the southern State governments, and administer them for the benefit of the whole people, instead of permitting them to be administered as they are today – exclusively for the benefit of a class interest (36 Cong 1, Appendix, 374).

In 1860, Massachusetts Representative Henry Dawes said that a southerner who might dare print or distribute printed anti-slavery material “against this self constituted censorship, is sunk beyond fathom, and the editor himself... is shot down and made food for dogs.” The Constitution “wraps itself like a coat of mail around the citizen, for his protection, wherever his footsteps may lead him within the broad limits of this Republic.” But in the slave states, the Constitution “is set at naught, and its very joints pierced as worthless gossamer, by the fell spirit of this demon in its mad attempt to bend every knee at its altar.... A Northern man may to-day roam the world over, outside of the Southern States, free in thought and speech, in more safety of person than he can inside them” (36

Cong 1, Appendix, 227). This was an astonishing claim. Americans were freer in the un-republican world outside the boundaries of the Republic than in the putatively republican slave states of the American South.

Institutional Basis of Oligarchic Rule in the South: Constitutional Organization of Government

Like Waitman Willey, Jacob Blair was from the western part of Virginia before the war, and served in the House of Representative when Virginia seceded and most other Virginian seats in Congress were vacated. During Reconstruction, Blair represented the new state of West Virginia. In 1862, he explained how the aristocratic eastern section of Virginia dominated his and Willey's western section of Virginia prior to the war. In Blair's western section, few owned slaves and the institution was dying. As a result, he said, "The habits, tastes, and industrial pursuits of the people residing in the two sections of the State are as unlike each other as perhaps any two States in the Union" (37 Cong 2, Appendix, 329). The people in Blair's western section were like free state people, "hardy, industrious and energetic." But they chafed under the yoke of the aristocratic eastern section. He recounted the fight between the two sections in the Virginia state constitutional convention of 1850. The western section wanted representation in the state legislature to be apportioned by "the white basis." By enumerating white population alone and then dividing representation equally into that enumeration, the state constitution would not apportion additional representation to the eastern section on account of the eastern section possessing a much larger share of slaves.

In Virginia, as in other states that enumerated slaves in apportioning representation in the state legislature, slave-owners could gain disproportionate influence over the state government in this fashion. The more slaves they owned, the more representation they would receive. Similarly, slave-holding states received more representation in the United States House of Representatives, because Article I, Section 2 of the United States Constitution enumerated “three-fifths of all other persons,” i.e. slaves, in apportioning representation to that body. But within slave states like Virginia, slaves were more numerous in proportion to the total state population than the number of slaves in the whole United States in proportion to the total national population. And slave density considerably varied within the slave states. When the slave state constitutions enumerated slaves in apportioning representation using the federal three-fifths ratio or by other formulae, intra-state sections where slaves were concentrated would receive a substantial grant of political power for slave ownership. In contrast, low slave-owning sections of the state would lose political representation and political influence over the state. This contributed to the non-slaveholders’ loss of political liberty in the slave states and provided a direct means by which the slaveholders acquired and maintained their rule over non-slaveholders.

Covering this ground, Blair explained that, in the Virginia constitutional convention of 1850, the aristocratic eastern section struck a deal with the central section of the state. This deprived Blair’s western section of the “white basis” formula they were seeking for apportioning representation to the state legislature. The aristocracy of Virginia preserved its domination. They “secured for themselves the control of the legislative department of the State until the day of judgment and a day after, and leaving

those residing west of the Alleghenies to shift for themselves the best they could” (37 Cong 2, Appendix, 330).

Blair and Willey’s western Virginia colleague, Kellian Whaley, summed up the instructive conflict between the slaveholding and non-slaveholding sections of their state:

But the greatest wrong and insult which has degraded us politically and socially is what is called the “mixed basis of representation.” In the west portion of the State there exists a large majority of white population, and in the other portion the slave property interest, and giving rise to diversity of sentiment. The east insists upon protection of property by apportionment of representation; that the majority of the people should not rule, but the majority of interests; that the great wealth of the State is in slaves, and that the forty-thousand slaveholders of the east should rule; that while eight hundred and ninety-eight thousand people have, say fifty representatives, \$495,000 of taxes must also have fifty representatives; that slavery, and not free white men, is the element of political power; that more than one hundred and twenty-five thousand citizens of the west are properly denied representation in the councils of the State; that, with an immense majority of free white men in the west, the legislative power is rightly placed in the hands of the minority, giving them thirty majority on joint ballot in General Assembly, as Mr. Scott said in Virginia convention, “to secure property [slaves] by not surrendering the legislative control to a majority of mere numbers.” As Mr. Beale also said, “to protect slavery from West Virginia” (37 Cong 2, 3269).

If southern state constitutions enumerated slaves in apportioning state representation, each incremental slave weighted the scales of political power within the state, in favor of slaveholders. Slave numbers, combined with these southern state constitutional provisions, contributed to the elevation of southern oligarchy and the degradation of non-slaveholders’ political liberty in the South. The increase and uneven concentration of slaves under such constitutions would make this class of non-slaveholding southern Americans politically irrelevant to the government of these states.

Through the enumeration of slaves in apportioning representation, the Confederate government more deeply institutionalized the political impotence of non-slaveholders in the states comprising the new nation. Article I, Section 2 of the

Constitution of the Confederate States of America also enumerated slaves by the federal ratio in the United States Constitution – the three-fifths clause – to apportion representation for the popular branch of its national legislature. On the surface, this transposition of the three-fifths clause appears to imply that the constitutional organization of the United States government and Confederacy’s government did not at all differ. But by the 1860 census, the ratio of slaves to free population in the United States approached one to seven; in the Confederacy, it was one to 1.5. This meant that slave-owners enjoyed far more political power in the Confederate government than they did in the United States government.

Waitman Willey understood that the slave-owning oligarchy knew what kind of national government they formed when founding the Confederacy. He adverted to antebellum slave state constitutions containing provisions already securing the political ascendancy of the oligarchic class in the slave-holding states, as that class had done in his own Virginia. Willey indicated that his audience of free state Republican Senators knew this. In evidence of the secessionists’ purpose to establish an independent oligarchic regime as an independent nation, he said:

I need hardly remind Senators of the arbitrary provisions existing in the fundamental law of many of the southern States, such as the qualifications of members of the General Assembly of South Carolina, requiring that they should own slaves and land, and the apportionment of representation upon the basis of property, as in Virginia. Nor is it necessary to do more than allude to the indisputable fact that free labor in the South is everywhere esteemed as degrading. The teachings of Mr. Calhoun against the majority found a wide-spread lodgment in the minds of southern statesmen. An aristocratic sentiment, carefully and sedulously inculcated, had become everywhere prevalent, especially in the Gulf States, prior to their ordinance of secession (38 Cong 1, 1230).

Blair and his constituents experienced what the slave-owning aristocracy did with this power in his own state. In the 1850 constitutional convention in Virginia, the aristocrats of the east also gained for themselves a provision in the constitution that exempted \$200,000,000 of slave property from taxation. But, Blair complained, “every knife and fork; every bed, whether feather or straw; every horse, mare, and gelding, whether blind, spavined, or wind-broken; every old clock, whether it had refused to tell of the passing hours or not; in a word, every species of property, real, personal, and mixed, west of the Alleghany mountains, was taxed, taxed, taxed!” (37 Cong 2, 330). Blair’s western section of Virginia paid the state’s bills, and the state “spent millions upon millions in wild schemes of internal improvements” for the aristocratic eastern part of the state (329). The western people were ruled and used for the advantage of the rulers. Western Virginians, Blair said, “do not claim by birth or otherwise to be superior to their eastern brethren or their countrymen at large, [but] they do maintain they are the equals of either.... We do not belong to the ‘mudsills’ of society” (329-330).

Western Virginian Jacob Blair’s denial that he and his constituents were “mudsills” referred to the name South Carolina Senator James H. Hammond gave to all laboring classes, free or slave, in a 1858 speech on the floor of the United States Senate (35 Cong 1, Appendix, 71). To Hammond, the laboring mudsill class was unfit for any participation in government and was not politically equal to the ruling elite, a charge Blair denied. Blair’s denial paid notice to the view by which he believed the aristocratic eastern section held his section of the state. That view explained why eastern Virginians kept western Virginians in political vassalage. The western Virginians unwillingness to remain in vassalage explained why they sought admission into the Union as a state

separate from Virginia, as the western Virginians so urged upon their congressional colleagues, with success.

Another provision in the constitutional organization of slave state governments by which the aristocracy secured their rule was the *viva voce* or open ballot vote. This provision required that electors declare their votes in person or on a ballot that could be viewed. In 1867, Charles Drake alluded to this when proposing an amendment to a supplementary reconstruction bill. His amendment required closed ballots in elections in the former insurrectionary states, which prohibited the use of *viva voce* or open ballots. Drake, a Missourian, strongly urged his amendment, which surprised his sympathetic Republican colleague, Henry Wilson. Coming from town hall-schooled Massachusetts, Wilson did not understand the fuss. He recalled his fellow citizens' initial enthusiasm, and then indifference to their state's adoption of a secret ballot law:

I have had some little experience in this matter of the secret ballot. Some fifteen years ago we of Massachusetts enacted a secret ballot law and we were right confident that we had made a great radical reform; but when the day of election came round, and our people who had ever been accustomed to the open ballot were required to put their votes in sealed envelopes, they somehow got it into their heads that our great radical reform was just no reform at all. So the compulsory portion of the secret ballot law went down... and no one now thinks of sealing up his vote (40 Cong 1, 102).

But voting secrecy mattered in the domain where slavery had reigned and where the common people had reason to fear the controlling frowns of aristocrats. Drake gave a very different account of the ballot system in his state:

I have offered this amendment because of my knowledge from actual observation during a large portion of my life of the power which the minority of the people have exercised over the majority in some of the States of this Union through the *viva voce* system of voting It is perfectly manifest to me that whenever these States are reconstructed the power is no longer to be in the hands of their aristocracy. The masses of the people, those upon whom the reproach has

heretofore been cast of being the “poor white trash” of the South, combined with those who have heretofore been trampled down even below the “poor white trash” in the slavery to which they were subjected, these two classes are to be, until the infusion of a new life from the North into that region shall have taken place, the Governors of these rebel States.... [N]o man is to stand at the polls in any of these States and frown down the will of the people, as has been done for long years past.... If this measure be not adopted by the Senate, what will be the result? They will form their constitutions and they will perpetuate *viva voce* voting in every one of these States; and when you have got that perpetuated in their constitution, good bye to the will of the loyal people of these States; each one of them will still be governed, as it has been in all time past, by an aristocracy... (40 Cong 1, 99).

Drake claimed that through the institution of the *viva voce* or open ballot vote alone, the aristocracy would preserve its old rule over the people, whereas in Massachusetts, electors apparently became bored with the closed ballot and indifferently returned to the open ballot. This contrast highlighted the different effects of the institution among a politically equal versus unequal people. The republican citizens of Massachusetts did not need to fear their equal fellow citizens’ knowledge of their votes; the ruled subjects of the ruling oligarchy in the slave states did need to fear their political masters’ knowledge of their votes. The *viva voce* vote had no effect on a republican political society, but provided a powerful support to the rulers in an oligarchic political society.

Institutional Basis of Oligarchic Rule in the South: Land Monopoly

Reconstruction Republicans understood that the inter-state ruling class of the slave state oligarchy depended upon their class’s monopoly of land to maintain its rule. The common Republican view on the relationship between land distribution and southern

oligarchy was complex but critical to their general understanding of how the southern regime maintained its form.

Representative George Julian is most instructive on this issue. Julian served as Chairman of the Committee on Public Lands from the 38th Congress through the 41st Congress (1863-1871). He probably spoke and wrote more than any other Reconstruction Republican on the relation between land and the form of southern government. Needless to say, the position he held afforded him unique access to information and unique influence on land policy and reconstruction in the South. Since Julian was the senior House member overseeing land policy in the Republican-dominated Congress, his position can be fairly construed as representative of Reconstruction Republican opinion on land issues.

Writing retrospectively in 1884, Julian contrasted the disposition of lands in the free and slave states:

The laws regulating the ownership and disposition of landed property not only affect the well-being but frequently the destiny of a people. The system of primogeniture and entail adopted by the Southern States of our Union favored the policy of great estates, and the ruinous system of landlordism and slavery which finally laid waste the fairest and most fertile section of the Republic and threatened its life; while the New England States, in adopting a different system, laid the foundations of their prosperity in the soil itself, and “took a bond of fate” for the welfare of unborn generations. Their political institutions were the logical outcome of their laws respecting landed property, which favored a great subdivision of the land and great equality among the people, thus promoting prosperous cultivation, compact communities, general education, a healthy public opinion, democracy in managing the affairs of the church, and that system of local self government which has since prevailed over so many States (Julian 1884, 296-297).

What form of government did the land laws in the South predestine? In 1850, Julian publicly said, “a domineering oligarchy” (Julian 1872, 49); in 1852, a “heartless

aristocracy” (68); in 1857, a “Slave Oligarchy” (137) and a “merciless aristocracy in human flesh” (152); in 1862, a “remorseless oligarchy” (165); in 1863, a “mighty aristocracy based upon ownership in men” (207); in 1864, a “grinding aristocracy resting upon landed estates” (221) and an “aristocracy founded on the monopoly of the soil” (224); in 1865, a “pampered oligarchy” (269); and in 1868, a “relentless landed aristocracy” (409).

Julian first entered the House of Representatives in 1849 as a member of the Free Soil Party, dedicated to keeping United States territories free from slavery. In his first major speech in 1851, he advocated the passage of a homestead bill that would divide public lands, as New England land was divided, into limited plantations for actual settlers. His defense of this bill explained the difference between a land policy conducive to American republicanism and a land policy conducive to oligarchy.

From 1785, the United States government had disposed of around 150 million acres of public land. Julian’s speech noted that the government currently held 1.4 billion acres, nearly ten times the amount of land the government had released since 1785. The bill under consideration, Julian said, would fundamentally change American policy on public lands. Rather than using the lands to generate revenue for the United States treasury or for grants to state governments, as the national government had previously done, the bill directed the government to give limited parcels of land to “actual settlers, on condition of occupancy and improvement” (Julian 1884, 51). This policy was best, he said, both on the grounds of economy and “humanity and justice.” But most of his speech is occupied with defending the policy on the second ground.

He advocated this policy “on the broad ground of natural right.” The “first principles” of American government held “it to be wrong for governments to make merchandise of the earth.” Congress should recognize “this fundamental truth... in devising measures for the settlement and improvement of our vacant territory.” Julian drew his first principles from the *Declaration of Independence*. He affirmed “the natural right of the landless citizen of the country to a home upon its soil” (Julian 1884, 51-52). He was recovering a natural rights moral claim to the government-held lands on behalf of the sovereign rulers, the whole people. These principles could not justify public officials’ use of the public lands as “merchandise,” that is, as booty for visionary projects profiting a favored few. He refused to recognize a moral claim by a governing class distinct from the people. But he also distanced himself from the doctrines of “Agrarianism,” “Socialism,” and “leveling,” which he explicitly disclaimed. In later years, Julian gave proof that he had not believed in these doctrines when he joined the pro-free trade, pro-hard currency Liberal Republicans who bolted from the Republican Party in the early 1870s (Julian 1884, 335).

Julian also disavowed any intention to interfere with state land policy. In taking this position in his 1851 speech, Julian was mollifying those in his hearing who might be inclined to guard their state governments’ policy of merchandising their lands, or doing anything else with their land contrary to natural right. That is, if the aim of slave state statesmen was to assist their ruling class’s private hoarding of state-held public lands, he would have nothing to say. However, with respect to the national government’s policy towards land in the national territories, Julian insisted on a policy respecting the first

principles of American government, and he opposed the adoption of policies favored by states that administered land on another principled basis.

Julian then stated what original natural rights individuals possessed in the state of nature, which the “vacant territory” approximated:

The earth was designed by its Maker for the nourishment and support of man. The free and unbought occupancy of it belonged, originally, to the people, and the cultivation of it was the legitimate price of its fruits. This is the doctrine of nature, confirmed by the teachings of the Bible. In the first peopling of the earth, it was as free to all its inhabitants as the sunlight and the air; and every man has, by nature, as perfect a right to a reasonable portion of it, upon which to subsist, as he has to inflate his lungs with the atmosphere which surrounds it, or to drink of the waters which pass over its surface. This right is as inalienable, as emphatically *God-given*, as the right to liberty or life; and government, when it deprives him of it, independent of his own act, is guilty of a wanton usurpation of power, a flagrant abuse of its trust. In founding States, and rearing the social fabric, these principles should always have been recognized. Every man, indeed, on entering into a state of society, and partaking of its advantages, must necessarily submit the natural right of which I speak (as he must every other) to such regulations as may be established for the general good; yet it can never be understood that he has renounced it altogether.... It attaches to him, and inheres in him, in virtue of his *humanity*, and should be sacredly guarded as one of those fundamental rights to secure which “governments are instituted among men” (Julian 1872, 52, original emphasis).

The natural right to the earth in the state of nature still inalienably adhered to human nature in the state of society. Though the social compact requires attenuation of the natural right to the earth, the right can only suffer limits for the sake of the *general* good, not for the good of a privileged few. But the United States held 1.4 billion acres of public land; no limitation of the right to the earth was necessary or sufferable, and certainly not for the sake of the *general* good. Since equal, natural rights-bearing individuals formed the social compact that created the American government, the lands held by the American government belonged to the people, jointly.

If the government withheld from the people their natural right to the earth, their means of living, the government would unjustly reduce many to dependency and begging. He asked, “Does government then fulfill its mission when it encourages or permits the monopoly of the soil, and thus puts millions in its power, shorn of every right except the right to beg?” (Julian 1872, 53). It was true, Julian said, that some who do not receive government’s protection of this right “are not altogether destitute” of the blessings of comfort, “but they are dependent for them upon the saving grace of the few who have the monopoly of the soil” (53). However, “The sentiment is becoming rooted in the great heart of humanity, that the right to a home attaches of necessity to the right to live, inasmuch as the physical, moral, and intellectual well-being of each individual cannot be secured without it; and that government is bound to guarantee it to the fullest practicable extent.” The bill would give “independent homesteads to the greatest number of cultivators, thus imparting dignity to labor, and stimulating its activity” (54). The happiness of any nation depends proportionately on “the number of independent cultivators of its soil;” an axiom neglected by most governments. This neglect “has been one of the great scourges of the world.” With so much available land at the government’s disposal, national legislators “now have it in our power, without revolution or violence, to carry [these principles] into practice, and reap their beneficent fruits.” Wise policy shows the citizen that it serves “the promotion of the public good, by a scrupulous regard for his private interest.” Policy guided by this principle “will establish the strongest of all ties between him and the State” (54).

Julian’s argument aligned the homestead legislation with the self-regard republican citizens have for their natural rights. Citizens’ regard for their natural rights,

including their natural right to the earth, is the self-interest, properly understood, that legislators should “scrupulously regard.” This was the only just basis for property rights. He aligned the opposition to the neglect of citizens’ self-interest in exercising that right, in favor of the “merchandisers” of the soil, a policy carried out by most earthly governments, which has been a “scourge of the world,” that is, a scourge of the people. A government that respects the natural rights of the people will be a government that binds the people to its government; it is a government that proves it is of, by and for the people; it is a government that rules for the common good. Julian exhorted his colleagues, “Give homes to the landless multitudes in the country, and you snatch them from crime and starvation, from the prison and the almshouse, and place them in a situation at once the most conducive to virtue, to the prosperity of the country, and to loyalty to its government and laws” (Julian 1872, 54). Rather than becoming “pauper and outcasts,” the people “will become independent citizens and freeholders.” Seeing that their government attends to their interest, citizens will become “pledged by their gratitude to the government, by self- interest.” Due to “the affections of our nature,” that is, the affection human beings have for what belongs to them, these citizens will “consecrate to honest toil the spot on which the family altar is to be erected and the family circle kept unbroken.” That is, they will cultivate and develop their property, and give their community, family, and religious lives a prosperous, durable foundation. The result will be: “They will feel, as never before, the value of free institutions, and the obligations resting upon them as citizens” (54-55).

And, according to Julian, they will fight: “Should a foreign foe invade our shores, having their homes and their firesides to defend, they would rush to the field of deadly

strife, carrying with them ‘all the animosity of a personal quarrel’” (Julian 1872, 55). Citizens in communities that grow from the foundation Julian was trying to establish feel such a strong sense of ownership in a nation built up by like communities that they regard foreign foes as personal enemies. In a monarchy, by contrast, whereby only the royal head is sovereign, only the monarch so regards a foreign foe. A nation established on the basis of every citizen owning a personal stake in the nation’s property is a nation that is “owned” by the people in fact as well as in law. Ownership annexes a material foundation to the legal foundation of the sovereignty of the people. In war, “an army of such men, however unpracticed in the art of war, would be invincible” (55). The true power of a nation, its wealth and its supply of soldiers willing to fight, is rooted in its government’s goodness, which consists in the laws’ due regard for the natural rights of the people. Regard those rights, and the enlightened self-interest of the people will unite behind the goal of preserving the life of the government. Prosperity and general improvements in the nations of Western Europe have risen “just in proportion as freedom has been communicated to the occupiers of the soil,” that is, just in proportion as those governments have respected the people’s natural right to the earth. The changes in those Western European governments’ respect for those rights can be seen in the change in the political condition of the cultivators, from “slave,” to “villains,” to “metayers,” and then to “farmers.”

But Julian looked home for examples of governments’ disregard for natural rights in the most extreme form:

But I need not go abroad for illustrations of this principle. Look, for example, at slave labor in this country. Compare Virginia with Ohio. In the former the soil is tilled by the slave. He feels no interest in the government, because it allows him

the exercise of no civil rights. It does not even give him the right to himself. He has of course no interest in the soil upon which he toils. His arm is not nerved, nor his labor lightened by the thought of home, for to him it has no value or sacredness. It is no defense against outrage. His own offspring are the property of another. He does not toil for his family, but for a stranger. His wife and children may be torn from him at any moment, sold like cattle to the trader, and separated from him forever. Labor brings no new comforts to himself or his family. The motive from which he toils is the lash. He is robbed of his humanity by the system which has made him its victim. Can the cultivation of the soil by such a population add wealth or prosperity to the commonwealth? The question answers itself. I need not point to Virginia, with her great natural advantages, her ample resources in all the elements of wealth and power, yet dwindling and dying under the curse of slave labor. But cross the River Ohio, and how changed the scene! Agriculture is in the most thriving condition. The whole land teems with abundance. The owners of the soil are in general its cultivators, and these constitute the best portion of the population (Julian 1872, 55-56).

Wherever governments do not respect natural rights, the political community weakens; wherever governments respect natural rights, the whole political community flourishes. In Ohio,

[l]abor, instead of being looked upon as degrading, is thus rendered honorable and independent. The ties of interest, as well as the stronger ties of affection, animate the toils of the husbandman, and strengthen his attachment to the government; for the man who loves his home will love his country. His own private emolument and the public good are linked together in his thoughts, and whilst he is rearing a virtuous family on his own homestead, he is contributing wealth and strength to the State. Population is rapidly on the increase, whilst new towns are springing up almost as by magic. Manufactures and the mechanic arts, in general, are in a flourishing condition, whilst the country is dotted over with churches, school-houses, and smiling habitations. The secret of all this is the distribution of landed property, and its cultivation by freemen (Julian 1872, 56).

The secret of a political community's prosperity and power is to make laws that respect natural rights. By logical extension, governments that are imbued with respect for equal, natural rights will respect the people's right to the earth ("the distribution of landed property"), as well as their right to life and liberty, repudiating slavery in all forms and recognizing that the laborers are all "freemen," equal before the law. Equal freedom

and a just foundation for land distribution and property rights logically follow governments' respect for natural rights. Wherever the natural right to the earth is respected in law, individuals could equally expect to keep the fruit of their own unequal labors invested in developing raw material supplied by the earth. In other words, laws respecting the right to the earth "animate the toils of the husbandman," because by such laws the husbandman knows that the fruit of his toils will be justly recognized as his property. Even if the results of their labors disappoint their efforts, members of this political community would still be party to their communities' free social compact respecting natural rights. Furthermore, they could still benefit from free institutions arising from the state of nature organized on that basis – free churches, free schools, freedom of speech and the press, etc.

But governments imbued with disrespect for equal, natural rights will logically disregard the people's right to the earth as well their right to life and liberty. Under these governments, monopolists of the soil coerced labor, and the fruit of this labor was unjustly taken from the laborer. Both coerced labor and monopoly of the soil served the selfish interests of monopolists. In such a society, to work was to slavishly serve others rather than to make strides for self-improvement.

Under the former governments, independent farms cultivated by free, republican citizens and thriving political communities would predominate. Free institutions would predominate. Under the latter governments, wasting, large estates cultivated by slaves-in-name and slaves-in-fact would predominate. Institutions befitting despotism would predominate.

In the first case, labor was honorable; in the second case, degrading. These two contrary conditions of labor developed from governments' contrary disposition towards natural rights. Wherever natural rights were repudiated, an individual's proper self-regard for natural rights dictated that those free to choose to work or not work would refuse to imitate laboring slaves and would prefer poverty or seek escape rather than submit to the imperious direction of monopolists of the soil. James Garfield did observe that the southern planters drove "poor whites to the mountains, where liberty always loves to dwell, and to the swamps and by-places of the South" (38 Cong 1, 404). Those non-slaveholding, non-landholding whites loved their liberty more than their dependency, and so they escaped the reach of the ruling oligarchy to the "by-places of the South" where they could remain personally free, yet poor and alienated from government. In contrast, wherever natural rights received their vitality from positive law, individuals' proper self-regard for their natural rights dictated that those free to choose to work or not work would labor to better their condition and to prove their talents. This difference in the political regimes' regard for natural rights constituted the difference between "free labor" and "slave labor," terms so often flogged by antebellum and post-bellum statesmen on both sides of the free and slave state divide.

Reconstruction Republicans very often spoke for "free labor," a rallying cry of Julian's short-lived Free Soil party, and a rallying cry of the Republican Party since its original organization. Their concept of "free labor" was used as George Julian used it here – in opposition to southern praise for slave labor. Julian and the Republicans knew that the concept embodied principles as old as the American founding – the principles of

natural rights in the *Declaration of Independence*. These were the principles which Julian quoted and applied when defending his favored policy on the public lands.

Perhaps over-confidently, Julian argued that even where Congress did not legally block slavery from the territories, the effect of the homestead bill, once passed into law, would block slavery wherever that law operated. If Congress passed the bill, extending protection of the natural right to the earth “to actual settlers whose interest and necessity it will be to cultivate the soil with their own hands,” slavery would have no place to take root. “In a country cut up into small farms, occupied by as many independent proprietors who live by their own toil, it would be impossible, — there would be no room for it,” because slavery required large estates.

Under this homestead act, Julian predicted, “the poor white laborers of the South, as well as of the North, will flock to our Territories” (Julian 1872, 56). There, “labor will become common and respectable,” with the result that “our democratic theory of equality will be realized.” Free communities would develop, “whilst education, so impossible to the masses where slavery and land monopoly prevail, will be accessible to the people through their common schools.” Both “physical and moral causes will combine in excluding slavery forever from the soil”; hence, their land policy was “therefore an anti-slavery measure.” The law would “weaken the slave power by lending the official sanction of the government to the natural right of man, as man, to a home upon the soil, and of course to the fruits of his own labor.” The law would repudiate “the vicious dogma of the slaveholder that the laborious occupations are dishonorable and degrading” (56-57).

Wherever the “natural rights of man” received government sanction, that is, wherever the right to the earth was recognized in legislation organizing vacant territory (approximating the state of nature), communities of free people with institutions deepening the freedom of the people would develop. People could count upon these communities to resist the introduction of an institution based upon opposite principles that directly clashed with the natural rights principles supporting their claim to the soil. They would resist the institutions, as settlers of the Kansas Territory later did concerning the imposition of the proslavery, fraudulent Lecompton Constitution. But wherever the “natural rights of man” did not receive government sanction, that is, wherever the right to the earth was flouted and the government reserved the soil for “merchandisers” or monopolists, these free communities would not develop. In other words, monopoly of the soil and domestic slavery were complementary institutions in a political regime characterized by the rejection of the equality of natural rights. Equal subdivision of vacant lands and free citizenship were complementary institutions in a political regime characterized by the embrace of the equality of natural rights.

In 1859, Michigan Representative Francis Kellogg made similar points in arguing for a homestead measure accommodating actual settlers. He called for support from congressional colleagues who “professed to be friends of popular sovereignty and popular institutions” (35 Cong 2, 566). The government should invite settlers to till the soil, “make ye homes and found republics.” By the “true theory of our Government,” they ought to “individualize, and not monopolize, interests.” The government was not framed for the benefit of favored classes. “Ours is a Government of individualities, bound together for the mutual benefit and protection of all; and just in proportion as

individuals are prosperous, so will be the prosperity of the nation.” Insofar as it was possible, the government should “induce every individual, in his own right, to become an owner of the soil.” This policy “would make them loyal to the Government, for in fact, and not in theory alone, would it be their Government” (35 Cong 2, 566).

The land policy should serve the whole people and not classes who would monopolize the soil. This policy would bind the people to the government. The inauguration of the policy would show in fact that the government belonged to the whole people and not to favored classes. The policy would stimulate the growth of free communities and free institutions, which would become the backbone of new “republics,” or new states, protected by the enlightened self-interest of self-improving citizens. Kellogg would make “the Territories the habitation of a freeman. I would dot it all over with smiling homes” (35 Cong 2, 566). From that beginning would rise “first school and church, then town and city, with railroads, commerce, and manufactories.” This would “give security and stability to your political institutions, the landholder having the means of prosperity within his power, secured to him by the Government, realizes that he is an integral part of it; that its prosperity is his prosperity; that her permanence is his security; and that he has a direct interest in her advancement. He is as jealous of her honor as of his own, and will protect it as surely.” As a result, “the country would reap a thousand fold the value of her lands” (566). Free labor, which was nothing but the negation of slave labor and the positive recognition of natural right, yielded these benefits to the citizen and to a republican government.

Kellogg’s preferred land policy protected the element of free labor and “enables it to assert its right to the high position to which it is entitled in the political economy of our

Government” (35 Cong 2, 566). With this measure, free labor would be strengthened and would defy and overthrow “its great antagonism, slave labor,” regardless of “the political organizations and wrangling disputations of party chieftains,” and regardless of “Executive interference.” Rather, “the moral and political power that free labor engenders in the hearts and souls of free men” who “have known and felt its reward and dignity” would defeat slavery (566-567). Free labor, grounded in the government’s recognition of citizen’s natural rights, implants “manhood and vigor,” engenders a “moral and political power,” and gives “reward and dignity.” When citizens know that their right to the earth is recognized, they can work with the confidence that their government will protect the fruits of their labors; their work becomes dignified, and as a result, they will flourish, economically and morally, building up free communities. Citizens and free communities with these qualities develop immunity to free labor’s “great antagonism,” slave labor, and that immunity will repel the ingress of slavery more effectively than policy emanating from political parties or the national government.

Kellogg then considered the effect of this territorial land policy on the poor non-slaveholder in the South. He would “induce emigration from the South of the free, laboring men of the South, who, by the effects of a land-monopoly system inseparable from the institution of slavery, are landless and dependent, to the Territories, where, with an equal right to the soil, they would, with their own labor, thus honorable, become the molders of their own fortunes; and proud of their own creations” (35 Cong 2, 567). In the free territories, “they would spurn the chains that had restrained their energies; and being now independent, would hate oppression in any form, and would cherish those institutions which tend to elevate and ennoble mankind.” There, “where the laborer and

his family are tasting the sweets of the fruits of his own toil, where his own rights are acknowledged, where he teaches his children the precepts of justice and humanity,” slavery could not exist in safety (567). By common sense and regard for their self-interest, the poor refugees from the domain of slavery would fiercely resist the ingress of slavery. Having personally experienced slavery’s effects in the slaveholding South, these emigrants would not consent to reproducing that experience again. Kellogg added that “if ever the slave-holding States permit this question to be fully met and discussed, its demonstration will be as a light to the path of the laboring man to a land where slavery is not tolerated” (567). He hinted that if the slaveholding statesmen gave their real reasons for why they wanted the territories opened to slavery, the laboring men of the South would be further encouraged to emigrate to a land without slavery. Slavery supported the oligarchy’s land monopoly and alienated the laboring men from government that was controlled by the oligarchy. The ingress of slavery into the territories would reproduce those conditions favoring the oligarchy. If this were clearly stated by the oligarchy in debate, the prompts of self-interest would be clearer to the laboring men of the South, pointing them to exit the domain of slavery.

Southern free laborers, that is, the non-slaveholders, were not free, due to the “land-monopoly system [that was] inseparable from the institution of slavery” (567). There, the law did not respect natural rights; land monopoly and slavery were the logical consequence. The nominally “free” laborers in the South were dependents, not independent citizens. If those people emigrated and received their own land in the territories under a law respecting their natural rights, they could become “molders of their own fortunes” and “proud of their own creations” (567). They would become

independent, laboring for themselves, rather than dependents, laboring for others. Their emigration from a political regime that promoted and was upheld by land monopoly to a vacant territory on which they could stake a respectable land claim for themselves would change their attitude towards labor. Under a law that respected their natural rights, labor would become a means to their individual self-improvement, which was impossible in the South. In territorial communities of individuals all laboring for self-improvement in this way, they would develop free institutions deepening their attachment to their natural rights. The non-slaveholders in the South would eventually see their own oppression through their emigrating kinsfolk in the territories where labor produced both free institutions and prosperity. On behalf of the North, Kellogg claimed the right to impress a republican stamp on the laws governing the territories; the quality of those laws consisted in the protection of natural rights, including the right to the earth. The predestined effect of those laws would be honorable labor, free institutions, republican communities, and then, states whose governments would be republican in form and a republican citizenry loyal to their governments.

Pennsylvania Senator Simon Cameron added additional links to that chain of effects engendered by their preferred land policy: the easy acquisition of homesteads would cause the provisioning of education, which would elevate public intelligence, which would enhance the citizen's loyalty to free government, finally resulting in the stability of free government. First, he argued, "[T]he stability of free governments depends upon the intelligence and moral culture of the governed" (36 Cong 1, 3018). It followed that "the laborer and the artisan should be afforded the means of so educating their children." The means of education could "only to be derived from the protection

and encouragement of those branches of industry necessary to the development of the resources of States” (3018). The protection of the natural right to the earth embodied in land laws that encouraged the diffusion of private ownership would protect free labor. In turn, this protection encouraged individual productivity and would lead to moderate prosperity among the whole people governed by such laws. That general prosperity would secure the means of public education and elevate public intelligence, upon which free government depended.

The Republicans identified a contrasting chain of consequences originating in the rejection of natural rights. Southern governments did not respect natural rights, labor was degrading, and its institutions did not “elevate and ennoble mankind” (35 Cong 2, 567). Their land laws assisted the few in hoarding the soil and discouraged individual productivity, leading to poverty. From such conditions, the only way to secure the means of broad, public education would be to place the burden of the cost on the rich – those holding the land monopoly. But the character of land laws that encouraged land monopoly rested upon the rejection of natural right, the basis of popular sovereignty. By rejecting natural right and popular sovereignty, the political regime in the South that enacted such land laws would not be expected to have any use for high public intelligence, and instead would predictably be threatened by it. Therefore, the rulers would say that appropriations for public education were “clearly indicative of a spirit of licentiousness, which must, in the end, ripen into agrarianism,” the unjust thievery of the property of the rich (38 Cong 1, 1230). The rulers would not perceive the elevation of the common people’s intelligence to serve any purpose important to that political regime. In short, the rejection of natural right entailed the rejection of the natural right to the soil

and entailed the use of government to facilitate land monopoly. The opposition of the oligarchy to diffuse land-ownership derived from the same moral source as their opposition to popular education and popular rule, which was their embrace of natural inequality. That was the same moral source from which the oligarchy justified slavery.

During the war, and especially when considering confiscation of rebel property, the Republicans often recognized that the southern land monopoly provided institutional support to the southern oligarchy. In 1864, Iowa Representative James Wilson argued for land re-distribution in the South. Property there, he said, “is owned by comparatively a few persons. Property is not distributed among the people there as it is in the northern States” (38 Cong 1, 506). He supported the “sale and division of the large landed estates in the South,” which “would be of incalculable benefit to the mass of the people after the rebellion passes into history.” As a result, “the people can then become landholders, and no longer be subject to the despotism with which a privileged class has heretofore ruled that whole country.” The leaders of the rebellion were “the great lordly landholders who have almost crushed humanity out of the poor people who are squatted on their princely estates.” Those rebel leaders constituted an “aristocratic class” which had held “the immense slave and land power in its hands for the purpose of crushing and grinding the common people into an intellectual darkness almost as dense as barbarism itself.” An “aristocratic few” ruled “the poor, the oppressed, the betrayed mass of the southern people.” They ruled “the people of the South with a rod of iron which pierced and seared every subject conscience before the rebellion, and now rule it” (506).

The problem of land monopoly in the South was a primary obstacle to displacing oligarchy with republicanism there. Wilson presented his vision of triumphant

republicanism: “We expect to meet, in the onward and triumphant march of this Republic, a ‘redeemed, regenerated, and disenthralled,’ South. We expect to join hands with it, and march forward in the accomplishment of the grand mission of this Republic. We expect to see the power of the southern States taken from the hands of a ‘cruel and remorseless’ aristocracy and restored to the rightful possession of a whole people” (39 Cong 1, 507). To accomplish this, “the first step” was “the destruction of that aristocratic and semi-feudal system which has heretofore existed in the South.” He proposed to “make the mass landholders by breaking up the land monopoly of the rebel slaveholders of the South and placing land within the reach of the poor, and thus add to the dignity and assert the individuality of every man” (507).

Iowa Representative William Allison also spoke for southern land re-distribution in order to destroy the oligarchy and plant republicanism. He first likened pending legislation to the recently passed homestead law for the public lands. The pending legislation opened southern lands to homesteads for Union military servicemen and would impart the same republican effects on the political re-organization of the South that the homestead law imparted on the political organization of vacant public lands.

Before touching on the southern problem, Allison set forth the rule, “Land monopoly, with its attendant evils, has ever been the bane of empire” (38 Cong 1, 2115). In Rome, labor was once esteemed when proprietors tilled the soil, but when property “passed into the hands of the privileged few,” political power also passed into those same hands, and labor became dishonorable. The few controlled the power and wealth of the state; the many became landless and oppressed. Mexico furnished a more contemporary example: “The successive-revolutions in Mexico have been but a struggle of the people

against the lordlings of the soil.” Their continuing struggles proved how difficult it was “to maintain a permanent republican government over the few selfish, proud aristocrats who own the soil and wealth of the country, even without the demoralizing and aggravating evils of slavery.” But the American South did suffer from those evils and in consequence, could not meet the conditions prerequisite to thriving republicanism. On the one hand, in the free, republican states, he said, “labor must not only be free, but the cultivator of the soil must have a proprietary right in the soil itself.” On the other hand, in the slave states, “the slaveholders not only owned the soil but the labor that tilled it. Labor thus degraded became dishonorable. Here the poverty of the many, with its evils of want, of ignorance, and dependence, was to be found side by side with the excessive wealth and opulence of the few” (2115).

Without proprietor-cultivators the necessary consequences were ignorance and dependence. To reverse this condition of the people, the South needed free education and free churches, but, Allison added, “This can only be done successfully by a division of the large estates, now abandoned, into small farms, which shall be tilled by their owners” (38 Cong 1, 2115). And, he warned, “[N]o permanent cure can be effected except by the adoption of some permanent system looking to the division of these immense estates among those who till them, and who by every rule of justice are entitled to the fruits of their labor.” As George Julian had argued more than a decade before, Allison argued that free institutions, the bedrock of republican government, depended upon political communities formed by proprietor-cultivators. From that new beginning, all good things would flow: “Free schools and churches will take the place of slave-pens and whipping-post. Labor will be dignified, being no longer servile. The great body of the people will

become producers as well as consumers; manufactures will be encouraged, the arts will flourish; villages, towns, and cities will spring up in the now obscure localities. The people will become homogeneous, our internal and external commerce will be increased, and with it enhanced the wealth and glory of the nation” (2115).

To reorganize Southern society on a republican basis, Julian also favored the creation of homesteads from the confiscated rebel land, warning that without this redistribution of land, the oligarchy would retain an institution that would support its regeneration and perpetuity. The few would continue to rule both the freedmen and the poor whites:

Mr. Speaker, the poor whites of the South will be as powerless to take care of themselves as the freedmen, unless the government shall arm them against their masters. “Subdivision” of the land, as Mr. Yeatman says, would also secure a loyal population, since every man who has a home to love and to defend will naturally love his country. This rebellion will present the strongest temptations to land monopoly that were ever offered to the greed of avarice and power. The rich lands of the South have been cursed by this evil from the beginning, and without the interposition of Congress the system will be continued, and vitalized anew by falling into fresh hands. The degraded and thriftless condition of the people, the heritage of centuries of bondage, will pave the way for land monopoly in more grievous forms than have yet been recorded in ancient or modern times. Society cannot possibly be organized on a Republican basis, because a grinding aristocracy, resting upon large landed estates, will convert the mass of the people into mere drudges and dependents. African slavery may not exist in name, but the few will practically control the fortunes of the many, irrespective of color or race. In such communities public improvements will necessarily languish. Wasteful and slovenly farming will stamp upon the country the impress of dilapidation, while reducing the productiveness of the soil and hindering the growth of manufactures and commerce. In the midst of large landed estates, towns and villages can neither be multiplied nor enjoy a healthy growth. The want of diversity of pursuits and competition in business will palsy the energies of the people. The education of the masses will be impossible, since the establishment and support of schools within convenient reach of the people cannot be secured. The proprietors of the great estates, as has been well remarked, will be feudal lords, while the poor will have no feudal rights (Julian 1872, 221-222).

The same principles Julian had invoked when arguing for a homestead bill for the territories in the 1850s recurred in the remedy he propounded for establishing republicanism in the South:

We must not only cut up slavery, root and branch, but we must see to it that these teeming regions shall be studded over with small farms and tilled by free men. We must remember that “the best way to help the poor is to enable them to help themselves.” We must guard the equal rights of the people as a religious duty, for “Christianity is the root of all democracy, the highest fact in the rights of man.” Labor must be rendered honorable and gainful, by securing to the laborer the fruits of his toil. Instead of the spirit of Caste and the law of Hate, which have so long blasted these regions, we must build up homogenous communities in which the interest of each will be recognized as the interest of all. Instead of an overshadowing aristocracy, founded on the monopoly of the soil and its dominion over the poor, we must have no order of nobility but that of the laboring masses of the country, who fight its battles in war, and constitute its glory and its strength in peace. Instead of large estates, widely scattered settlements, wasteful agriculture, popular ignorance, political and social degradation, the decay of literature, the decline of manufactures and the arts, contempt for honest labor, and a pampered aristocracy, we must have small farms, closely associated communities, thrifty tillage, free schools, social independence, a healthy literature, flourishing manufactures and mechanic arts, respect for honest labor, and equality of political rights (Julian 1872, 224-225).

The principle of inequality had a controlling influence on antebellum land laws in the South. That unjust principle had allowed the land monopolists to hold title to their large estates by positive law. Those outside the ruling class had been unable to exercise their self-interest in their natural right to the soil. As a result, the regime had laid “waste the fairest and most fertile half of the Republic, staving its progress in population, wealth, power, knowledge, civilization” (Julian 1872, 152). Julian’s favored policy would reorganize the South as if its vast expanse were like the vacant national territories, approximating the state of nature. The first principles of American republicanism, the principles of natural rights, would be applied anew to the South. The reorganization of southern society on the political basis of recognizing natural rights, including the right to

the soil, would undo decades of unjust land accumulation. This would re-establish private property rights on a just, new basis, giving the inhabitants confidence in their government, which would stimulate labor. By following their self interest and toiling, they could expect to keep what their pursuit of happiness yielded. Free labor would become honorable in the South. Free institutions, including schools, would arise amidst these communities of toiling cultivators. As in the vacant territories, free political communities would develop; republican forms of government would naturally receive support from these people and their institutions. The communities would resemble northern communities where free labor and free institutions predominated. The question of land reform would decide the political destiny of the South, and it would determine whether the United States could truly re-unite as one people:

We can reenact over them the political and social damnation of the past, or predestinate them to the blessedness and glory of a grand and ever-unfolding future. We can build up a magnificent constellation of free commonwealths, whose territory can support a population of more than one hundred millions, on the basis of free labor and a just distribution of land among the people; or we can again organize society after the pattern of Europe, and thus spare the hideous cancer which, in the words of Chateaubriand, “has gnawed social order since the beginning of the world.” Can we hesitate, in dealing with so fearful an alternative? Shall we mock the Almighty by sporting with the heaven-permitted privilege now placed before us? Shall we heap curses on our children, when blessings are within our grasp? Sir, let us prove ourselves worthy of our day and of our work. Let us rise to the full height of our sublime opportunity, and thus make ourselves, under Providence, the creators of a new dispensation of liberty and peace. Then, in the eloquent language of Solicitor Whiting, “The hills and valleys of the South, purified and purged of all the guilt of the past, clothed with a new and richer verdure, will lift up their voices in thanksgiving to the Author of all good, who has granted to them, amidst the agonies of civil war, a new birth and a glorious transfiguration. Then, the people of the North and the people of the South will again become one people, united in interests, in pursuits, in intelligence, in religion, and in patriotic devotion to our common country” (Julian 1872, 225).

CHAPTER III

THE RELATIONSHIP OF SLAVERY TO SOUTHERN OLIGARCHY

The Cause of Southern Oligarchy Attributed to Domestic Slavery

Reconstruction Republicans commonly ascribed the primary cause of the oligarchic form of southern government to the institution of domestic slavery. Wherever it extended, slavery tended to erode republican government and the republican way of life, meanwhile steadily raising up a ruling class of slaveholders. Slavery was one of several institutions that supported the rule of the slave-holding class in the oligarchic South, but the power of this domestic institution to cause a revolutionary change in political life, from republican to oligarchic, set that institution apart from others. As Nevada Representative Delos Ashley put it, “All the institutions of the South were based on slavery. It was the substratum of the aristocratic system.” Slavery raised up “those men who had political power and ruled the South” (39 Cong 1, 1315). California Representative William Higby said, “I have declared that the institution [of slavery] is anti-republican, and that no Government which tolerated it could be in form, body, or spirit a republican Government” (38 Cong 1, 2944). The far-reaching effect of slavery on the fundamental character of political society, explains why the Republicans regarded slavery as a political evil in addition to a moral evil.

Charles Drake claimed that slavery “fostered a social aristocracy, which, by a resistless tendency, became also political. The whole history of the country since it achieved Independence has proved this. Indeed, I am not aware that intelligent

Southerners deny – but, on the contrary, they seem rather to boast – that the legitimate and certain effect of Slavery is to create an essential aristocracy” (Drake 1864, 104).

New York Representative Thomas Davis said that upon slavery “has grown up a caste, an aristocracy, based upon the ownership of labor, of sinews, bones, and blood entirely inconsistent with republican government and republican institutions” (38 Cong 2, 154).

Recounting the history of American slavery in 1864, Illinois Representative Isaac Arnold directly linked the cause and effect relationship between domestic slavery and southern oligarchy:

[S]lavery had revolutionized the Government. The great principles of *Magna Charta* and the *Declaration of Independence* had ceased to have practical existence in a large part of the Union. Liberty of speech, freedom of the press, and trial by jury had disappeared in the slave States. Indeed, that portion of the so-called Republic had ceased to be a government of law, and had become a government of a tyrannic, cruel oligarchy, more odious, despicable, and cruel than any on earth. There was no redress for any outrage, however cruel, if perpetrated in behalf and at the behest of slavery. The vengeance of the slaveholder against the man who spoke or published in behalf of liberty was sharp, speedy, and unrelenting. The bowie-knife and the bludgeon, the halter, and even the stake, were the instruments of violence and torture resorted to by every petty lynch judge who found any bold enough to question the divinity of the “peculiar institution.” In the slave States of this Union a freeman had no rights which a slaveholder felt bound to respect. In those States the Constitution had disappeared. I say, then, that slavery had established a revolution, overturned a republican form of government, and established a despotism in its place (38 Cong 1, 114-115).

Arnold modified Supreme Court Chief Justice Roger B. Taney’s dictum in *Dred Scott*, that black Americans “had no rights which a white man was bound to respect,” and changed black Americans to “freeman” and white men to “slaveholders” (*Dred Scott v. Sanford*, 60 US 393). That is, a few slaveholders ruled the many, comprised by slaves and poor whites. In saying this, Arnold illustrated that the effect of domestic slavery fell not upon domestic slaves alone. By precipitating a change in the form of government

from republican to oligarchical, slavery resulted in the political oppression of all Americans in the South, outside of the minority ruling class of slaveholders.

Massachusetts Representative George Boutwell also explicitly recognized the causal relationship between domestic slavery and political oligarchy. In a Boston speech in 1861, Boutwell recalled a visit to the slave state of Kentucky in 1857, where he attended church services and was treated to a sermon containing three propositions, “which, as far as I could judge, were accepted by that congregation. They were, first, that the Saviour never said any thing in favor of human equality; secondly, that he never said any thing in favor of universal education; and thirdly, said the preacher, what we need is authority in the Church” (Boutwell 1867, 132).

These observations, Boutwell said, demonstrated the “radical changes” caused by slavery. The changes were “antagonistic to free institutions,” and consequently, “free institutions cannot long be maintained” (Boutwell 1867, 133). In this particular case, the visible radical changes were “the denial of the equality of man” and “the denial of the right of individual opinion in matters of religion.” These radical changes corresponded with a change in the political regime. Under the causal influences of slavery, the South had “steadily marched towards the establishment of a military, slaveholding oligarchy” (133). In 1862, Boutwell re-affirmed what form of government slavery had caused, saying, “In the South, a governing class is recognized, which corresponds to the governing classes wherever an aristocracy or monarchism exists” (169-170). In 1864, he affirmed the inherent, mutual antagonism between slavery and republicanism, saying, “Wherever slavery exists there republicanism is not; that wherever slavery exists there a republican form of government, under the Constitution, cannot be” (38 Cong 1, 2104).

But he did not mean that a republican government's toleration of domestic slavery stripped that government of the moral right to call itself "republican," although he could have made that case. More, he meant that domestic slavery unleashed tendencies that destroyed republican government.

Showing that this was his understanding, Boutwell further said that legislative acts requiring the abolition of involuntary servitude as a condition of readmitting the insurrectionary states were "acts of justice which are due to one race and necessary for the salvation of the other" (38 Cong 1, 2104). In other words, the abolition of slavery was owed to the enslaved race, but it was also necessary for the salvation of the other race that had suffered under the oligarchy. The abolition of slavery was a necessary precondition for re-establishing republican government for all people who had endured the direct and indirect effects of domestic slavery. The direct effects were the brutalities visited upon the slave; the indirect effects were the inevitable changes domestic slavery wrought on the form of government, robbing the common people of their republican liberty. The lesson Boutwell and the Republicans drew from the national experience with slavery since the American founding was that wherever domestic slavery existed, it would destroy republican government and replace it with an oligarchic form of government.

In 1862, when arguing for the necessity of abolishing slavery, Pennsylvania Representative Thaddeus Stevens attributed the cause of the southern oligarchy that had caused the war to domestic slavery. Referring to the war, he said,

All must admit that slavery is the cause of it. Without slavery we should this day be a united and happy people. So long as it exists we cannot have a solid Union. Patch up a compromise now and leave this germ of evil, it would soon again

overrun the whole South, even if you freed three fourths of the slaves, and your peace would be a curse (37 Cong 2, 440).

Why would re-union secured by a compromise on the slavery question inevitably result in renewed conflict between slave states and free states? Stevens answered that oligarchic government was the inevitable “evil” produced by the “germ” of domestic slavery. Domestic slavery, or what Stevens called “individual despotism,” brought about political despotism. The ruling class rebelled in order to establish their slave oligarchy as an independent nation, free from the limits, reproaches and fetters of republican government:

They have rebelled for no redress of grievances, but to establish a slave oligarchy which would repudiate the odious doctrine of the *Declaration of Independence*, and justify the establishment of an empire admitting the principle of king, lords, and slaves.

The *Declaration of Independence* and the Constitution of the United States were a constant reproach to the slaveholding South. They were in palpable contradiction to their domestic institutions. They were conscious of the impropriety of being governed by a Constitution which was an evident condemnation of their actual principles, and of their institutions founded on individual despotism. They feared that the principles of freedom and of the equality of man before the law... might be gradually breathed from the North into southern ears and southern minds, and establish even there the doctrine of the Rights of Man (37 Cong 2, 439).

The republican principles and republican organic law of the American government were in tension with the oligarchy’s institutions “founded on individual despotism.” Stevens added that American republicanism and slavery, the “germ” that generated anti-republican oligarchy, could not co-exist:

The principles of our Republic are wholly incompatible with slavery. They cannot live together. While you are quelling this insurrection at such fearful cost, remove the cause, that future generations may live in peace (37 Cong 2, 440).

Stevens stood with his Reconstruction Republican colleagues in the opinion that domestic slavery was a political as well as a moral evil. The political evil consisted in slavery's tendency to overcome republican government and erect an oligarchic political regime in its place. Upon these claims, any compromise on slavery that guaranteed either its ultimate perpetuity or destruction was impossible for both partisans of republicanism and oligarchy, who understood domestic slavery's political effect. Implacable support for either slavery's ultimate perpetuity or destruction was not compromise-killing or irrational fanaticism. Rather, it rationally aligned the respective partisans of republicanism and oligarchy.

How Slavery Causes Oligarchy: Legal Effect

Illinois Representative Elihu Washburne argued that constitutions founded on an explicitly proslavery basis would immediately produce "oligarchal" governments. That is, he argued that the enshrinement of proslavery principles or ideas in founding constitutions would inevitably create an oligarchic political regime. He made this claim in 1858, when the House debated whether to admit Kansas as a slave state under the infamous Lecompton constitution, framed by proslavery men in the city of Lecompton, Kansas:

It is admitted on all sides that we may look into a constitution to see if it provides for a republican form of government. The provision referred to in the Kansas constitution determines its character, whether republican or not. It asserts, in the most unqualified terms, that slavery is established by the law of nature; that its foundations are so strongly laid in the eternal and absolute fitness of things, that they cannot be shaken by any human enactments. If this right to hold slaves be sacred and inviolable, constitutions denying it are, in that regard, merely void; and governments built on such denial are false. A government established upon the principle, or recognizing as fundamental the idea, that the right to own slaves

under it does and must exist, and cannot be impaired; assumes that every true and legitimate government must be founded upon the existence of classes – a privileged class and a degraded class. Such government is not *republican*, but *oligarchal*. A republican form of government, if the principles of this constitution be acknowledged, is false and impossible; and every attempt to institute a government on the principle of the equality of men, on the assertion that there shall be no inferiors before the law, no slaves, will, in the end, prove a failure; for the great central and efficient law, written by God himself, has laid the basis of all government in the truth that men are created unequal – part to be masters, and part slaves. Admit Kansas, give your sanction to her constitution, and you declare that the *Declaration of Independence* was a work, not only of “glittering generalities,” but of false generalities, and the Constitution of the United States a stupendous cheat; and the nation, instead of being a Union of republican States, is but a Confederation of oligarchies. No State, at the time of its admission, ever contained such a provision as this slavery section in the Lecompton constitution; and Congress has never before been called upon to give such an indorsement as is now required in voting for the Kansas bill. (35 Cong 1, 1349, original emphasis).

The Lecompton constitution differed from other admitted slave state constitutions by its provision declaring slavery to be established by “the law of nature.” Whereas other admitted slave state constitutions permitted or were silent about slavery, the Lecompton constitution declared its sacredness and inviolability at the formation of the state government. This was new. The state government would be founded on a principle exactly the opposite of the *Declaration’s* principles, and all laws and institutions in the new state would have to conform to that principle of inequality from the outset. Unlike the experience of previously admitted slave states, domestic slavery would not need to gradually revolutionize this state’s government from republican to oligarchic. The Lecompton constitution would establish the government on an “oligarchal” basis at its foundation, due to its acknowledgment of natural slavery.

When Washburne said that this principle declared all were “created unequal – part to be masters, and part slaves,” the term “slaves” compassed both white Americans and black Americans. Like Boutwell, he did not mean that the mere existence of slavery

qualified the term “oligarchal” and disqualified the term “republican.” He did mean, however, that a government organized on such a basis as the Lecompton constitution stated would politically enslave both domestic slaves and the nominally free. A later portion of his speech confirmed this reading. Enjoining his colleagues to keep slavery out of Kansas, he continued:

That which is now free must be protected for the free white men of our own country, and of other nations who seek an asylum upon our shores. They may be called “hirelings,” or “slaves,” in the language of the Senator; but they are “slaves” that know no masters on earth, and acknowledge no superiors; “slaves” who break up the prairies, hew down the forests, cut through the mountains, build up cities, towns, and villages, and lay the foundations for empires on the eternal basis of virtue, intelligence, and truth. (1350).

Washburne referred to South Carolina Senator Hammond’s description of free laboring whites from the free states as “hirelings” or “slaves.” He denied that these free whites, accustomed to republican government and free institutions, would freely submit to any form of mastery, domestic or political. But the political enslavement of these free whites would be the consequences of the “oligarchal” form of government that the proslavery Lecompton constitution would generate.

Washburne believed that domestic slavery causally influenced the form of government in its jurisdiction, in proportion to the entrenchment of the principles justifying the institution. In the case of the state government that the Lecompton constitution would have established, Washburne believed it would have been oligarchic right away because the moral principle that claimed to justify slavery – the natural inequality of mankind – was the central principle of that constitution. A few years after this speech, the national constitution of the Confederate States, unlike the national

constitution of the United States, did enshrine the perpetuity of domestic slavery. By Washburne's reasoning, this government would be "oligarchal" from its founding.

How Slavery Causes Oligarchy: Moral Effect

What about constitutions that do not proclaim the "divinity" of slavery, but that instead proclaim republican equality, nevertheless permitting the institution of slavery? How could the practical existence of slavery change the form of government, constitutionally organized on natural rights principles, to oligarchy?

In 1860, Senator Charles Sumner explained how this could happen. He noted southern statesmen's praise of both slavery and aristocracy, and pointed out that they themselves had observed that slavery created a ruling aristocratic class (36 Cong 1, 2590). How did slavery create a governing order like an order of nobility, but without needing noble titles to grant warrant to its governing authority? Sumner explained:

The denial of all rights in the slave can be sustained only by a disregard of other rights, common to the whole community, whether of the person, of the press, or of speech. Where this exists there can be but one supreme law, to which all other laws, legislative or social, are subordinate, and this is the pretended law of Slavery (2595).

The practical existence of slavery in the political community presents a permanent moral question. Is the institution just or unjust? If it is unjust, slavery cannot be defended. Moreover, it exists under a moral ban and must eventually pass away. But if the regime ruling the political community is determined to keep slavery, the only way it can justify enslaving any part of the political community is to deny the principle that demands the slaves' freedom – that all members of the human family, including slaves, possess an equal share of natural rights common to humanity. The legal order of the

regime then reconstitutes itself around a new fundamental principle. If the regime is republican in form in the beginning, the sovereign whole people will unwittingly expose themselves to tyranny if they accept this denial of others' natural equality. If they do, they give up the moral foundation of popular sovereignty. Natural inequality justifies rule by those who deem themselves naturally "superior." Elevated by superior force, these superiors take possession of the political community's sovereignty. These new rulers then disregard the natural rights "common to the whole community" by ruling over them, denying them their share of sovereignty, and oppressing them.

If it is conceded by the political community that slavery is unjust, despite its practical existence, then slavery can temporarily continue thus marked for ultimate extinction, contradicting, but not immediately commencing, to destroy the republican regime. But, Sumner said,

Proclaim Slavery to be a permanent institution, instead of a temporary Barbarism, soon to pass away, and then, by the unhesitating logic of self-preservation, all things must yield to its support. The safety of Slavery becomes the supreme law; and since Slavery is endangered by liberty in any form, therefore all liberty must be restrained. Such is the philosophy of this seeming paradox in a Republic (2597-2598).

Only the principle of natural inequality can justify the permanence of slavery. If it is declared permanent, "all things" subsumed by the political regime based on that principle of natural inequality will be brought into conformity with that principle by the "unhesitating logic of self-preservation." That logic is common to all political regimes. A republican political regime will likewise bring "all things" it subsumes into conformity with natural equality by that same logic of self-preservation. When the political regime changes principles, from natural equality to natural inequality, the logic of self-

preservation does not change. But the changed disposition towards slavery, from marked for ultimate extinction to permanent, must by necessity change the regime principle from natural equality to natural inequality to sustain the justification for slavery. The “logic of self-preservation” then re-organizes the political regime into one that conforms to the new principle. Rule by the strong who deem themselves naturally superior characterizes the new, revolutionary regime, revolutionized by slavery. That regime is an oligarchic regime, ruled by a privileged minority rising from the political community. By the “logic of self-preservation,” the oligarchy must restrain liberty claimed by the ruled parts of the political community in order to maintain the regime. By this logic, the oligarchy must stamp out the remaining free institutions and free principles of the prior republican regime. The revolution is complete when slavery and its progeny, oligarchy, are safe from all threats, institutional or moral.

How Slavery Causes Oligarchy: Economic Effect

In 1865, New Hampshire Representative James Patterson afforded a different kind of theory to explain how slavery’s effects cause the development of an aristocratic political regime. “Slavery, villanage, serfdom, or any system, which lays restraints upon labor” creates two economic classes, separated by marked differences in wealth, intelligence, and manners (Patterson 1865, 24). The common people become a rabble; the few become haughty. Republicanism is impossible to sustain and a new political system becomes necessary:

Any system of enforced labor, where the laborer is made property, creates a landed aristocracy, and throws the wealth of the community into the hands of a few. The non-slaveholding free population are driven from the country, or sink to

the most abject poverty, and yet are too proud to engage in work, which has been degraded by Slavery. Public intelligence and public morals cannot be maintained in such a community. The poverty-stricken masses, pressed by want and lost to self-respect, become either a dangerous and turbulent body of malcontents, or the pliant tools of faction in the hands of an unscrupulous but un-titled nobility. The influence upon the holders of this species of property is not less baneful than upon the disenfranchised and hopeless chattel. Living in ease and luxury, upon gains wrung from the compulsory labor of others, they become indolent, arrogant and corrupt, and naturally desire to carry into the government of the state, the monopoly and oppression, with which they have become familiar in the institutions of social life (Patterson 1865, 24-5).

Systems of enforced labor result in extreme wealth inequality for two primary reasons.

First, the fruit of labor accrues to the owners of labor rather than to the laborer. Second, enforced labor degrades labor.

Even if the local laws protect civil liberty, the commanders of labor can nonetheless abuse their command of the laborer in economic relations, because the commanders of labor increasingly own all the means of economic production. Due to these economic conditions, the laborer cannot choose to produce for himself, because that economic alternative becomes increasingly less available. Those outside the wealthy class then face a personal economic choice: to choose to escape the laborers' commanders and accept poverty or worse; or to choose to labor, increasing the wealth of the commanders of labor. Those who choose to work for the commanders of labor submit to the degrading oppressions under that command.

The commanders of labor become accustomed to their command over the common people in economic and social life. Their economic command develops a commanding character and they "naturally desire" to rule over the majority in political relations. The poverty and slavishness among the people inhibits public intelligence and

the capacity for self-government. Their character becomes fitted for despotism. This is how systems of enforced labor necessarily terminate in oligarchic rule.

In his 1858 speech against admitting Kansas a slave state, Francis Blair presented a similar theoretical account, drawn from the fall of the Roman republic. He first alluded to the political effect of permitting slavery in the territories, in order to argue for excluding the institution:

The Territories of this Government cannot be wrested from the freemen to whom they belong, to be given up to slaveholders and their slaves, in order to strengthen the oligarchy which rests upon this servile institution (35 Cong 1, 1282).

He then expounded excerpts from Hook's *History of Rome* to the House of Representatives,

to show how the great Republic of antiquity fell; to decay, when it ceased to cherish the people as landholders, and became an oligarchy, by the very means now being employed in our own.

Due to their access to cheap labor, the slave-owners of Rome could out-bid the non-slaveholders for possession of the public land, which increased the concentration of land-holding in the hands of the few, dispossessed the non-slaveholders, and increased the incentive of the slave-holders to acquire more slaves.

Because free but dispossessed republican citizens of Rome did not easily submit to the command of the slave-holding Patricians, the slaveholders began to acquire more slave labor from barbarian nations. These slaves, not accustomed to republican liberty, were more amenable to the individual despotism of the Patricians:

So that Italy was in danger of losing its inhabitants of free condition... and of being overrun with slaves, and barbarians, that had neither affection for the Republic nor interest in her preservation (1283).

This aggravated the destitution and disaffection of non-slaveholding Roman citizens. “To remedy these disorders,” Tribune Tiberius Gracchus proposed a law to redistribute the land that the Patricians had acquired and to compensate the Patricians from the public treasury. The Patricians murdered him, however, before the law took effect. This political step showed that the determination of the slave-owning, land-monopolizing Patricians to economically and socially dominate the free Roman plebeians had crossed over into government. The social aristocracy fostered an oligarchic regime. Blair traced the cause of this revolution in the form of government to slavery.

In 1864, Representative Reuben Fenton from New York referred to European and American histories of the ancient world to similarly argue that agrarian slavery created vast economic inequality that irresistibly resulted in political inequality. Slavery depressed the value of paid labor and non-slaveholding freemen became poor. This gave the owners of capital a great advantage over free laborers in their capacity to accumulate additional wealth. The non-slaveholding freemen could not compete with slaveholders for the price of land, and so, those who were rich in slaves and land became richer, engrossing all of the land, while the freemen became increasingly destitute. The radical wealth inequality easily transformed the political system, resulting in the rule of an aristocratic few. This is what happened in the American South, Fenton argued. The “curse of slavery” had “demoralized the people of the South and was rapidly undermining the liberties of the whole people” (38 Cong 1, 932).

Waitman Willey summarized this argument best. He reminded his congressional colleagues of Thomas Jefferson’s pride in having abolished the rights of primogeniture, and then said, “Sir, the proper effects of the latter bill can never be felt and enjoyed in the

slave States, until slavery is abolished. Until then, the poor white man will always be kept in subjection; the land and the capital will be in the hands of the slaveholders” (38 Cong 1, 1233).

How Slavery Causes Oligarchy: Effect on the Personal Character of Slaves and Non-slaveholders

Slavery was a massive school of anti-republican tyranny and subjection. The Republicans often noted, in the words of Charles Sumner, “the operations of slavery on character” in all “who have been exposed to it” (38 Cong 1, 2976). Emphasizing the extent and effect of slavery on personal character, Massachusetts Representative Thomas Eliot said:

No nation upon the face of the earth with whose history I am conversant has held in bondage over so wide extent of country so many millions of human beings as this nation has dared to hold under a Constitution which the people ordained to secure the blessings of liberty and to establish justice; nor has human ingenuity ever devised a system of slavery more debasing in its character to the slave or to his master (38 Cong 1, 568).

The degradation of the slave and the poor white, and the elevation of the master to a position of absolute personal and political dominion, tended to destroy any sense or respect for natural equality. As a result, republican mores, necessary to the maintenance of republican government, were insupportable.

Those under the political and personal rule of the master class became unfitted for freedom. In the 1850 slavery debates in Congress, Thaddeus Stevens used sarcasm to vividly demonstrate how southern representatives mistook the degraded human condition

in slavery for the lower nature of slaves. On the floor of the House, the slave state statesmen had again roundly proclaimed

that slavery was a moral, political, and personal blessing; that the slave was free from care, contented, happy, fat, and sleek. Comparisons have been instituted between slaves and laboring freemen, much to the advantage of the condition of slavery. Instances are cited where the slave, after having tried freedom, had voluntarily returned to resume his yoke. Well, if this be so, let us give all a chance to enjoy this blessing.... If these gentlemen believe there is a word of truth in what they preach, the slaveholder need be under no apprehension that he will ever lack bondsmen. Their slaves would remain, and many freemen would seek admission into this happy condition. Let them be active in propagating their principles. We will not complain if they establish societies in the South for that purpose—abolition societies to abolish freedom. Nor will we rob the mails to search for incendiary publications in favor of slavery, even if they contain seductive pictures, and cuts of those implements of happiness, handcuffs, iron yokes, and cat-o'-nine-tails (31 Cong 1, Appendix, 765).

If slavery really was all that the southern representatives claimed, the North had been unjust to the South for criticizing slavery, and unjust to the northern people for having yoked them with “the cares, the troubles, the lean anxieties of freedom. This is a monopoly inconsistent with republican principles, and should be corrected.” Therefore, Stevens suggested that the southern representatives introduce “a ‘compromise’” – which is in quotations marks, indicating a play on the compromise that became the compromise of 1850. By this compromise, the slaves and masters should exchange conditions so that “the oppressed master may slide into that happy state.” But ,

It may be objected that the white man is not fitted to enjoy that condition like the black man. Certainly, at first, it will be so. But let not that discourage him. He may soon become so...

.... I appeal to the learned men of this House, the gentleman from Alabama [Mr Hilliard], from Massachusetts [Mr. Mann], from Vermont [Mr. Meacham], to say if that ethnological researches of the past and present age—whether drawn from the physiology or the philology of tribes and nations of men—do not all corroborate the recorded fact that “*He hath made of one blood all nations of men;*” and that their present great variety in color, form, and intellect is the effect

of climate, habits, food, and education. Let not the white man therefore despair on account of the misfortune of his color. Homer informs us that the moment a man becomes a slave, he loses half the man; and a few short years of apprenticeship will expunge all the rest except the faint glimmerings of an immortal soul. Take your stand, therefore, courageously in the swamp, spade and mattock in hand, and uncovered, and half-naked, toil beneath the broiling sun. Go home to your hut at night, and sleep on the bare ground, and go forth in the morning unwashed to your daily labor, and a few short years, or a generation or two at most, will give you a color that will pass muster in the most fastidious and pious slave market in Christendom. Your shape also will gradually conform to your condition. Your parched and swollen lips will assume a chronic and permanent thickness of the most approved style. Your feet, unconfined by shoes, and accustomed to a marshy soil, will shoot out behind and sideways until they will assume the most delightful symmetry of slavery. Deprived of all education, cut off from all ambitious aspirations, your mind would soon lose all foolish and perplexing desires for freedom; and the whole man would be sunk into a most happy and contented indifference. And all these faculties, features, and color, would descend to your fortunate posterity; for no fact is better established than that the accidental or acquired qualities of body and mind are transmissible, and become hereditary. True, your descendants will be black, stupid, and ugly. But they would only be so many incontestable evidences of their natural right and fitness for the enjoyment of this state of moral, political, and personal happiness! (31 Cong 1, Appendix, 765).

Step by step, in this hypothesized reversal of roles, the newly enslaved master class would gradually assume the character of their slaves. By the end of this transformation, the description of the enslaved masters meets the exact description the master class assigned to black slaves when accounting for their natural inequality and fitness to be despotically ruled. Stevens ironically used the language of the master class to mock their claims. So severe is the degrading effect of slavery on human beings that the claim of natural inequality can appear to many to be plausible. In reversed roles, the enslaved master would present qualities appearing to be “incontestable evidence” of their natural inferiority. Bondage so degrades human character that humans in bondage develop a fitness for despotic subjugation and an incapacity for republican self-government.

Reconstruction Republicans mostly fell in line with Stevens on this point, blaming the slavishness of slaves on the institution and not on their nature. In 1857, Henry Wilson noted South Carolina Senator Andrew Butler's claim that the slaves in the South were contented. Maybe so, replied Wilson, but he then added, "I commend to him, whenever he boasts on this floor of the contentment of the bondman, the words of Edmund Burke, 'He who makes a contented slave makes a degraded man'" (34 Cong 3, Appendix, 68). In 1868, Indiana Senator Oliver Morton did not deny that black Americans freed from slavery might be "ignorant, imbruted, and half civilized." But the slave states had "forbidden by law, made it a penitentiary offense to teach the negro to read and write, [had] withheld from him all the means of education and intelligence," and in general had "degraded him by slavery." He continued, "If he is degraded, they have made him so; slavery has made him so. If he is ignorant, they have made him so by making it a crime to teach him to read and write" (40 Cong 2, 2929). In 1866, New York Representative Glenni Scofield admitted:

The colored man has never exhibited equal ability, to be sure, but he has never had equal opportunities. The forbidding statutes of the South attest the capacity of the negro. If they really believed his mind was so feeble, why bind it with such heavy chains? If he was incapable of learning, why prohibit it with the penitentiary? Their theories proved he was weak, but their legislation acknowledged he was strong. They debased him by law to fit him for slavery, and justified slavery because he was debased (39 Cong 1, 180).

Slavery had so completely debased slaves in fitting them for despotism that even sympathetic Republicans could not imagine how their condition could be reversed.

Waitman Willey expressed these doubts:

I ask you to look with a candid eye upon the real condition of the southern slave. There he is, a slave by birth; a slave by law; a slave by education; a slave by habit; a slave in word, thought, and deed, in body and in mind; ignorant,

degraded, poor, helpless, without the capacity of self-maintenance. You cry, what a pity! I heartily respond, what a pity! But still it is a fact....

How long will it be before this mass of ignorant and servile population will become capable of self-government and self-subsistence? How many generations will it require to divest the slave of his servility, and to clothe him with the independence of the freeman? (37 Cong 2, 1301).

Slavery had also debased the character of poor whites. In an 1858 speech, Henry Wilson devoted time in “contemplation of the blighting and crushing effects of slavery, not upon the poor bondman, but upon the non-slaveholding poor whites of the South” (35 Cong 1, Appendix, 172). He prefaced his remarks with the declaration

that the five millions of non-slaveholding whites of the South live in meaner houses, consume poorer food, wear poorer clothes, have less means of mental and moral instruction, less culture, and less hope for the future for themselves and their posterity, than the five millions of the poorest people of the seventeen millions of the North.

Approvingly quoting six sources, southerners included, Wilson described the erosion of republican characteristics in poor whites. In 1851, one South Carolinian had estimated that 125,000 whites were unproductive, and “but one step in advance of the Indian of the forest.” Another said that “the poor are very poor... The little they get is laid out in brandy and not in books or newspapers; hence they know nothing of the comparative blessings of our country.” One traveler, comparing poor whites to the “Spanish and Indo-Hispano races,” said he had seen

among the worse of them, none so entirely debased, so wanting in all energy, industry, purpose of life, and in everything to be respected, as among extensive communities on the banks of the Congaree, in South Carolina.... They are more ignorant, their superstitions are more degrading, they are much less industrious, far less cheerful and animated, and very much more incapable of being improved and elevated, than the most degraded peons of Mexico. Their chief sustenance is a porridge of cow-peas (35 Cong 1, Appendix, 172).

Frederick Olmstead gave a rice planter’s report, that

They seldom have any meat, except they steal hogs, which belong to the planters or their negroes... They are small, gaunt, and cadaverous, and their skin is just the color of the sand hills they live on. They are quite incapable of applying themselves to any labor, and their habits are very much like those of the old Indians.

Another source said that in New York, “half of them would be considered objects of charity.” Wilson quoted United States Representative J. H. Lumpkin of Georgia, who had described the poor white class as “degraded, half-fed, half-clothed, and ignorant... without Sabbath schools, or any other kind of instruction, mental or moral, or without any just appreciation of character.” Wilson complemented Lumpkin’s account of these Georgians, again quoting Olmstead:

It is evident that a large part of the people of Georgia still have the vagrant and hopeless habits and character of Oglethorpe's first colonists, somewhat favorably modified, it is true, by the physical circumstances which have made them superior to absolute charity or legal crime, and also, perhaps, by the influence of a freely preached, though exceedingly degraded, form of Christianity. They are still coarse and irrestrainable in appetite and temper; with perverted, eccentric, and intemperate spiritual impulses; faithless in the value of their own labor, and almost imbecile for personal elevation (35 Cong 1, Appendix, 172).

Another slave state source, taking a view of all non-slaveholding whites in the South, reported that succeeding generations were “less educated, less industrious, and in every point of view, less respectable than their ancestors.” Another slave state source reported, “Poverty, ignorance, and superstition are the three leading characteristics of the non-slaveholding whites of the South.”

New York Representative Samuel Miller described poor whites as an exploited and ostracized class:

Our friends even among the whites are for the most part poor, landless, and unaccustomed to independent political action....

In the organization of southern society there was no place for the poor white man. The slaveholder monopolized the soil and the slaves performed the labor. The poor white was a mere hanger-on-a miserable, despised tool of the slave-master (38 Cong 1, 2109).

California Representative Thomas Shannon complemented Miller's account:

This [slave] institution necessarily establishes three conditions of society where it prevails: the master, the slave, and that most degraded condition of all, the middle-man, or the poor white trash, whose vocation is pander and pimp to the vices of both master and slave, and ultimately dependent on both, having no recognized condition, and enjoying none of the privileges of the governing or governed class, but an outcast from both and despised by both (38 Cong 1, 2948).

James Garfield bore witness to the effect of slavery's debasement of the poor whites. Fresh from military service in the war, in 1864 Garfield spoke of his personal experience at the front-lines in Tennessee in accounting for the wrongs suffered by the poor white southern population. He concluded:

[The slaveholders] have so long believed themselves born to rule, that they will rule the poor man in the future, as in the past, with a rod of iron. The landless man of the South has learned the lesson of submission so well that when he is confronted by a landed proprietor he begins to be painfully deferential; he is facile and dependent, and less a man (38 Cong 1, 404).

Under slavery, poor whites had become the detritus of slave society. Their weakened character posed a less formidable obstacle to the ambitious slaveholders who expected to rule them.

How Slavery Causes Oligarchy: Effect on the Personal Character of Masters

No single speech or writing of a Republican who served during Reconstruction more thoroughly addressed the effect of slavery on masters than the speech of Charles Sumner in 1860. After more than three years spent away from the Senate recuperating from Preston Brooks's attack, Sumner re-took his vacant seat and delivered this speech,

his first since his return. The effect of slavery on the character of the master occupied the bulk of his time. The clear inference of this speech was to the character defects of the class of men to which his assailant, Brooks, belonged. Without a doubt, he intended his performance, as well as his analysis, to demonstrate the difference between the republican and oligarchic character.

Sumner's beating in 1856 had excited the nation, and earned Brooks praise from southern slaveholders and their adjunct press (Sumner 1870-1883, IV:257-342, 271-280). What would Sumner say in his return address? Observing that "Time has passed, but the question remains," Sumner announced his intention to renew his attack on slavery, to resume "the discussion precisely where I left it" (Sumner 1870-1883, V:8). Sumner was demonstrating firmness, though his opinions had nearly and might yet cost him his life, because "Ours is no holiday contest... but it is a solemn battle between Right and Wrong, between Good and Evil" (10). He eschewed conciliation at the cost of principles. "This is no time for soft words or excuses.... They may turn away wrath; but what is the wrath of man? This is no time to abandon any advantages in the argument" (9). If he appeared bowed or chastened, he would be submitting to force and abandoning the ongoing struggle for Right. Sumner disdained the coward's path, avowing his intention to attack slavery and acknowledging that:

About me, while I speak, are its most jealous guardians, who have shown in the past how much they are ready to do or not to do, where Slavery is in question. Menaces to deter me have not been spared. But I should ill deserve the high post of duty here, with which I am honored by a generous and enlightened people, if I could hesitate. Idolatry has been exposed in the presence of idolaters, and hypocrisy chastised in the presence of Scribes and Pharisees (16).

So would he not hesitate to expose slavery in the presence of slaveholders. He disclaimed both uttering “personal griefs” and “personal wrongs to avenge,” since the first was the product of a “vulgar egotism” – the self-pity of a weak man; and the second was the product of “a brutish nature” of one who usurped the Lord’s right to visit vengeance upon a transgressor. In this, Sumner proposed to take the path of self-disinterested magnanimity. He claimed to “begin my argument with that easy victory which is found in charity” (8). That is, from charity, or love for his enemy, he was able to place the interest of the nation before the personal cause he might have against southern senators in his presence when resuming his argument. His weapons would be his words, aiming at persuasion, rather than threats, and aiming at submission. He would rely on right for might, rather than on force to claim right.

“Motive,” he said, “is to Crime as soul to body.” Slavery was the motive behind the national crimes, and therefore, “It must be exhibited as it is, alike in its influence and its animating character, so that not only outside, but inside, may be seen” (9). The inner influence of slavery, its soul, would be presented. Sumner quoted the proslavery sentiments of southern statesmen, some of whom faced him. They had variously hailed slavery as the essential foundation of their political institutions and way of life, ennobling to both slave and master, black and white (10-11). “Thus, by various voices, is Slavery defiantly proclaimed a form of Civilization” (12). To that Sumner opposed his thesis, “the essential Barbarism of Slavery” (13). In prior times he admitted he had “said too little of the character of Slavery,” but “the debate is now lifted from details to principles.” Sumner signaled his preparation to give a full account, a *magnum opus*, on the inner soul of slavery.

The longer slavery exists, Sumner said,

the more completely it prevails, must its vengeful influences penetrate the whole social system. Barbarous in origin, barbarous in law, barbarous in all its pretensions, barbarous in the instruments it employs, barbarous in consequences, barbarous in spirit, barbarous wherever it shows itself, Slavery must breed Barbarians, while it develops everywhere, alike in the individual and the society to which he belongs, the essential elements of Barbarism (15).

Sumner drew attention away from the outward, visible epiphenomena of slavery, and to its inner nature, logic and power. Slavery reshaped the political society that admitted it, imparted its essential character of barbarism to that political society, and re-organized it around that central principle. The inner character of slavery corresponded to the inner character of the political regime, which bred men with its corresponding character, American Barbarians.

Sensitive to rising conflict, many had objected to the characterization of the strife between North and South as between the two civilizations of “Freedom and Slavery.” But this characterization, despite the sensitivities of some, was not strong enough; it “was mistaken” (15). Rather, Sumner said,

Sir, in this nineteenth century of Christian light there can be but one Civilization, and this is where Freedom prevails. Between Slavery and Civilization there is essential incompatibility. If you are for the one, you cannot be for the other; and just in proportion to the embrace of Slavery is the divorce from Civilization.

Sumner recast the conflict between Freedom and Slavery as a conflict between Civilization and Barbarism.

Barbarism rested upon the Law of Slavery, which was that “Man, created in the image of God, is divested of the human character, and declared to be a ‘chattel,’ – that is, a beast, a thing, or article of property” (17). In support of this, Sumner cited slave state

laws. South Carolina defined slaves as “chattels personal.” Maryland defined a slave as an “article,” equivalent to “working beasts, animals of any kind” (18).

The Law of Slavery recognized that “man can hold property in man,” abrogated “the relation of husband and wife” and “the parental tie,” closed “the gates of knowledge,” and appropriated “the unpaid labor of another” (Sumner 1870-1883, V:23-24). What was the “single motive” of these five barbarisms recognized by slave state law? Sumner quoted Senator Jefferson Davis of Mississippi, a sitting member of that Congress, who said that slavery was ““but a form of civil government for those who are not fit to govern themselves”” (24). That statement, resting on a claim of natural inequality, was an “outrage,” invented to justify the “profit” and “power” of the master (24-25).

American Slavery, as defined by existing law, stands forth as the greatest organized Barbarism on which the sun now looks. It is without a single peer. Its author, after making it, broke the die (26).

The American Law of Slavery did not derive from Common Law, Roman Law, Koranic Law, or Spanish Law, since these bodies of law afforded more privileges and rights than the American Law of Slavery, such as protections for marriage, parental ties, the freedom of children, and restrictions on punishment. The American Law of Slavery did not derive from English or American statutes since, by “positive and repeated averment of the Senator from Virginia [Mr. Mason], and also of other Senators, that in not a single State of the Union can any such statutes establishing Slavery be found” (28).

Then Sumner lit this explosive charge:

No, sir; not from any land of civilization is this Barbarism derived. It comes from Africa, ancient nurse of monsters; from Guinea, Dahomey, and Congo. There is its origin and fountain.

Sumner averred that the Law of Slavery in the slaveholding south derived from the customs of Africa. The absolute dominion of the master over the slave as property was a right asserted in Africa by captors of others in war, transferred from the captor to the slave-trader and from the slave-trader to the planter. The Supreme Court of Georgia justified the Georgia planters' license to hold slaves as chattel on that basis, and Sumner quoted and cited the court's opinion. Therefore,

It is natural that a right, thus derived in defiance of Christendom, and openly founded on the most vulgar Paganism, should be exercised without any mitigating influence from Christianity; that the master's authority over the person of his slave—over his conjugal relations—over his parental relations – over the employment of his time – over all his acquisitions, should be recognized, while no generous presumption inclines to Freedom, and the womb of the bond-woman can deliver only a slave.

Thus are the barbarous prerogatives of barbarous half-naked African chiefs perpetuated in American Slave-masters (28-29).

Sumner seriously maintained that American slave-masters had absorbed the customs of African chiefs and framed those customs into American law.¹ The political society of the slave South was reproducing the political society of Africa. The character of slave masters was assimilating to the character of African chiefs.

The most prominent principle of the slave master and African chief is violence, for, according to Sumner, “Slavery is founded on violence, as we have already too clearly seen; [and] can be sustained only by kindred violence, sometimes against the defenseless slave, sometimes against the freeman whose indignation is aroused at the outrage” (50). Unaware of their warped character, the slave masters “unblushingly” avow “Barbarous

¹ In more recent times, scholarship has found that African culture shaped the planters class (Waterhouse 2005, 17).

standards of conduct.... The swagger of a bully is called chivalry; a swiftness to quarrel is called courage; the bludgeon is adopted as the substitute for argument; and assassination is lifted to be one of the Fine Arts” (50-51).

“[B]ad as slavery is for the slave, it is worse for the Master” (51). Sumner proceeded to recite American and European authorities’ condemnation of slavery’s effect on the slave master’s character. American founder George Mason said that “every master of slaves is born a petty tyrant” (51); and Thomas Jefferson said that the slavery “transforms those into despots” (52). Philosopher John Locke declared slavery to be “the state of war continued” (52). Adam Smith said, “There is not a negro from the coast of Africa who does not possess a degree of magnanimity which the soul of his sordid master is too often scarce capable of conceiving.” Their masters were “wretches who possess the virtues neither of the countries which they come from, nor of those which they go to, and whose levity, brutality, and baseness, so justly expose them to the contempt of the vanquished” (53). Dr. Samuel Johnson confessed he did not know of anyone who would willingly abstain from advancing Christianity unless it was “the planters of America, a race of mortals whom, I suppose, no other man wishes to resemble” (53). Sumner quoted an exchange of letters between Condorcet and Voltaire on the brutality of the slave master, “the American savage” (54). Speaking of the Africans, Montesquieu ironically said, “It is impossible that we should suppose these people men; because, if we supposed them men, the world would begin to think that we ourselves were not Christians” (55). And Tocqueville reasoned, “The legislation of the Southern States with regard to slaves at the present day exhibits such unparalleled atrocities as suffice to show that the laws of humanity have been totally perverted, and to betray the desperate position of the

community in which that legislation has been promulgated” (56). Concluding these observations, Sumner assailed,

Tell me not of the lenity with which this cruel Code is tempered to its unhappy subjects. Tell me not of the sympathy which overflows from the mansion of the master to the cabin of the slave. In vain you assert such “happy accidents.” In vain you show individuals who do not exert the wickedness of the law. The Barbarism still endures, solemnly, legislatively, judicially attested in the very SLAVE CODE, and proclaiming constantly the character of its authors (56).

To prove how violence and not humanity influenced the political society of the slave states, founded on barbarous violence, Sumner quoted public southern sources. One newspaper advertised a runaway slave with “holes in his ears, a scar on the right side of his forehead; has been shot in the hind parts of his legs; is marked on his back with the whip” (57); another, of a sixteen year-old girl whose rapist master had “no further use of her.” He quoted Olmstead’s interview of a slave master who explained a cure to runaways, by pulling out their toenails, and of another who cut the Achilles tendon of his runaway. He quoted the opinion of North Carolina Chief Justice Ruffin, who ruled that “The obedience of the slave is the consequence only of uncontrolled authority over the body. . . . The power of the master must be absolute, to render the submission of the slave perfect” (58). A recent Virginia court decision had declared “the policy of the law . . . to protect the master from prosecution, even if the whipping and punishment be malicious, cruel and excessive” (59). Perhaps the bleakest view into the masters’ barbaric character was their practice of selling their children, born from their slave women (61). The Virginia master bred slaves, and in his “crop of human flesh consists much of the wealth of his state” (62). The slave-hunter, “with the blood-hound as his brutal symbol,” pursued slaves, “as the hunter pursues game.”

Since slavery was founded on violence, slave society was founded in violence, and new leaders, raised to command that society, were naturally prone to violence:

Nobody can look upon virtue and justice, if it be only in images and pictures, without feeling a kindred sentiment. Nobody can be surrounded by vice and wrong, by violence and brutality, if it be only in images and pictures, without coming under their degrading influence. Nobody can live with the one without advantage; nobody can live with the other without loss.... But if these loathsome things are not merely, sculptured and painted, if they exist in living reality--if they enact their hideous capers in life, as in the criminal pretensions of Slavery--while the lash plays and the blood spirts--while women are whipped and children are sold--while marriage is polluted and annulled--while the parental tie is rudely torn--while honest gains are filched or robbed--while the soul itself is shut down in all the darkness of ignorance, and while God himself is defied in the pretension that man can have property in his fellow-man; if all these things are present, not merely in images and pictures, but in reality, their influence on character must be incalculable (Sumner 1870-1883, V:64-65).

By an "irresistible law," surroundings and institutions fashion men into what they are. Some might rise above these influences, but most do not. Far from "ennobling the master," slavery degrades him. His circumstances lack anything that will "remind him of his own deficiencies, to prompt his ambition or excite his shame." Sumner continued:

Without these provocations to virtue, and without an elevating example, he naturally shares the Barbarism of the society which he keeps. Thus the very inferiority which the Slave-master attributes to the African race, explains the melancholy condition of the communities in which his degradation is declared by law (66).

Taught to believe that men can be held as an article of property, the moral sense of the master "is obscured." He becomes lawless, ruling his plantation with violent force, wearing his "bludgeon, revolver and bowie-knife" with pride (67). Customary violence and not the law becomes the means of settling differences with other men off the plantation through duels and "street fights." Unchristian murder, the badge of Cain, becomes a mark of honor and not the biblical mark of universal condemnation. Sumner

then quoted slave state governors complaining of the violent loss of life from these confrontations (68-72). He documented repeated instances of the rough suppression of liberties in the slave states, and placed the blame on the tyranny of slave masters (72-84). And this is “the social system, so much vaunted by honorable Senators, and which we are now asked to sanction and to extend” (68).

Finally, Sumner arrived at “the exhibition of Slave-Masters in Congressional history,” without making any personal allusion to his own historic experience at the hands of Brooks (84). Despite the “requirements of Parliamentary Law,” their violence in Congress broke “out in fearful examples. And here, again, facts speak as nothing else can.” Sumner recited a long list of outrages recorded in the congressional records.

In 1837, a member of the House of Representatives, R. M. Whitney, explained to a Committee of Investigation that he could not attend “without exposing himself thereby to outrage and violence in the committee-room.” Another testified

that Mr. Peyton, a Slave-master from Tennessee, and a member of the Committee, regarding a certain answer in writing by Mr. Whitney to an interrogatory propounded by him as offensive, broke out in these words: “Mr. Chairman, I wish you to inform this witness, that he is not to insult me in his answers; if he does, God damn him! I will take his life on the spot!” The witness, rising, claimed the protection of the Committee; on which Mr. Peyton exclaimed: “God damn you, you shan’t speak; you shan’t say one word while you are in this room; if you do, I will put you to death.” Mr. Wise, another Slave-master from Virginia, Chairman of the Committee, and latterly Governor of Virginia, then intervened, saying: “Yes, this damned insolence is insufferable.” Soon after, Mr. Peyton, observing that the witness was looking at him, cried out: “Damn him, his eyes are on me; God damn him, he is looking at me; he shan’t do it; damn him, he shan’t look at me.”

These things, and much more, disclosed by Mr. Fairfield, in reply to interrogatories in the House, were confirmed by other witnesses; and Mr. Wise himself, in a speech, made the admission, that he was armed with deadly weapons, saying: “I watched the motion of that right arm, [of the witness,] the

elbow of which could be seen by me, and had it moved one inch, he had died on the spot. That was my determination” (85-86).

In the House of Representatives in 1837, Hammond of South Carolina, “now a Senator,” said that if an abolitionist fell into “our hands, he may expect a felon’s death” (97). In the House in 1841, Mr. Payne, “a Slave-master from Alabama,” threatened that if “Abolitionists, among whom he insisted the Postmaster General ought to be included,” ever visited the South, ““he would hang them like dogs”” (97). On another occasion, “Mr. Dawson, a Slave-master from Louisiana, and a member of the House of Representatives, went up to another member on the floor of the House, and addressed to him these words: ‘If you attempt to speak, or rise from your seat, sir, by G--d, I’ll cut your throat’” (87). Joshua Giddings recounted that once, upon speaking about slavery in Georgia,

Mr. Black, of Georgia, raising his bludgeon, and standing in front of my seat, said to me: “If you repeat that language again, I will knock you down.” It was a solemn moment for me. I had never been knocked down, and having some curiosity upon that subject, I repeated the language. Then Mr. Dawson, of Louisiana, the same who had drawn the bowie-knife, placed his hand in his pocket and said, with an oath which I will not repeat, that he would shoot me, at the same time cocking the pistol, so that all around me could hear it click” (95).

In the Senate in 1848, Mr. Foote, a Slave-master from Mississippi, invited “Mr. Hale, the Senator from New Hampshire, who still continues an honor to this body,” to travel to Mississippi, where “he would grace one of the tallest trees of the forest with a rope around his neck, with the approbation of every virtuous and patriotic citizen, and that, if necessary, I should myself assist in the operation” (96). In 1850, Foot confronted Missouri Senator Thomas Benton.

This was aggravated by the circumstance that only a few days previously he had made this distinguished gentleman the mark for most bitter and vindictive

personalities. Mr. Benton rose at once from his seat, and, with an angry countenance, but without weapons of any kind in his hand, or, as it appeared afterward before the Committee, on his person, advanced in the direction of Mr. Foote, when the latter, gliding backward, drew from his pocket a five-chambered revolver, full loaded, which he cocked. Meanwhile Mr. Benton, at the suggestion of friends, was already returning to his seat, when he perceived the pistol. Excited greatly by this deadly menace, he exclaimed: "I am not armed. I have no pistols. I disdain to carry arms. Stand out of the way, and let the assassin fire" (87).

Not long after, Foote challenged Benton to a duel from the floor of the Senate in veiled but unmistakable language. The Senate did nothing (88). In 1852 "Mr. Clemens, a Slave-master of Alabama" challenged Mr. Rhett to a duel. The Senate called none to order (88-89). In 1854, Senator Benjamin from Louisiana, "who is still a member of this body, ardent for Slavery, while professing to avoid personal altercation in the Senate. . . , proceeded most earnestly to repel an imagined imputation on him by Mr. Seward, and wound up by saying: 'If it came from another quarter, it would not be upon this floor that I should answer it'" (89).

In that very session, Senator Jefferson Davis, "who speaks so often for Slavery," had praised the duel as a means of settling quarrels "and vindicating what is called personal honor; as if personal honor did not depend absolutely upon what a man does, and not what is done to him" (89). Also in that session in the House, Sumner quoted interruptions to Mr. Lovejoy, who was then addressing the issue of slavery:

By Mr. Barksdale, of Mississippi:

"Order that black-hearted scoundrel and nigger-stealing thief to take his seat."

By Mr. Boyce, of South-Carolina, addressing Mr. Lovejoy:

"Then behave yourself."

By Mr. Gartrell, of Georgia, (in his seat:)

"The man is crazy."

By Mr. Barksdale, of Mississippi, again:

“No, sir, you stand there to-day an infamous, perjured villain.”

By Mr. Ashmore, of South-Carolina:

“Yes; he is a perjured villain, and he perjures himself every hour he occupies a seat on this floor.”

By Mr. Singleton, of Mississippi:

“And a negro-thief into the bargain.”

By Mr. Barksdale, of Mississippi, again:

“I hope my colleague will held no parley with that perjured negro-thief.”

By Mr. Singleton of Mississippi, again:

“No, sir; any gentleman shall have time, but not such a mean, despicable wretch as that!”

By Mr. Martin, of Virginia:

“And if you come among us, we will do with you as we did with John Brown – hang you as high as Haman. I say that as a Virginian” (97-98).

In referring to these examples, Sumner said that he meant to show how such conduct violated “the first principles of Parliamentary Law.” But it would be too much to expect these men to restrain themselves “while Slavery prevails here, for the Duel is a part of that System of Violence which has its origin in Slavery” (90). He continued, “Men are transformed into wolves” (96). Slavery impels men to violence and to violate the rules of debate as a means of settling disagreement, “not knowing that there is a serener power than any found in personalities, and that all severity which transcends the rules of debate becomes disgusting” (91). Violence degrades he who is the mouthpiece for violence and slavery (91-92). “Of course, on such occasions, amidst all seeming triumphs, the cause of Slavery loses, and Truth gains. If men cannot afford to be decent, they ought to suspect the justice of their cause, or at least the motives with which they sustain it, but our Slave-Masters, not seeing the indecency of their conduct, know not their losses” (92).

In a republican political community, governing itself on the basis of natural equality, reason in debate, not violent force, decides political questions. In the eyes of a republican people, threatened and actual violence proves nothing. In fact, these examples, Sumner continued, “– and they might be multiplied indefinitely – attest the weakness of their cause. It requires no special talent to estimate the insignificance of an argument that can be supported only by violence” (98). But to members of a political community that governs itself on the basis of violent force, reason in debate is not sovereign in deciding political questions. At bottom, might makes right. In parliamentary councils, when reason expends itself short of victory, the issue is not settled until force is resorted to and expends itself. Paradoxically, the slave masters can only embrace the sovereignty of reason in debate by “the cultivation of those principles which make Slavery impossible” (92).

Sumner pointed out that pride made the slave masters unconscious “of the fatal influence of Slavery, which completes the evidence of the Barbarism under which they live” (99). It was “natural that a cherished practice should blind those who are under its influence,” and indeed the slave master exulted “in his unfortunate condition” (100). The slave masters’ deformities of character appeared to themselves as the distinctiveness of superiority.

Pride in their mastery had not only made them unconscious of their wrongs which had deformed them, but also made them forgetful of their republican fathers’ proscription of their wrongs. Sumner, along with his associates whose fellowship he saluted at the beginning of his return speech for “thinking alike about the Republic,” found “in the boasts of Slave-masters new occasion to regret that baleful influence under which even

love of country is lost in love of slavery” (101). The slave masters had reversed the meaning of the “great motto of Franklin,” so that “Where liberty is, there is my country” had become “Where slavery is, there is my country” (101). In their pride, the slave masters had forgotten or scanted the fact that Jefferson and Washington were abolitionists. They had threatened or had accomplished threats to shoot, beat, hang and stab their colleagues in Congress for having “simply expressed the recorded sentiments of Washington, Jefferson and Franklin” (99). The fathers “looked down upon Slavery,” but the slave masters of the present age “look up to Slavery.” Sumner continues:

The first, recognizing its wrong, were at once liberated from its insidious influence; while the latter, upholding it as right and “ennobling,” must naturally draw from it motives of conduct. The first, conscious of the character of Slavery, were not misled by it; the second, dwelling in unconsciousness of its true character, surrender blindly to its barbarous tendencies (101-102).

The difference between the slave-owning abolitionist fathers and the proslavery slave masters of the day consisted in the former’s immunity to and the latter’s infection by the contagion attacking the soul. The republican fathers believed in popular rule and tried to doom slavery; the latter-day slave masters believed themselves born to rule and were trying to spread slavery. Their embrace of slavery accounted for the latter’s moral crimes against the slave and their political crime against the rule of the people. Sumner had given a complete and prophetic account of the character of the slave masters, explaining why they could not easily respect any law conflicting with the law of their own political mastery.

Remarkably, subsequent events supplied a stunning confirmation of Sumner’s thesis. In response to Sumner’s speech Senator Chestnut of South Carolina alluded to Sumner’s beating and convalescence abroad:

Mr. President . . . , after ranging over Europe, crawling through the back door to whine at the feet of British aristocracy, craving pity, and reaping a rich harvest of contempt, the slanderer of States and men reappears in the Senate. We had hoped to be relieved from the outpourings of such vulgar malice. We had hoped that one who had felt, though ignominiously he failed to meet, the consequences of a former insolence, would have become wiser, if not better, by experience. In this I am disappointed and I regret it. . . . We know what is expected and what is desired. We are not inclined again to send forth the recipient of punishment, howling through the world yelping fresh cries of slander and malice (125).

To which Sumner replied, "I exposed to-day the Barbarism of Slavery. What the Senator has said in reply I may well print as an additional illustration. That is all" (126).

Within days after his speech, he received threatening visitors and messages, one threatening to "cut his d___d throat." His alarmed friends arranged for an armed bodyguard, and on one night, Representatives Anson Burlingame and John Sherman slept by the entrance to his bedroom to protect him (128).

On a different occasion, Ohio Representative Reader Clarke presented a theory of the effect of slavery on the character of masters that complemented Sumner's. Clarke's theory was unmistakably inflected by classical training, though he made no direct references to Greek authors. He began with the premise that "the constitutions, laws and institutions of a people are but the outgrowths of the wants, development and the culture of that people" (39 Cong 1, 1012). That is, a political society, or the regime, possesses a specific political character that is shared by the formal organization of government as well as by the way of life of that political society. The two halves of the regime are unified by a common spirit or character, on account of which the formal organization of government can be seen to "grow out of" political culture. For example, in a political regime defined by the principle of natural equality, the formal organization of government and the way of life of the people both tend to imbue that principle.

Clarke continued, saying that “the community has within it the germs of all possible forms of government by reason of the various characters of the individuals who compose it.” Every community possesses different individual character types each sharing in the specific character unique to different forms of government. These individual characters, in their “germ” form, represent the diversity of character types found within humanity: “the good and the bad, the educated and the ignorant, the simple and the crafty, the benevolent and the selfish, the inborn democrat and the natural tyrant” are all present in and part “so to speak, of this grand man, the body-corporate.” When political regimes are founded and government is formally organized, a ruling class is established that corresponds with a certain character type among many. At the American founding, “Selfish men would gladly have made everything subservient to their own aggrandizement, and to accomplish this would-have formed an oligarchy, a monarchy, or a despotism. Good men would gladly have laid the foundations of the structure upon the broad principles of right and justice, and would have embodied them into the forms of a pure republic.” Good men prevailed, and the people were established as the sovereign rulers of the republic upon the principle of natural equality.

However, subsequent history in which slavery was permitted to live demonstrated how slavery revolutionizes republican, or popular, government by directly developing the oligarchic character of the masters. Clarke isolated the “essential spirit of slavery” as the “selfishness that disregards the rights of others.” That selfishness was not bounded to “geographical lines, or limited to any particular color of skin”; that is, selfishness is not peculiar to one specific place or human relation defined by an incidental attribute like skin color. Selfishness is, simply, a “sin,” to which humanity is always susceptible, and it

corresponds to a certain character shared by “oligarchy, monarchy or despotism.” That sin “may be just as active and remorseless in the home of a domestic tyrant in Massachusetts as upon the cane-fields of Louisiana.” Though selfishness is found everywhere, its prevalence depends upon conditions that might feed the sin and give it scope, versus counter-acting forces of surrounding political society that might regulate and restrain that sin.

Domestic slavery is unusual in its powerful effect on selfishness. By giving one human being absolute dominion over another, slavery tempts selfishness to expand beyond the limits of self-control. Nothing but the conscience of the master checks the master’s selfish use of the slave’s life in any way that pleases the master, and if the master’s principle changes from the wrong of slavery to the rightfulness of slavery, the check of conscience is gone. The masters of political society become the slaves of all their selfish desires, especially, “pecuniary gain and political importance and the gratification of their lusts” (1012). The master resembles the classical definition of a tyrant. When spread out in society, domestic slavery creates a class of tyrants, enslaved to their appetites and lusting for lawless power. They seek to break the constraints of existing law, to make themselves rulers, and to make their twisted eroticism the law. In domestic slavery, “this accursed institution, the selfish and tyrannical found a central rallying point, which naturally drew together and to concert of action all the elements of reckless disregard of human rights, corresponding in the body-corporate to the animal propensities in the man.” Those simultaneously habituated to tyranny by slave-mastery naturally coordinate their actions to establish themselves and their rule, in “disregard of human rights.” Their character type was defined by enslavement to “animal

propensities,” i.e., the instinctive and unregulated pursuit of desires. Oligarchy was the natural political effect of inflated selfishness schooled under the dark wing of domestic slavery.

The shocking proof of slave masters’ unregulated lust was known to the Republicans. Responding to the oft-repeated charge that Republicans’ advocacy of equality for the slave would produce racial amalgamation, Ashley answered, if not “for a negro equality all over the South that must be nameless here, there would be no blue-eyed, light-haired octoroons, the children and descendants of African slaves, in every southern city, and in every neighborhood.” By a nameless negro equality, Ashley meant that the one way that southern masters treated slaves as equals was as counterparts in forced sexual union. At least Mormon polygamy, “about which even southern Representatives profess to be so shocked,” was voluntary and had to receive church sanction. Southern slavery permitted and encouraged “an involuntary, forced, and revolting concubinage, from which there is no escape,” and there was “no law to punish the aggressor.” Most shockingly, “the offspring of this criminal negro equality are slaves.” If the law punished these crimes and liberated the ill-used slave women and the children, slavery would immediately end. But it was “only in the land of slavery where this crime is tolerated. There it is unrestrained. There alone it is cherished.” The masters’ unpunished practice terminated in “eradicating from the heart of man all love for his own offspring, and filling the land with slaves who are the children of the dominant race.” In every “congressional district, in all the slave States of this Union,” one could find slaveholders who “own and sell their own children.” These fathers “see them toil daily beneath the lash of a taskmaster, and see them driven in coffle gangs to the southern

market – their sons to the shambles, and their daughters to the hells of southern cities” (36 Cong 1, Appendix, 373).

New York Representative William Kelley remembered that in 1824, when Lafayette traveled the South, he was surprised to find the “the complexion of the negro population in their cities so largely changed from what it had been at the close of the revolutionary war, and expressed the hope that in finding the two races thus blending their blood he might discover the solution of the slavery question” (38 Cong 1, 773). Lafayette’s hope would have been plausible if the masters had repented of their unrestrained eroticism and raised their children according to the law of paternal affections. Examples of this conduct may be found. But occupying Union armies met with the evidence of paternal carelessness. Kelley held up a picture sent to the North by General Banks, “of a band of slaves... four of whom are as white as we who hold this discussion.” They were born in Virginia and Louisiana, and “were owned or sold by their fathers as negro slaves” (773). The strength of the masters’ lust more than overcame affection for common humanity in the abstract, but extended to vicious and unnatural treatment practiced on their own children. As cold and as hard as iron, the masters’ determination to elevate their lust to the lofty status of law, in disregard of any other law, irresistibly impelled them to despotically rule over all.

Why Republicans Often Meant “Oligarchy” or “Aristocracy” When Saying “Slavery”

Quite often, when Reconstruction Republicans used variants of the word slavery, they were referring to the oligarchic, slave-owning rulers of the South.

Because the Reconstruction Republicans identified oligarchic rule with slavery, the oligarchy's most outstanding feature, they often spoke in a manner that relied upon the audience's common understanding of that identification. To that audience, the identification of oligarchic rule with slavery did not need explanation at every instance of its mention. They often shortened their reference to the slave states' different form of government and way of life by using the word "slavery" to represent all of it. The historical record contains countless occurrences of Republicans using the word "slavery" and its variants, "slave power," "slave interest," "slavocracy," etc., in ways that literally do not make sense, unless the identification between domestic slavery and oligarchic political regime is borne in mind. Very often, their usage of these terms can only make sense when interpreted to include a specific system of government and way of life anchored in slavery. They often used the word "slavery" metonymously, that is, to represent the rulers, interests and forces of the political regime that owed its revolutionary, un-republican character to slavery. Because of the generally understood, close causal relationship between slavery and oligarchy, Republicans could use these variants of the word "slavery" with the knowledge that their contemporaries understood the associated meaning that these terms represented. In some cases, the context in which Republican speakers and writers made metonymous usage of "slavery" also contains direct confirmation that this is what they meant. These cases help the reader of the historical record understand that when variants of the term "slavery" appear, much more meaning is often intended than domestic slavery alone.

An 1864 speech by New Hampshire Senator Daniel Clark illustrates this interpretive point. Clark catalogued slavery's many oppressions and crimes. According to Clark, slavery had

spread herself since the formation of the Constitution over millions of square miles and among millions of people. She has excluded from that territory free schools and those institutions of learning which are accessible to the poor, and thus kept the people in comparative ignorance. She has degraded labor and increased poverty and vice.... She has denied often times in those States to citizens of other States their rights under the Constitution. She has shut up to them the, liberty of speech and the press. She has assaulted them, imprisoned them, lynched them, expatriated them, murdered them, for no crime, but because they testified against her. She has debarred from that territory most of the improvements which mark a free people. She has perverted knowledge. She has opened in parts of it the foreign slave trade, and obstructed the punishment of the kidnapper and the pirate. In other parts she has degraded the people to the infamous business of raising negroes for sale, and living upon their increase. She has practiced concubinage, destroyed the sanctity of marriage, and sundered and broken the domestic ties. She has bound men, women, said children, robbed them, beat them, bruised and mangled them, burned and otherwise murdered them. To their cries she has turned a deaf ear, to their complaints shut the courts, and taken from them the power to testify against their oppressors. She has compelled them to submit in silence and labor in tears. She has forbidden their instruction, and mocked them with the pretense she was christianizing them through suffering.

She has devised and set up the doctrine of State rights, denying that her people owed allegiance to the national Government, thus weakening their attachment to it, and sapping its foundations.

She has claimed to nullify the acts of Congress and to yield obedience to those only which she chose to obey.

She agreed to a division of the national domain by the line of 36-30, abided by it till she had appropriated the part assigned to her, then abrogated it, and filled Kansas with fraud, violence, and blood to secure the rest.

She stole into Texas, caused it to rebel against Mexico, and then erected it into a slave State in the Union, and made the nation pay the debts of the adventure.

She made war again on Mexico for more territory; and when California, a part of the territory obtained by the war, asked to be admitted as a free State, she refused her Assent until appeased by new compromises (38 Cong 1, 1369).

Clark's catalogue did not end there. What is noteworthy about his long list is that "slavery" did not literally commit all these evils. How can slavery "set up the doctrine of State rights"? "Slavery" in this context cannot literally be an agent of the actions of government. More precisely, those with the strongest interest in maintaining slavery and clothed with the political authority to maintain it committed these evils. But who above all possessed the interest and the authority to maintain slavery? Clark gave the answer. In this speech, he said that slavery had "reared an aristocracy and trampled down the masses." The aristocrats of the regime that slavery had reared did all these things. And, this was a regime that did not only trample down domestic slaves, but "the masses." "Slavery" here is a metonym for "slavery-nourished political aristocracy."

The reader would be mistaken to limit the interpretation of "slavery" in this context to mean no more than the domestic institution supported by individuals who were morally sympathetic with it. This interpretation would ignore the fundamental re-organization of the antebellum southern political regime in alignment with the preservation of slavery, the cause of this political re-organization, which Clark and many others acknowledged. In appreciating the Republicans' identification of slavery as the cause of southern oligarchy, the crimes attributed to "slavery" are often more accurately read as government actions whose agents were the despots of a ruling class elevated by slavery.

Of the many other examples that could be drawn out of the historical record, a portion of an 1858 speech by Owen Lovejoy in the House of Representatives supplies another example like Clark's catalogue of slavery's crimes. Lovejoy colorfully indicted

slavery in this speech, but the crimes he indicted were actions of government changed by the causal influence of slavery:

The demon of slavery has come forth from the tombs. It has grown bold and defiant and impudent. It has left its lair, lifted its shameless front towards the skies, and with horrid contortions and girations, mouths the heavens, and mutters its blasphemies about having the sanction of a holy and just God; dodges behind the national compact, and grins and chatters out its senile puerilities about constitutional sanction; and then, like a very fantastic ape, jumps upon the bench, puts on ermine and wig, and pronounces the dictum that a certain class of human beings have no rights which another certain class are bound to regard; and then it claims the right to stalk abroad through the length and, breadth of the land, robbing the poor free laborer of his heritage, trampling on congressional prohibitions, crushing out beneath its tread State sovereignty and State constitutions. It claims the right to pollute the Territories with its slimy footsteps, and then makes its way to the very home of freedom in the free States, carried there on a constitutional palanquin, manufactured and borne aloft on the one side by a Democratic Executive, and on the other by a Democratic Jesuit judge! It claims the right to annihilate free schools – for this its very presence achieves – to hamper a free press, to defile the pulpit, to corrupt religion, and to stifle free thought and free speech. It claims the right to convert the fruitful field into a wilderness, so that forests shall grow up around graveyards, and the populous village become a habitation for owls. It claims the right to transform the free laborer, by a process of imperceptible degradation, to a condition only not worse than that of the slave (35 Cong 1, 752).

In this speech, Lovejoy confirmed that by “slavery,” he meant government changed by domestic slavery. He said that the national conflict over slavery was not precisely between “the North and the South, but between freedom and slavery – between the principles of liberty and those of despotism.” The sectional nature of the conflict was incidental to the primary difference – a difference in political regimes that were separated by the border between “liberty,” the domain of republican government and “slavery,” the domain of oligarchic government.

Republicans often referred to the North-South conflict, as Lovejoy did, as a conflict between “liberty and slavery” or “freedom and slavery.” But in stating this, the

word “slavery” included but signified more than enslavement of Africans (cf. Rep. Daniel Gooch, 38 Cong 1, 2070, May 3, 1864; Rep. Isaac N. Arnold, 38 Cong 1, Appendix, 68, February 20, 1865). Representative Isaac Newton Arnold said, “[I]t is a question between liberty and slavery; not of the black man alone, but of the white man also. Constitutional liberty and despotic slavery will struggle and contend on this continent until one or the other is subdued” (37 Cong 2, 859). In these contexts, slavery carried the political meaning of the subjugation of all – of domestic slaves, as well as the subjugation of all those not sharing in, or allied with the ruling oligarchic class.

For another example, in 1862, Representative Francis Kellogg referred to slavery as a ruler and agent of public action, which is literally nonsensical:

For the last ten years if a school teacher was to be employed, or a clergyman settled, or a constable or justice of the peace elected in any one of the thirty-four States, the first question asked was “what are his opinions on slavery”... It is aggressive in its nature, always encroaching upon the rights of others, and at war with liberal institutions everywhere. In the thirteen states where it has the control of the local government, freedom of speech and freedom of the press are unknown, and the laws which it enacts and enforces are more oppressive and tyrannical than the decrees of the despots of Austria (37 Cong 2, Appendix, 326).

How can “slavery” be aggressive, encroach on the rights of other, make war on liberal institutions, control the local government and enact and enforce laws? His meaning becomes clear in light of a speech two years earlier on the exact same subject, freedom of speech and the press:

This freedom of speech and of the press has cost too much blood and suffering in the past to be given up now for the sake of accommodating a few thousands of an aristocracy, who rob one class of all their rights, and then bid their poorer neighbors relinquish half of theirs, so they may live on in security (36 Cong 1, Appendix, 422).

The class robbed of all their rights was the slaves; the “poorer neighbors” induced to relinquish half their rights were non-slaves who were not allied with or numbered among “a few thousands of an aristocracy.” This shows that when Kellogg said “slavery has the control of the local government,” he meant “slaveholding aristocracy” for “slavery.”

The Republicans often used the term “slave power.” In 1858, Henry Wilson said that the “gigantic slave power” was the only “power on this continent that could thus control, direct, and guide men.” Furthermore, it held “this Administration in the hollow of its hand,” and it “guides and directs the Democratic party, and which has only to stamp its foot, and the men who wield the Government of this country tremble and submit and bow to its will” (35 Cong 1, 576). In 1860, Ohio Representative John Bingham defined the term with reference to the abandonment of the early national policy of containing slavery: “The precepts and example of Jefferson were discarded. An influence appeared in the southern States which sought to change the settled policy of the Government, and to establish, and perpetuate the institution of slavery. This influence I shall denominate the slave power” (36 Cong 1, 2310, May 24, 1860).

In 1862, Senator William Windom said that “the loyal people of this nation” would never again “confide its interests and its destiny to the slave power,” implying that the slave power had controlled the nation’s destiny. If slavery emerged intact from the war, the slave power “will inevitably renew the old struggle for supremacy. Just so long as it can aspire to rule, it will conspire to ruin the nation, and there will be no peace” (37 Cong 2, 2246). In 1864, Senator John Hale recalled when “the Government of the United States, under the cruel and arbitrary sway of the slave power, in the madness of its power

undertook to shut up Faneuil Hall” in Boston, by prosecuting antislavery speaker Theodore Parker in federal court “for seditious words” (38 Cong 1, 559). Also in 1864, Representative Thomas Shannon (CA) mentioned in passing that when the California convention asked Congress for admission, “The slave power was then in control here, and refused to admit them” unless the Missouri Compromise line’s extension to the Pacific were obeyed. This “would have cut the state in two and made the lower half a slave State” (38 Cong 1, 685). In the same year, Representative John Baldwin equated the slave power with the “vicious old political dynasty that has long controlled the Government” and still commanded “supporters at the North,” who, “forgetting or failing to comprehend the grand meaning of this Republic, brought themselves to act as if the slave power were really the fundamental law of the land” (38 Cong 1, 949).

Speaking for himself, but also for all these aforementioned Republicans, Henry Wilson gave the term “slave power” this definition: “When I speak of the slave power of this Government I mean the political influence of slavery in the Government of this country” (36 Cong 1, 593, January 26, 1860). With Bingham, Wilson perceived that the slave power had risen after the founding generation had passed away: “When the Constitution was made there were about six hundred thousand slaves in this country.... Slavery as an element of political power was utterly contemptible.... These six hundred thousand now have increased to four million.”

With the increase of that interest “upheld by State law..., the result is that men in favor of perpetuating and extending this system of slavery over this continent have obtained the control of the sovereign States of this Union.” But it would not be completely true to say that the “slave power” completely consisted in those men. In

1862, Isaac Arnold called the leaders of secession, “the chief conspirators, Davis, Floyd, Slidell, Mason and others... , the instruments of the slave power” but not the slave power itself, despite their leading positions in the Confederacy (37 Cong 2, 858).

The Republicans’ conception of the slave power’s nature was that it was served by men, but not entirely by the men themselves. The slave power’s life in America had a beginning point – sometime after the founding generation; it was predictably rational, dictating commands consistent with its certain character; it was instantly and recognizably different from the power that it competed against for control of American governments; it was foreign to their own character; and as such, it was indisputably evil. The Republicans understood that the slave power emanated from the oligarchic political regime among the slave states.

Charles Sumner explicitly connected the two in 1855. The few who owned the great mass of slaves, “this small company – sometimes called the Slave Power, or Black Power, better called the Slave Oligarchy – now dominates over the Republic, determines its national policy, disposes of its offices, and sways all to its absolute will” (Lester 1874, 207). The slave power’s object was to extend slavery, and with its extension, to make not just slavery national, but also to nationalize the oligarchic political regime that correlated with slavery. Though he was, at the time, a Whig from Massachusetts, Sumner had signed the 1854 public “Appeal of the Independent Democrats of Ohio in Congress to the People of the United States.” This document stated that the “Federal Government, controlled by the Slave Power” was being directed “to extinguish Freedom and establish Slavery in the States and Territories of the Pacific, and thus permanently subjugate the whole country to the yoke of a Slaveholding despotism” (33 Cong 1, 282).

In 1864, Michigan Representative John Longyear also described the slave power in regime terms. The arms of the slave power reached forth from the slave states, attempting to destroy national republicanism and liberty, in favor of a new system of government familiar to itself:

In respect to slavery it is not change merely that is taking place, it is *radical substitution*; and of what? Of freedom for slavery; and why? Because slavery proved itself inimical to civil liberty, to the Constitution, and to republican institutions. The slave power, not content with the enslavement of its immediate victims insisted upon and for along series of years was conceded the control of the Government, and the enslavement in fact, of all its [the national Government's] energies, its power, its wealth and its emoluments. At length, through congressional enactments controlled by its interests, and subsidized judicial decisions in furtherance of its purposes, its encroachments became intolerable; and a cry went up from the great body of the people of the free States and from many in the slave States against the aggressions of the slave power and demanded that it should confine itself to its own particular domicile and not stretch its arms over the entire nation and attempt to control the liberties of the entire people (38 Cong 1, 2014, original emphasis).

The slave power could not co-exist with the form of government alien to its nature, which was inimical to republicanism and the Constitution framed by the republican fathers. This explained why, in the opinion of Windom and other Republicans, “so long as it [the slave power] can aspire to rule, it will conspire to ruin the nation.” From the Republicans’ point of view, unchecked oligarchy would be the ruin the nation, whether by coercive violence, or by the oligarchy successfully supplanting American republicanism. In a short space of an 1862 speech, George Julian employed several of these terms together – slavery used metonymously, the slave power, and oligarchy – all intimately related, which enables us to see the “slave power” connected to the political regime from whence it came:

Slavery triumphed, finally, when it clutched the national Treasury, sent our Navy into distant seas, plundered our arsenals, fired on our flag, and sought to make

sure its dominion by wholesale perjury, treason, rapine, and murder.... [S]lavery has now forced upon the nation the question of liberty or death.... In the year 1850, when the slave power triumphed through the “final settlement” which was then attempted, I had the honor to hold a seat in this body; and I said, in a speech then delivered, that-

...Sir, these questions are no longer within the control of politicians. Party disciples, presidential nominations, and the spoils of office, cannot stifle the free utterance of the people respecting the great struggle now going on in this country between the free spirit of the North and a domineering oligarchy in the South. Here, sir, lies the great question, and it must be met....

Sir, I speak to-day in the spirit of these words, uttered nearly twelve years ago, and verified by time (37 Cong 2, Appendix, 186).

Slavery and the slave power, in this passage, signify the same thing: the powers had been contending for “a domineering oligarchy in the South” and contending against “the free spirit of the North.” Julian’s 1850 claim, that the questions of the day were “no longer within the control of politicians,” portended larger changes than ordinary political realignment. The great question was: what would issue from the inter-regime struggle that lay underneath all of their politics? Julian claimed that time had verified his correctness in predicting great changes caused by that struggle. Following his 1850 speech, the parties did realign, and after the dust cleared, they did become sectional, each aligned to one of the two dueling regimes. The contention between the two political regimes became an inter-regime war. The war staked the lives of each political regime.

In many instances, the variant terms, “slavery,” “slave power,” etc., only make sense as the Republican speaker or writer’s short-hand for the oligarchic regime, its rulers, defenders, interests, manners and tendencies. These are all closely associated with the institution of domestic slavery. In the voluminous instances when the Republicans indicted “slavery,” they were not merely engaged in moral disputation with opponents

over the rectitude of slavery. Often, they were also railing against slavery's corrosive effects on free institutions and republican government; moreover, they were railing against slavery's offspring and patron, oligarchic government, its way of life and its rulers. In sum, when the Republicans indicted slavery, they were waging a struggle over the ultimate political question: the character and type of the American political regime. Disarmed of this meaning of the word "slavery," the reader cannot see the full breadth and depth of the impression oligarchic government made on the Republicans. With that meaning understood, the reader can better comprehend the centrality of oligarchic government in Republicans' reconstruction concerns.

CHAPTER IV
THE ORIGIN OF THE OLIGARCHIC REVOLUTION
IN THE ANTEBELLUM SOUTH

*Charles Sumner on the Deviation of Southern Oligarchy from the Plan of the
Republican Fathers*

Reconstruction Republicans generally agreed that the southern oligarchy did not conform to the plan of the American Founding, and that the founders did not favorably contemplate oligarchic government. By frequently referring and professing fidelity to the American Founders when attacking slavery and the southern political regime that grew from it, the Republicans attempted to demonstrate their true conservatism and the oligarchy's false claim to conservatism. The conservatism of the rulers and defenders of the southern regime could only be construed as true conservatism if the referents of their conservatism were forms of government and political life that antedated the American Founding (for example, from aristocratic-monarchic Europe). But the founders, said Nevada Senator James Nye, "started with a new doctrine and a new theory," and "threw aside the postulates of aristocracy ... instituting government to protect natural and personal rights" (39 Cong 1, 1074). The Republicans only cared to show whether the southern statesmen's idea and practice of government conformed to the one referent that mattered: the plan of the American Founding. If it was proven that government and political life in the slaveholding states substantially differed from that plan, the

Republicans could show that the South had revolutionized. Southern oligarchy was revolutionary and was never planned, nurtured or wished for, by the American Founders.

Few examples better show their agreement on this point than the speech of Senator Charles Sumner on February 5 and 6 in 1866. By then, the post-war 39th Congress had been convened for two months, preoccupied with the question of reconstruction policy. This policy would determine how to implement the establishment of republican government in the insurrectionary states. At that crucial time, Sumner delivered a two-day speech on the meaning of American republicanism.

Article IV, Section 4 of the Constitution required that the national government guarantee a republican form of the government to the states. Although Congress generally agreed that the insurrectionary states were not republican, a thorough and precise definition of what constituted a republican form of government was required. Addressing the Senate, Sumner said that this was “a practical question, which you are summoned to decide.” To fulfill its constitutional duty to guarantee a republican form of government, the Senate had to “affix its meaning.” The Constitution compelled it to answer the question (Sumner 1870-1883, X:138).

Sumner’s speech attempted to affix a proper meaning to that definition. Nineteen pages of subsequent praise excerpted from free state newspapers, journals and letters from prominent Americans, and even from the French journal, *Revue Des Deux Mondes*, append the speech in Volume X of *The Works of Charles Sumner*. The correspondent to the *New York Tribune* said, “You can hear men who are not in the habit of following Mr. Sumner’s views of policy say with heartfelt satisfaction, it was a grand speech, worthy of the Senate, worthy of the cause it defended, worthy of this Republic. I have hardly seen a

Republican here who was not as proud of it as if he had made it himself” (249). The Dayton (OH) *Journal* wrote, “As an exposition of the American theory of Republicanism, this speech is unsurpassed in the history of American oratory” (252). The Portland (ME) *Daily Press* wrote, “It is not only *the* great speech of Charles Sumner’s life, but it is the great speech of the age.”

Among the Congressional Republicans who were “not in the habit of following Mr. Sumner’s views of policy,” but who expressed their agreement with Sumner’s argument, were Representative James Gillespie Blaine, Senator William Pitt Fessenden, and Senator George H. Williams. Blaine wrote that Sumner’s speech was an “exhaustive and masterly essay” and “a treatise of great value” (Blaine 1884-1886, II:200). From the Senate floor, Fessenden said Sumner had “eloquently shown...the great principles which lie at the foundation of the Constitution itself, and of all free and republican government” (39 Cong 1, 705). Senator George H. Williams effused,

Sir, I listened with profound admiration to the speech which the Senator delivered in favor of the proposed substitute. It was worthy of the subject, worthy of the occasion, worthy of the author; and when those who heard it shall be forgotten, the echoes of its lofty and majestic periods will linger and repeat themselves among the corridors of History. I cordially indorse the prevailing sentiment of that speech (39 Cong 1, Appendix, 94).

These signs of agreement indicate that Sumner’s speech on what was and what was not republican government generally represented Reconstruction Republicans’ views.

Sumner first traced the background of Article IV, Section 4. Writing before the constitutional convention, James Madison anticipated dangers to the existence of republicanism arising from the existence of slavery. Quoting and commenting on Madison’s private notes, Sumner said:

“According to *republican theory*, right and power, being both vested in the majority, are held to be synonymous; according to fact and experience, a minority may, in an appeal to force, be an overmatch for the majority”; and he remarks, in words which furnish a key to the “guaranty” afterwards adopted, “Where Slavery exists, the *republican theory* becomes still more fallacious,” – thus showing, that, at its very origin, it was regarded as a check upon Slavery (Sumner 1870-1883, X:139, original emphasis).

Sumner was showing that Madison understood the inherently antagonistic relation of slavery to republicanism: where slavery existed, “right and power” did not remain lodged in the majority as republican theory required, but was transferred to a lodgment in the minority. An explicit guaranty of republican government was intended to provide a constitutional check upon this tendency.

Sumner continued that, in their notes or speeches contemporaneous with the convention, Alexander Hamilton, Edmund Randolph and George Mason had all expressed sentiments strongly in favor of a constitutional requirement that American government be republican in form. An early proposal of the provision in the convention included the national government’s guaranty of a state’s “existing laws,” to which Gouverneur Morris objected. James Wilson amended the language with the convention’s approval, so that the national government would only be required to guaranty “a republican form of government” to the states. This showed that the convention agreed in distinguishing true republicanism from “existing laws” in deciding what should receive the guaranty. Summoning further reasons for the guaranty’s inclusion, Sumner quoted and then commented on “the prophetic language” of Madison’s Federalist No. 43:

“It may possibly be asked, what need there could be of such a precaution, and whether it may not become a pretext for alterations in the State governments, without the concurrence of the States themselves. These questions admit of ready answers. If the interposition of the general government should not be needed, the provision for such an event will be a harmless superfluity only in the Constitution.

But who can say what experiments may be produced by the caprice of particular States, by the ambition of enterprising leaders, or by the intrigues and influence of foreign powers?"

The very crisis anticipated has arrived. "The caprice of particular States" and "the ambition of enterprising leaders" have done their worst. And now the "guaranty" must be performed, not only for the sake of individual States, but for the sake of the Union to which they all belong, and to advance the declared objects of the Constitution, specified in its preamble (141-142, Sumner's emphasis).

The guaranty does not only serve the advantage of the people of the state in which the government had revolutionized, but is "a guaranty to each in the interest of all," because the "good of all is involved in the good of each." As the guarantor, the national government acts for each and all when it acts "on default of the party guaranteed." In other words, when one or several state governments revolutionize away from republicanism, all states are vulnerable to corruption as from a cancer. If several states adopted a new anti-republican form of government, the nation would become divided by a regime difference. But vested with the constitutional authority to interfere in those states, the national government both saves the people of that state from anti-republican tyranny and also protects the other states from spreading tyranny. Sumner observed that the nation had been experiencing this crisis through the antebellum period and Civil War, against which the framers of the Constitution had provided a remedy in Article IV, Section 4.

Sumner then took up the question: "What is 'a republican form of government,' according to the requirement of the National Constitution?" (143). The Fathers distanced themselves from prior definitions and foreign definitions of republicanism. The "most competent" of the Fathers "who disagreed on other things, agreed in discarding these examples" (146). Sumner described the Fathers as lettered but thoughtful, confident and

independent men who sought to improve upon available definitions and did settle upon one.

By inserting the republican guarantee into the Constitution:

Our fathers plainly intended a government representing the principles for which they had struggled. Now, if it appears that through years of controversy they insisted on certain principles as vital to free government, even to the extent of encountering the mother country in war, – that afterward, on solemn occasions, they heralded these principles to the world as “self-evident truths” – that also, in declared opinions, they sustained these principles, – and that in public acts they embodied these principles, – then is it beyond dispute that these principles must have entered into the idea of the government they took pains to place under the guaranty of the nation (153-154).

The reason why the Fathers struggled, then warred against the mother country, was “to establish the very principles for which [Sumner] now contend[s]... [t]o secure the natural rights of men” (154). Sumner continued:

The first object was not independence, but the establishment of these principles and when at last independence began, it was because these principles could be secured in no other way. Therefore the triumph of independence was the triumph of these principles, which necessarily entered into and became the animating soul of the Republic then and there born (154-155).

Marshaling broad historical testimony, Sumner showed that the purpose of the revolution was to establish “a Republic, with Liberty and Equality as animating principles, where government stood on the consent of the governed,” based on natural right (172). When the Fathers declared independence, “they continued loyal to their constant vows” (173). In their Bills of Rights, the states also proclaimed this doctrine. At the close of the war, Madison wrote a similar doctrine that George Washington promulgated in a general order issued from his camp:

“Let it be remembered that it has ever been the pride and boast of America, *that the rights for which she contended, were the rights of human nature*. By the blessing of the Author of these rights, on the means exerted for their defence, they

have prevailed against all opposition, and *form the basis of thirteen independent states*. No instance has heretofore occurred, nor can any instance be expected hereafter to occur, in which *the unadulterated forms of Republican Government* can pretend to so fair an opportunity of justifying themselves by their fruits. In this view the citizens of the United States are responsible for the greatest trust ever confided to a political society” (174-175, Sumner’s emphasis).

From events prior to the Revolutionary War, through the war’s end, and throughout their lives, the Fathers sustained the same principles, “testifying to the government they founded and upheld” (176). A tolerably distinct, recurring definition of republican government could be found in their broadly overlapping opinions. Sumner provided supporting exegeses of the principled professions of founders Benjamin Franklin, Thomas Jefferson, James Madison, Alexander Hamilton, Samuel Adams, Roger Sherman, John Adams, Charles Pinckney, Luther Martin, George Mason and John Taylor of Caroline (176-188).

In sum, they all conjoined natural right to republicanism. They professed their belief in natural equality with respect to liberty, from which they derived the rightfulness of popular sovereignty. Republican government was the only legitimate form of government, resting upon the consent of the governed, because the fact of natural equality admitted no other form. But by “consent of the governed,” the Fathers meant both that the government had to register the collected will of the governed political community, and also that the government could not violate the natural rights of any member of the political community. Natural rights both conferred lawfulness on the will of the majority and limited what the majority could rightfully do.

Sumner recited the public acts of the founding generation that confirmed this meaning (188-196). Sumner concluded this section of his speech:

I offer you the American definition of a Republican form of government. In vain do you cite philosophers or publicists, or the examples of former history. Against these I put the early and constant postulates of the Fathers, the corporate declarations of the Fathers, the avowed opinions of the Fathers, and the public acts of the Fathers, all with one voice proclaiming, first, that all men are equal in rights, and, secondly, that government derives its just powers from the consent of the governed; and here is the American idea of a Republic, which must be adopted in the interpretation of the National Constitution. You cannot reject it. As well reject the Decalogue in determining moral duties, or reject the multiplication-table in determining a question of arithmetic (196).

Sumner conceded one plausible objection to his proof: “the contemporary recognition of Slavery.” But he thought it enough to remind the Senate that “our fathers did not recognize Slavery as a permanent part of our system, but treated it as exceptional and transitory” (196). And in fact, “becoming a freeman,” the slave stepped into republican citizenship. Sumner gave extensive proof that “at the adoption of the National Constitution,” the founding generation “refused to recognize any exclusion from the elective franchise on account of race or color. The Fathers knew too well the requirements of a republican government to sanction such exclusion” (188).

Over the course of dissecting the opinions and acts of the founding generation, Sumner took care to distinguish the Fathers’ republicanism from the form of anti-republicanism that had brought America to a crisis. Franklin’s 1736 writing on popular government, foreshadowing republican government, held it to be created for “the good of the whole,” and, to which Sumner added, “not for an odious oligarchy or an aristocratic class” (176-177). On Jefferson’s criticism of excluding tax-paying and fighting men from representation, Sumner commented, “Thus did he scout out the whole wretched pretension of oligarchy and monopoly by which citizens are deprived of equal rights” (179). Quoting Hamilton, Sumner said that, “as long as offices are *open to all men* and

no *constitutional rank* is established, it is pure republicanism.” Then Sumner added for emphasis: “Not for an oligarchy but for *all*, is a republic created” (182, Sumner’s emphasis).

By contrasting the founders’ republicanism with oligarchy on these particular points, Sumner reminded the Senate how the insurrectionary states grossly violated Article IV, Section 4, which the Senate was bound to enforce. Continuing, Sumner read the inter-state political regime of the southern states out of the protection of the Constitution:

A republic, like a democracy, cannot tolerate inequality. Wherever a favored class appears, whether in one or the other, its republican character ceases. It may be an aristocracy or oligarchy, but it is not a democracy or a republic.

It is not difficult to classify our Rebel States. They are aristocracies or oligarchies. An aristocracy, according to the etymology of the word, is the government of the best. An oligarchy is the government of the few, and is not even an aristocracy, but an abuse of aristocracy, as despotism is the abuse of monarchy ...

To show that our Rebel States are aristocracies or oligarchies might suffice. But we must not forget, that, born of Slavery, they have the spirit of that iniquity, so that they are essentially of a low type. Founded on color of the skin, they are, beyond question, the most senseless and disgusting of all history. Would you learn to what they must incline? Listen to the frank words of the Venetian master, the famous Father Paul, [who] counsels the privileged class how to use their powers. “If a noble,” says he, “injure a plebeian, justify him by all possible means; but should that be found quite impossible, punish more in appearance than in reality. If a plebeian insult a noble, punish him with the greatest severity, that the commonalty may know how perilous it is to insult a noble.”... But this same spirit predominates still in the Rebel States. It rages there with more revolting cruelty than Venice ever witnessed. And such is the government now claiming recognition as “republican” ...

Clearly, most clearly, and beyond all question, such a government is not “republican in form.” Call it oligarchy, call it aristocracy, call it caste, call it monopoly; but never call it a republic (211).

In quoting the Venetian, Sumner demonstrated the sense by which he proscribed unrepublican inequality. Plebeians and nobles deserved unequal punishments for the same offense, which meant they were not equal before the law. “The same spirit” of inequality between classes distinguished the American South.

In this speech, Sumner touched only briefly on the point of departure of these states’ development from the Fathers’ republicanism. From the founding, the origin of the rebellion of oligarchy against republicanism proceeded from South Carolina, spreading outward and enveloping other states. Georgia was an early compeer of South Carolina in political character. In his account of the public posture of all the states during the founding generation, Sumner made exception for those two states. Georgia was “fitful,” never quite embracing republican practice, and in stronger terms, Sumner described South Carolina as “the persistent marplot of republican institutions” (193). These anti-republican states then acquired a defender and promoter. The “false evangelist” John C. Calhoun of South Carolina openly rejected the Fathers’ principles of republicanism when he

audaciously announced in the Senate that to declare all born free and equal was “the most dangerous of all political errors”; that it had “done more to retard the cause of liberty and civilization, and is doing more at present, than all other causes combined”; and that “we now begin to experience the danger of admitting so great an error to have a place in the *Declaration of our Independence*” (234).

Sumner commented, “To repel such effrontery is not enough; it must be scorned... The whole assumption is ignoble, utterly unsupported by history, and insulting to the Fathers, while offensively illogical and irreligious” (234-235).

The political regime of the slave states had deviated from the standard of American republicanism established by the Founding Fathers long before the Civil War.

Southern oligarchy was revolutionary, not conservative, in relation to the proper referent of the founders' republicanism. South Carolinian John C. Calhoun was the aspiring Founding Father of the revolutionary oligarchy. That revolution spread from his state and from Georgia, and it eventually overtook other states where slavery had continued past the Founding era.

The Republican Fathers and Slavery

Why was the oligarchic political regime among the slaveholding states allowed to grow, revolutionize and supplant the republican political regime patronized, planned and established by the American Founders? Were the founders aware of the revolutionary effect domestic slavery would bear upon their political establishments? Or did they unwittingly sow the seeds of their republican regime's destruction by including slavery among the elements of their political society?

The Republicans maintained that the founders opposed slavery on principle and did understand slavery's antirepublican character and effects. Their new nation inherited but crippled slavery. Wounded, slavery was expected to die, but instead escaped its intended mortality, then recovering and gaining strength.

At the time of the American Founding, the republican Fathers and the public anathematized slavery. In the language of Connecticut Representative Orris Ferry, the founders regarded slavery as an "unholy thing" (36 Cong 2, 553). "Our fathers," California Representative Thomas Shannon said, "were abolitionists" (38 Cong 1, 2949). Reflecting on the founders' antislavery aims, Senator William Fessenden of Maine

remarked, “Of course they wanted it to die; they thought it ought to die; they desired that it should perish” (36 Cong 1, 557).

In 1854, Ohio Senator Benjamin Wade denied that “the founders of the Constitution were lovers of injustice and slavery” (34 Cong 1, 750). Gentlemen “may preach until doomsday that the fathers believed slavery to be right,” but to say so was “a libel on them – it is a gross slander upon their memories.” All the founders “whose names are held sacred, and are revered among the American people” treated “it as a great stigma upon the Republic which they had formed.” They wished “that the time would come, and come soon, when it would be blotted out forever. Not to wish this, would make them fiends instead of patriots.” Wade dared anyone in the august body to tell him “who it was in the olden times, in the better days of our Republic, that rose up as the advocate of eternal chains and slavery to any class of the human race.” Nobody of that description could “be found upon the record of those great men who made their impress on our Constitution” (34 Cong 1, 750). In an 1858 speech to his constituents, Illinois Representative Jehu Baker encouraged his listeners to “look back to the beginning of our government,” and they would “find that there was scarcely any difference of opinion in relation to slavery” (Baker 1858, 4). Not only in the North, but also in the South, “and quite universally,” Americans regarded slavery as “a great and deplorable evil.” Baker quoted Daniel Webster, who had said that “the eminent men, the most eminent men, and nearly all the conspicuous politicians of the South, held the same sentiments; that slavery was an evil, a blight, a blast, a mildew, a scourge and a curse.” The founding generation “expected that on the stoppage of the importation of slaves, slavery would begin to run out, and gradually disappear from the country.” Baker called out the antislavery position

of “Washington, Jefferson, Madison, Franklin, Henry, Lee, and the whole rank and file of illustrious men of that day.” Antislavery sentiment was the rule “with scarcely an exception. . . . Such was the original state of opinion in the whole country” (Baker 1858, 4). In 1860, Massachusetts Representative Henry Dawes denied that any founders supported slavery, but that “they all, with one accord, and with a concurrent and solemn testimony swelling into a volume, pronounced the institution of slavery an unmitigated wrong, a blighting curse to the land it rests upon, a sin and a crime in the people who gather its guilty fruits” (36 Cong 1, Appendix, 226).

The Supreme Court, in the case of *Dred Scott v. Sandford*, grounded its decision in an alternate history of slavery at the American Founding, an account that Senator John Hale of New Hampshire gainsaid in 1858. The court had claimed, Hale said, that the right to hold and traffic in slaves “at the time of the American Revolution, and at the time of the adoption of the Federal Constitution, was so universally acknowledged and recognized. . . . that no man thought of disputing it.” Upon this alleged fact, it followed that, “even the great and sublime truths which are embodied in the *Declaration of Independence*” did not apply to slaves. Hale retorted that the “the truth of history” showed otherwise (35 Cong 1, 341, 343). To vindicate the truth of history, Hale did what many Republicans also did, which was to let loose a blast of research, reading founding era antislavery statements into the columns of the *Congressional Globe* (343-344). When circumstances such as this one challenged the Republicans to supply proof, they routinely trotted out rafts of quotations of the founders’ antislavery statements. They especially quoted southern founders in the presence of the southern founders’ proslavery successors in Congress.

Numerous Reconstruction Republicans served at that time and read folios of founding era antislavery quotations from public acts, speeches and from both private and public writings, which were recorded in the *Congressional Globe*. These Republicans included: Massachusetts Senator Henry Wilson in 1860 (35 Cong 1, 569-571); New York Representative Reuben Fenton in 1860 (36 Cong 1, 822-824); New York Representative Charles Van Wyck in 1860 (36 Cong 1, 1028); Wisconsin Senator James Doolittle in 1860 (36 Cong 1, Appendix, 104); Massachusetts Representative Thomas Eliot in 1860 (36 Cong 1, Appendix, 257-258); Wisconsin Representative Cadwallader Washburn (36 Cong 1, Appendix, 267-268); Massachusetts Representative John Alley in 1860 (36 Cong 1, 1886); Ohio Representative James Ashley in 1862 (37 Cong 2, Appendix, 102); and West Virginia Senator Waitman Willey in 1864 (38 Cong 1, 1232-1233).¹

By far, they referred to and quoted the *Declaration of Independence* and its language, proclaiming “all men are created equal,” to demonstrate the antislavery sentiments of the founding era, more than any other statements. Next most often, they quoted the Virginians, including Thomas Jefferson, George Washington, George Mason, James Madison, and Patrick Henry. They quoted Jefferson’s attack on slavery’s injustice and warping effect on the character of masters, from his *Notes on the State of Virginia*. They referenced Washington’s hope that legislative measures would abolish slavery and his promise that he would always vote for abolition. They included Mason’s statements on slavery’s devastating effect on laboring whites and “pernicious” effect on the morals of masters. They quoted Madison, who said that the Constitution should not acknowledge

¹ See Appendix A for a compendium of the founders’ antislavery views quoted and presented by some Reconstruction Republicans to the Congress.

that men could be held as property, and Henry, who said that slavery was “as repugnant to humanity as it is inconsistent with the Bible and destructive to Liberty.”

With regard to the *Dred Scott* decision, Hale said he could forgive the court almost anything but the claim that “the African race was not intended to be included” in the paragraph of the *Declaration* that began, “We hold these truths to be self-evident, that all men are created equal.” His subsequent vindication of the founders fairly speaks for the general Reconstruction Republican view:

Sir, the men who framed the *Declaration of Independence*, the men who fought the battles of liberty; and the men who wrote our Constitution, understood the meaning of language quite as well as the Supreme Court, and if I were put on oath, I should say [they understood the meaning of language] a little better. They knew the circumstances in which they were placed; they knew the crisis in which they were called to live and to act; they knew that the experiment which had been made from the beginning of time up to that day, of free government, had been a failure; they knew that every effort and every attempt that oppressed man had made had failed; and they felt that to them, at that time, and at that day, was committed, by the Arbiter of national destiny, the great question to solve for themselves, for their posterity, for all coming time, the great problem whether man was capable of free government. They went into that contest fully understanding the character of the strife by which their position was to be maintained; fully sensible of the character of the contest upon which they had entered. They went into it, as has been well said on another occasion, poor in everything but faith and courage. They were without arms, without wealth, without even a name amongst the nations of the earth, rebel provinces; but they were strong in faith, strong in hope, strong in patriotic impulse, and strong in their reliance on the Most High; and they went, taking their lives, their fortunes, and their honors in their hand. They threw themselves into the world’s Thermopylae of that day, and they declared that they held certain great truths to be self-evident, and that among these truths was, that all men were entitled to life, liberty, and the pursuit of happiness. Why? Not because it was written in the musty folios of speculating philosophers; not because it was found in the writings of patriots of other days; not because their fathers had vindicated on the field of battle their right to be free; not because the old British Commoners had brought King Charles to the block; not because their old Puritan ancestry, on the battle-fields of Naseby and of Marston Moor, had written in their own blood, on their own country’s soil, their determination to be free. No, sir, none of all these; but they said that man was entitled to be free, because he was endowed by his Creator with that right. They stopped nothing short of the throne of eternity. They ignored all human

reasons, all human platforms, and all human authority, and with unclouded eye fixed their gaze upon the eternal throne, and laid the foundation of the institutions, which they were to build upon the eternal justice of God.

That, sir, is what the revolutionary fathers did; and when the contest was over, when the dust and the blood of battle had disappeared, and victory stood upon the flagstaff of their banner, these old men issued a declaration to the world. It was issued in 1780, the very year the war was over. "Let it be remembered," say they, "finally, that it has ever been the pride and boast of America that the rights for which she contended were the rights of human nature." They contended for no class, no condition. They contended for humanity. No matter, in the language of the Irish orator, what complexion, incompatible with liberty, an Indian or an African sun may have burned upon him, when he stands erect in the image of his Maker, a man, then say the fathers of the Revolution, "There stands one for whom we have fought; there stands a man who was involved in the great issues which led to the revolutionary war, and which we have vindicated with our blood." They continue further:

If justice, good faith, honor, gratitude, and all the other qualities which ennoble the character of a nation and fulfill the ends of government, be the fruits of our establishments; the cause of liberty will acquire a dignity and luster which it has never yet enjoyed, and an example will be set which cannot but have the most favorable influence on the rights of mankind.

There is the idea; true to their principles, true to the avowals of public sentiment, with which they went into that contest.

When the American Founders established independence with the declaration that, "all men are created equal," they did not mean "all white men," "all free men," or "all English speaking men." They meant all members of the human family. They braved war to gain an improbable victory for this principle, which was the bedrock of their republicanism and perfectly aligned with their antislavery sentiments. The Republicans maintained that everything that the founders said and did, including what they said and did about slavery, related to that principle like sunbeams related to the sun. Here was a hypothesis that the Republicans were willing to submit to the test of historical evidence, and they gave a large share of historical evidence to prove their argument.

The founders proscribed slavery on moral grounds, but also on political grounds. They understood that slavery and republicanism were mortal threats to each other's existence. Orris Ferry claimed he could bring forth "hundreds of expressions in the writings of the revolutionary fathers and of the framers of the Constitution, wherein slavery is spoken of as antagonistic to the principles of the *Declaration*" (36 Cong 1, 733). Ohio Representative John Bingham explained, "The fathers did deem the existence of this institution as incompatible with the safety of the Republic," because they knew it was a "terrible and destructive element in our social system," and "knew well that slavery must be restricted and finally abolished, or the Republic would perish" (37 Cong 2, 1640). Henry Wilson referred to "the glorious fact that the founders of the Republic proclaimed slavery to be an evil – a moral, social, and political evil." He specified the sense in which the founders regarded slavery a political evil, saying that slavery always was "an alien in America, an enemy to law and order, liberty and progress. The pages of our colonial history bear to us the amplest testimony that our fathers saw its malign influence" (38 Cong 1, 1320). At the time the Constitution was formed, said Ohio Representative Reader Clarke, "the common sentiment" proscribed slavery as "an outrage upon the rights of humanity" but also, as "a source of infinite danger if perpetuated" (39 Cong 1, 1012).

During the war, Lovejoy quoted two founders' acknowledgments of the mutual, inherent hostility between slavery and republicanism, in order to remind his congressional colleagues that although the struggle that defenders of republicanism had been waging against slavery was eighty years old, it was a struggle necessarily mortal to one or the other. Exhorting his colleagues to move quickly towards emancipation,

Lovejoy took the position that “either slavery or the Republic must perish; and the question for us to decide is, which shall it be?” In witness to the founders’ awareness of the irreconcilability of slavery and republicanism, he read aloud a passage by Jefferson that stated that “the liberties of a nation” can never be secure when the acceptance of slavery takes away “their only firm basis, a conviction in the minds of the people, that these liberties are of the gift of God.” And he read from Maryland founder William Pinckney, who said, “Nothing is more clear, than that the effect of slavery is to destroy the reverence for liberty, which is the vital principle of a republic” (37 Cong 2, 1816). John Shanks said that “slavery is but treason against humanity, and [the] transition being an easy one to treason against the free Government of our fathers.” He then read the same passage from Pinkney to show that the founders also knew that slavery and republicanism could never co-exist. At different times, Wilson, Fenton, Lovejoy and Willey all quoted a passage by Luther Martin, whose forthright declaration of slavery and republicanism’s irrepressible, mutual hostility, requires no comment: “Slavery is inconsistent with the genius of republicanism, has a tendency to destroy those principles on which it is supported, as it lessens the sense of equal rights of mankind, and habituates us to tyranny and oppression” (36 Cong 1, 571; 36 Cong 1, 823; 36 Cong 2, 1090; 37 Cong 2, 1816; 38 Cong 1, 1233). The Republicans did not need to pause to survey the history of the early Republic to their own troubled days, to consider whether events had proven and fulfilled Martin’s theory. They experienced and bitterly felt its fulfillment all around them. Long before the ongoing war opened the veins of the nation, when Lovejoy quoted Martin’s words, a proslavery mob had murdered his abolitionist brother. The

dissolution of republicanism in the slave states, and the consequent struggle to defend and advance embattled republican liberty was their enveloping reality.

If the republican fathers despised slavery – and feared the institution’s effects, how did slavery enter into the political society of the founding generation? Addressing the House of Representatives in 1860, Reuben Fenton of New York recalled that:

When the declaration of our rights was proclaimed, and the proclamation of our liberties and those rights which belonged to all, there existed among us an institution inconsistent with its great truths, and with the form and spirit of the Government which was framed. All the leading men of that day, and subsequently through a large period of our history, believed it to be not only anomalous to our institutions, but a deplorable evil; and they sought by every means to eradicate it (36 Cong 1, 823).

By saying “there existed among us an institution inconsistent with its great truths,” Fenton reminded his hearers that when the *Declaration of Independence* inaugurated the birth of the United States of America, slavery already existed in every one of the colonies that collectively became the new nation. That inherited birth defect disturbed the “leading men of that day,” whose principles condemned the institution. Missouri Senator Gratz Brown alluded to the founders’ discomfit that slavery was “at war in theory with the *Declaration of Independence* upon which the colonies had reposed their cause” (38 Cong 1, 1753). Illinois Representative Richard Yates said that when the fathers “came to form a Government, they encountered an institution which was hostile to the principle which they attempted to establish” (39 Cong 1, Appendix, 98).

The Republicans remembered the founders’ consternation towards Britain for fastening slavery to their country. Maine Representative John Rice remembered that “the abnormal anti-republican system of African slavery” had been “unjustly forced upon the unwilling colonies by their unnatural mother, against the protestations of our

revolutionary sires.” On account of that wrong and “other wrongs and oppressions, they asserted and won their independence” (37 Cong 2, Appendix, 206). In witness to this fact, Brown also recalled, “When the resolutions were passed by the Assembly of Virginia, prior to the war, it was made one of the formal charges against the King of Great Britain that he had interfered with his veto to prohibit the abolition of slavery.” Many Republicans read aloud that charge, drafted by Jefferson, which stated that “the abolition of domestic slavery is the greatest object of desire in these colonies,” and that the importation of slaves was “injurious to the lasting interests of the American states, and the rights of human nature” (36 Cong 1, 436; 36 Cong 1, 823; 36 Cong 1, Appendix, 104; 36 Cong 1, Appendix, 267; 37 Cong 2, Appendix, 102; 38 Cong 1, 1232).

Henry Wilson and Vermont Senator Jacob Collamer recounted in detail how Britain planted slavery in America. British merchants profiting from slavery influenced the colonial and commercial policy of England to their advantage. The Parliament and the Crown collaborated to extend and protect slavery in the American colonies. Queen Anne even instructed the governors of New York and New Jersey to support the Royal African Company. When opposition arose in America and Britain, slavery was already a significant element in American society. Before American society became the American nation, “British avarice planted slavery in America; British legislation nurtured and sustained it; British statesmen sanctioned and guarded it.” Slave merchants had found buyers in the colonies by the same unscrupulous profit calculation that narcotics merchants find buyers: the appeal to human greed. The difference between the two trades was that the slave trade operated under the sanction of the government, the British Crown and Parliament. Since the American colonies were governed and did not govern

themselves, they could not stop the trade. They did, however, protest. From 1762 until independence, “the popular leaders in New England, the middle colonies and Virginia” acknowledged “the wrongfulness of slavery,” and denounced “the slave traffic and the slave-extending policy of the British Government.” Colonial legislatures attempted to block the importation of slaves into the colonies. Their laws opposing slave importations were “scattered along the records of colonial legislation.” The Virginia legislature enacted a law taxing slave importations, but the Royal Africa Company obtained its repeal. The British Government overawed every attempt of the colonies to thwart, in the language of James Madison, “this *infernal traffic*.” The government persisted at forcing the slave trade upon the colonies until their political bands dissolved. As late as 1775, the Earl of Dartmouth maintained that the colonies would not be allowed to “check or discourage, in any degree, a traffic so beneficial to the nation.” The historical record proved that the American Revolutionaries “were not only hostile to the slave trade, but to the perpetual existence of slavery itself” (36 Cong 1, 569, original emphasis; 36 Cong 1, 1055-1056).

American political society inherited slavery, and many Americans who served in colonial governments led the revolution and resisted the British government’s slavery policy of personally owned slaves. But Wade would “not charge Thomas Jefferson, nor Mr. Madison, nor General Washington, nor Mr. Randolph, nor Mr. Tucker, nor any other of the great statesmen to whom we look up with such reverence, with hypocrisy, or anything sinister or wrong.” Though “they held slaves,” this fact did not prevent them from speaking out in one voice that slavery “was an infringement on natural right”; neither “did it prevent them, on all occasions, from inveighing against the institution” (36

Cong 1, 143). Reader Clarke acknowledged that “Washington, Jefferson, Madison and their compeers” held slaves, but “were never imbued with its spirit, never justified it, never by one word in all their writings gave it their sanction; but through all their lives looked and prayed and labored for its abolition.” Those who equated the founders’ “temporary and unwilling connection with it as its perfect sanctification” were guilty of “an audacity that rises to the sublime” (39 Cong 1, 1012). In the Republicans’ understanding, the founders were slaveholding abolitionists. The term “slaveholding abolitionists” is contradictory, but accurately describes these individuals, reflecting the conflicting worlds that a revolutionary age bridges. And in fact, since the founders were responsible for advancing the republican revolution on republican principle, they created the contradiction between their personal slaveholding practice and the prospective establishment of universal liberty. The slaveholding founders could have ignored political conditions and the opportunity to establish a new republican order, simply-mindedly followed moral principle, and released the slaves on their own estates into a hostile, slaveholding, monarchic world. Instead, the slaveholding founders sought to remake their monarchic world into a more perfect republican world, devoid of slaveholding both on their own estates and on all estates in the American republic.

As the bonds connecting America to the mother country began snapping, the founding generation acted against slavery. Growing into their political role as statesmen guiding an independent country, the founders did not sit idly while denouncing slavery. Rather, Wade asserted, “They made use of all the means within the legitimate compass of their power” to doom slavery (34 Cong 1, 750). Jehu Baker claimed that “the *acts* of

those great men... corresponded with the prevailing opinion of the time” (Baker 1858, 4, original emphasis).

Demonstrating that antislavery action took hold of the national government when it first breathed, Thomas Eliot reminded his congressional colleagues, “Our earliest legislative anti-slavery society was our first continental Congress” in 1774 (36 Cong 1, Appendix, 257). Several Republicans recalled what that first Congress had done. The Congress declared, “God never intended a part of the human race to hold property in, and unbounded power over, others” (36 Cong 1, 569). The second article of association organizing the Continental Congress of the United States said:

That we will neither import nor purchase any slave imported after the 1st day of December next, after which time we will wholly discontinue the slave trade, and will neither be concerned in it ourselves, nor will we hire our vessels, nor sell our commodities nor manufactures, to those who are concerned in it (35 Cong 1, 343; 38 Cong 1, 1233).

The fourteenth article ostracized anyone who violated the aforesaid second article of association:

And we do further agree and resolve, that we will have no trade, commerce, dealings, or intercourse whatsoever with any colony or province in North America which should not accede to, or which shall hereafter violate this association, but will hold them as unworthy of the rights of freemen, and as inimical to the liberties of this country (35 Cong 1, 343).

It was noted that southerners George Washington, Patrick Henry, Richard Henry Lee of Virginia and John Rutledge and Edward Rutledge from South Carolina signed that agreement (35 Cong 1, 343; 38 Cong 1, 1233).

Highlighting the antislavery acts of southerners in the founding era, Hale quoted a resolution of the first Provincial Congress of North Carolina in 1774, which said:

That we will not import any slave or slaves or purchase any slave or slaves imported or brought into this Province by others, from any part of the world, after the 1st day of November next (35 Cong 1, 343).

He also quoted an act of the Provincial Congress of Georgia in 1775, which said, “That we will neither import nor purchase any slave imported from Africa, or elsewhere, after the 15th day of March next” (35 Cong 1, 343).

Before the war broke out, Fenton recalled, a town meeting in Danbury, Connecticut agreed to import no more slaves, declaring, “We cannot but think it a palpable absurdity so loudly to complain of attempts to enslave us, while we are actually enslaving others” (36 Cong 1, 823). But, as Fenton and Van Wyck separately showed, a meeting of citizens in Darien, Georgia, in 1775 declared similar sentiments:

To show the world that we are not influenced by any interested or contracted motives, but a general philanthropy for all mankind, of whatever language or complexion, we hereby declare our disapprobation and abhorrence of the unnatural practice of slavery in America – a practice founded in injustice and cruelty, and highly dangerous to our liberties, debasing part of our fellow-creatures below men and corrupting the virtue and morals of the rest, and is laying the basis of that liberty we contend for upon a very wrong foundation. We therefore resolve at all times to use our utmost endeavors for the manumission of our slaves in this colony, upon the most safe and equitable footing for the masters and themselves (36 Cong 1, 823; 36 Cong 1, 1028).

Before the constitutional convention met in 1787, two states, New Hampshire and Massachusetts, had completely abolished slavery in a manner demonstrating that the natural rights principles of the age possessed legal standing against slavery. In separate instances, Wilson and Representative John Alley, both of Massachusetts, and New Hampshire Senators Daniel Clark and John Hale recalled how this was done. Both states had included declarations of the equal, natural rights of mankind in their newly ratified state constitutions. In substance, those declaratory statements did not differ from the

natural rights doctrine in the national *Declaration of Independence* or in many states' bills of rights in their new constitutions. On the basis of those declarations, the courts of both states decided that their constitutions did not recognize slavery's legal existence, and that holding persons in bondage by custom, was unconstitutional (36 Cong 1, 597; 36 Cong 1, 1886; 36 Cong 1, 2271; 37 Cong 3, 788; Wilson I:22). These decisions suggested that, by extension, the national *Declaration of Independence* and the various state constitutions' bills of rights recognizing natural equality could also be construed to forbid holding persons in bondage. Only positive recognition of slavery in state or national organic law could interfere with a state or national court from reaching the same decision on similar grounds – the legal recognition of natural equality.

Other states abolished slavery by legislation: Rhode Island and Connecticut in 1784; New York, by gradual emancipation, in 1799; and New Jersey, by gradual emancipation, in 1804 (Arnold 1866, 29). In different years, Hale and Missouri Representative James Rollins quoted one such act of emancipation, the act to gradually abolish slavery in Pennsylvania in 1780, penned by Benjamin Franklin, which rested upon the principles of the revolution:

And whereas the condition of those persons who have heretofore been denominated negro and mulatto slaves has been attended with circumstances which not only deprived them of the common blessing they were by nature entitled to, but has cast them into the deepest afflictions, by an unnatural separation and sale of husband and wife from each other and from their children; an injury, the greatness of which can only be conceived by supposing that we were in the same unhappy case. In justice, therefore, to persons so unhappily circumstanced, and who, having no prospect before them wherein they may rest their sorrows and their hopes, have no reasonable inducement to render the service to society which they otherwise might, and also in grateful commemoration of our own happy deliverance from that state of unconditional submission to which we were doomed by the tyranny of Britain: Be it enacted,

That no child hereafter born shall be a slave (35 Cong 1, 344; 37 Cong 3, Appendix, 145-146).

Hale and Eliot both reminded Congress of an extraordinary effort by the national government, still before the constitutional convention, that would have sooner sealed the national abolition of slavery. In the Congress under the Articles of Confederation in 1784, one year after the Treaty of Paris formally ended the war, Jefferson moved that all territory then held by the national government or acquired in the future “should be forever free from what he considered the contaminating and blighting influences of human slavery.” Two southerners, Jefferson and Chase of Maryland had a place on the committee that reported the draft bill. The report divided the territory then held and expected to be acquired by state cession into seventeen anticipated states, nine above the Ohio River, and eight below. Thus, the committee had proposed to prohibit slavery from all territories, from both northern and southern latitudes of the nation’s future westward expansion. Due to the peculiar requirements of the Articles of Confederation, the committee report failed, though six states and sixteen members voted for it, against three states and seven members (35 Cong 1, 344-345; 36 Cong 1, Appendix, 257). The vote nevertheless showed that a majority of national representatives in Congress favored forever prohibiting slavery from all land the nation would henceforth acquire. Slavery narrowly escaped restriction to only the original states that had hitherto not yet abolished it.

The delegates who met to revise the constitution of the national government brought with them their natural rights convictions. After quoting Washington’s antislavery opinions, Fenton reminded his congressional colleagues that the southerner

presided over the convention of men who framed a constitution designed to “secure and perpetuate to themselves and posterity union, freedom, and happiness,” and who roundly agreed with Washington “with equal force and emphasis... against this evil, the wrong, and curse of human bondage” (36 Cong 1, 823). The Republicans showed that these convictions influenced the development of the delegates’ new plan for the national government.

In their general view, the Constitution was antislavery in spirit and used reticent language towards slavery when confronting it. To be sure, very few Republicans who served during Reconstruction came close to declaring at any time that slavery was or had been unconstitutional, but they showed there was ground to make the argument. At minimum, they did not believe that the founders legally established slavery in the Constitution. Hale invoked evidence to prove that the founders “thought slavery ought not to be countenanced and allowed in the Constitution.” The delegates in the constitutional convention altered the text of the emerging Constitution consistent with their opposition to slavery. A drafted clause concerning the enumeration of population “fixed the number and said, ‘including those bound to servitude.’” But Randolph of Virginia “moved to strike out the word ‘servitude,’ and insert ‘service’ in its stead; because the word ‘servitude’ implied the condition of slaves, and ‘service’ described the obligations of free persons.” Hale added that, in the convention, James Madison objected to the use of the word “slave,” saying that he “thought it wrong to admit in the Constitution the idea that there could be property in men” (35 Cong 1, 344). Consistent with the natural rights principles of the *Declaration*, Ferry argued, the Constitution “purposely, carefully, guardedly, ignores the very existence of such property.” Even the

Fugitive Slave clause eschews using the word slave, indirectly referring to those commonly called slaves, but directly calls them persons, which denied they were property. The clause, Ferry said, “does not purport to restore merchandise to its owner, but a debtor to his creditor; representation and direct taxation are to be apportioned among the several States, according to an enumeration of persons, not according to an enrollment of property” (36 Cong 1, 732). Under the Constitution, no man lost the title of his own person to another, but the Constitution did recognize that one man might owe a debt in labor to another. The difference between one man owning a title in another, and one man held to a debt of labor to another, was a significant difference. An owned man has no rights and is chattel property; a man owing a debt of labor does have rights, the exercise of which might be limited by law or contract.

But, as Jacob Collamer pointed out, the Constitution did not create the debt in labor one man owed to another. The Fugitive Slave clause merely mandated the enforcement of that debt, if such a debt existed, and its enforcement involved a diversity of states. The “language of the Constitution,” Collamer quoted, was “‘held to service.’ – how? Under the laws of another State. ‘Held to service under the laws thereof,’ is the language.” Therefore, the Constitution did not recognize any man as property. It did recognize that some may owe a debt in labor to another, but debts in labor were not the creation of the Constitution. Collamer maintained that the Constitution’s allusion to “the laws thereof” implied that the debt in labor was created by the states, or of a contract permitted by state law, and was not the creation of the Constitution. The common name given to the so-called Fugitive Slave clause after the drafting of the Constitution was, speaking in precise terms, a Fugitive Laborer clause, because it could equally apply to

persons commonly known as slaves or to a contracted employee or apprentice. Hence, the clause did not legally recognize a difference between a black American fleeing bondage and the young Ben Franklin fleeing contracted apprenticeship with his brother. Collamer went further with his proof. If a “man bound to service in one State escapes into another State, is he property there? Can the master go and take him there, and keep him there, and sell him there, and use him there? If he is like other property... all that would be true; but we know it is not. That provision of the Constitution declares all laws of other States that would release him from the service void; that is all.” All the Fugitive Slave clause provided for was the return of a fugitive from service, and it prospectively voided state laws that might attempt to free the fugitive from service. Had the clause established and recognized “property in man,” state and territorial laws prohibiting slavery would all be unconstitutional. In that case, a master from the slave state of Maryland could retrieve an escaped slave in the otherwise free state of Pennsylvania, and use the slave and sell the slave in Pennsylvania, just as a master could retrieve, use and sell a horse. Any interdiction of the master’s disposal of the slave or horse in Pennsylvania would deprive the master of his property without due process of law, which was the basis of the later *Dred Scott* decision. But the case had always been the reverse, which meant that the Constitution tolerated state laws that allowed holding, limiting and prohibiting persons bound to service, but it never recognized the constitutionality of chattel slavery. In support of his position, Collamer cited the case *Prigg v. Pennsylvania*, which found, “The state of slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of territorial laws.” This meant that slavery was a local creation, not the creation of the Constitution. But even the *Prigg* decision said more than

what was warranted, because the Constitution did not at all recognize the “state of slavery,” the right of man to hold property title in any other man (36 Cong 1,1055).

Because the Constitution did not recognize property in another man, Massachusetts Representative Daniel Gooch supposed that when “two men leave a State, one man being the slave of the other,” and voluntarily enter “into another, – where slavery is not recognized..., neither has any right to claim the other as a slave.” When prompted by a southern representative, “By what law?” Gooch’s answer linked natural equality in the *Declaration* to the equal privileges bestowed upon citizens by the Constitution: “By the law of nature; by the fact that the two men were made by God, and were entitled originally to equal rights and privileges.... [T]hey assume the position which God intended them to occupy, and stand upon an equality before God, and before the laws” (36 Cong 1, 2073). Outside the jurisdiction of a state that limited the rights and privileges of a person held to labor, the debtor-creditor relationship of the putative master and slave fell away, and both were recognized as equal before the Constitution, which embodied the natural equality principle of the *Declaration*. So convinced was New York Representative Robert Hale “that the institution of slavery itself has existed in defiance of the provisions of the bill of rights,”; that “it was an anomaly under the Constitution”; and that “under the strict language of the Constitution,” he could not see “how it ever could have been claimed to exist.” Of course, he acknowledged it had existed, but was distinguishing its constitutional existence from its existence by custom or state law (39 Cong 1, 1065).

In 1864, Senator Brown also quoted Madison’s objection, noting the strange incongruity between the delegates’ free use of the word “slave” in their debate and

discussions, and their abstention from using the word “slave” in the Constitution’s text. From this, Brown reasoned, it was “very clear” that the founders “must have had an intention to subserve some public end when they deliberately left out of the instrument, which is the charter of our liberties, the word ‘slave.’” That public end was “to exclude from that Constitution any national recognition of slavery, to avoid any national obligation to foster or protect it, and to keep that noble muniment of our political rights free from reproach” (38 Cong 1, 1753). Also, in 1864, Illinois Representative John Farnsworth argued that when the framers adopted the Constitution, “the greatest care was taken that no words should be incorporated into that instrument which would imply that ‘man could hold property in man.’” Noting that this was Madison’s “very language,” when objecting to the use of the words “slave” or “slavery,” Farnsworth added, “You may search through the Constitution from the beginning to the conclusion of it, and no stranger to the fact that slavery has existed in the United States would believe for a moment that slavery could exist under it.” This deliberate abstention from using the word “slave,” Farnsworth argued, showed principled consistency, for the revolutionaries had previously declared their independence while declaring the “self-evident facts that all men were created equal, and endowed with the inalienable rights of life, liberty and the pursuit of happiness” (38 Cong 1, 2978).

Bingham apprehended that the Fifth Amendment, which protected the rights of “life, liberty and property,” together with the Sixth Amendment, constituted a conflict with slavery. He communicated this indirectly, stating, “If Ohio had tolerated involuntary slavery by her constitution, or had denied to any man protection of life, liberty, or property, or trial by jury, her constitution would have been... violative of the

fifth and sixth amendments of the Constitution of the United States” (34 Cong 3, Appendix, 138). The obvious inference was that states permitting involuntary slavery, whether by law or custom, were violative of those parts of the Constitution.

All of their arguments aimed at revealing how the founders’ Constitution struck a legal blow at what was customarily known as slavery. The wording of the text ameliorated the legal condition of those regarded as slaves by custom by not recognizing slavery at all. Slavery was commonly known to exist in the land, but it was legally unknown to exist by the Constitution that governed the land. Within the purview of the Constitution, those in slavery by existing custom were to be regarded as persons held to labor, as persons imported for labor, and as persons specially enumerated for purposes of legislative apportionment. Persons were recognized as bearing rights by the Constitution, whether states’ organic or statutory laws stripped or protected those rights. As far as the Constitution was concerned, persons held to labor were not to be construed as chattel property, lacking equal, unalienable rights. The constitutional text weakened the standing of customary slavery from the perspective of the national government.

The Republicans always accepted and insisted upon the similitude of the principles behind the Constitution and stated by the *Declaration*. Iowa Representative Josiah Grinnell claimed, “The great expounders of our Constitution have said that the *Declaration of Independence* itself, proclaiming all men free and equal, laid the cornerstone of our Confederacy” (38 Cong 2, 199). When a southern Congressman asked Gooch whether the *Declaration*’s “higher law,” i.e., “the law of nature,” overruled the provisions of the Constitution, he answered, “I tell him no. I consider the Constitution of the United States to be in accordance and in agreement with the law of nature. I consider

that the Constitution of the United States does not provide for and establish the existence of slavery. The men who framed the Constitution of the United States never intended to make a Government which was to uphold and be responsible for the existence of slavery” (36 Cong 1, 2073).

Confronted by the brute reality of slavery existing by custom, the framers had drafted the text of the Constitution in faithful accord with the *Declaration*. By doing this, the framers had opened legal ground upon which to press a constitutional case that would nationally abolish slavery. Although the Republicans’ demonstrations shed light on the plausible constitutionality of the position, most shied away from directly embracing it. In 1854, Senator William Pitt Fessenden identified “a very small class, a very powerless class,” the “ultra-Abolitionists,” who professed that “under the Constitution there is power to abolish slavery in the States, and who avow a willingness to exercise that power.” They numbered only a few and had “no power to be represented in those opinions here [in the Senate].” The “creed of the Republican party” did not accept and “no paper of the Republican party... ever advocated the doctrine of the ultra-Abolitionists” (34 Cong 3, 30). Henry Wilson openly acknowledged that some “radical abolitionists” did espouse the view that the Supreme Court could and should emancipate all slaves in America on the same ground that the Supreme Court of Massachusetts had done, but he denied that the Republican party shared that belief (34 Cong 1, 64). Senator James Doolittle rejected the argument of Lysander Spooner, who had said that the Constitution “of itself, abolished slavery,” that is, completely abolished it legally but not practically. In Spooner’s opinion, slavery’s continuance since the founding was,

therefore, unconstitutional but unremedied. This argument, Doolittle announced, “has not, in my opinion, the shadow of a foundation” (36 Cong 2, 197).

Fessenden, Wilson and Doolittle, among others, delivered these disavowals of the unconstitutionality of slavery before secession, when the nation felt the strain of possible disunion. It is difficult to know in all cases to what extent these disavowals reflected their policy judgment rather than their constitutional judgment. As high office-holders in the government, they obviously would have constricted, if not destroyed, the possibility of peacefully securing justice and restoring republicanism had they declared slavery’s unconstitutionality. Southern statesmen seceded for far less a threat. For their pains, the Republicans would have gained nothing in making such a declaration. It was clearly fruitless for any of them to support the constitutional arguments of Spooner and others, since it was highly improbable that a court decision freeing slaves in southern states could be reached. If reached, it was not likely that the decision could be politically sustained. The political sustainability of prohibiting slavery in the territories by congressional legislation and placing slavery on the course of gradual extinction seemed prospectively more plausible. But amidst the new political conditions changed by civil war, and perhaps more propitious for a case declaring slavery unconstitutional, Grinnell reminded the Congress of this legal possibility when he expressed the wish “to see slavery wiped out here by a legal decision and announced by a chief justice” (38 Cong 2, 199). Although Grinnell did not mention the decisions of the Massachusetts and New Hampshire courts holding slavery unconstitutional, those courts supplied precedent models. The Constitution did not positively affirm the legal recognition of slavery, and the other organic law, the *Declaration of Independence*, flatly collided with slavery;

therefore, a national court could have reasoned from the concordance of those fundamental laws and reached the same conclusions in the same manner that the Massachusetts and New Hampshire courts did. If this legal ground for abolishing slavery nationally was patently wrong, then the Massachusetts and New Hampshire courts would not have declared slavery unconstitutional. The work of the signers of the *Declaration* and the framers of the Constitution exposed slavery to this challenge.

If the founding generation placed slavery on shaky ground in their Constitution, the question remains why they did not employ or threaten to employ the federal courts to end slaveholding at a much earlier date. Illinois Representative Isaac Newton Arnold explained that the founders did not foresee slavery's extension and that they thought "moral, legal, and constitutional means" would suffice to finish it off. They expected "public opinion" would render "its final verdict through the ballot," and "would consummate universal liberty throughout the land" (38 Cong 2, Appendix, 68). George Washington corroborated this view, that final abolition through the will of the people expressed through their votes was far more preferable to court order. Many Republicans quoted a letter from Washington to Robert Morris in 1786, in which he said, "There is only one proper and effectual mode by which [abolition] can be accomplished, and that is by legislative authority" (35 Cong 1, 343; 36 Cong 1, 570; 36 Cong 1, 1886; 36 Cong 1, Appendix, 104; 36 Cong 1, Appendix, 267; 36 Cong 2, Appendix, 119; 37 Cong 2, Appendix, 102; 38 Cong 1, 1232). Therefore, it seems likely that the founders thought the wisest course was to frame organic laws that were hostile in principle to slavery, and to tolerate slavery until the will of the people, through their legislatures, achieved final abolition. However, if proslavery oligarchs gained control of their state governments and

exerted disproportionate influence over the national government, as the Republicans believed they did, the antislavery sentiments of the people, whose interests were harmed by slavery, could not bring about this conclusion.

The constitutional convention had attempted to weaken slavery in another way: by restricting the ingress of slavery into the territories. Bingham said, “When the original draft of that great instrument was reported to the convention, the provision which authorized the admission of new States into the Union contained the expressive words that ‘new States may be admitted into the Union upon the same terms with the original States.’” The convention struck out the words of that clause, because the Constitution had reserved the power of continuing the slave trade to the original states for twenty years. By striking out that clause, the delegates foreclosed the possibility that newly admitted states might invoke constitutional authority to carry on the slave trade for twenty years, just as the original states were allowed to do. Foreseeing this possible interpretation, the “fathers of the Constitution were determined that no such privilege should be guaranteed or extended to any new States organized under this Constitution and admitted thereafter into the Union.... These words were struck out purposely, that the new States organized thereafter should not come into the Union possessed of [that] power” (37 Cong 2, 1640).

By its ordinary enactments, the American government struck blows against slavery on the western territorial flank. As very many Republicans did, Senator Hale held up the Northwest Ordinance of 1787, passed by the Congress under the Articles of Confederation and then re-enacted by the United States Congress, which prohibited slavery from all territory the United States then owned (35 Cong 1, 344-345).

Representative Baker added that when Congress framed the Ordinance, governing the territory that became the states of Ohio, Indiana, Illinois, Michigan and Wisconsin, “[e]very member of every slaveholding State voted for it.” Furthermore, when Congress “was five times applied to for a suspension of that portion of the ordinance which prohibited slavery,” Congress refused every time (Baker 1858, 4-5). Doolittle recalled one of these instances, when the Indiana Territory petitioned Congress during Jefferson’s administration. Virginian John Randolph, chairman of congressional committee reported against the petition, saying it would be “highly dangerous and inexpedient to impair a provision wisely calculated to promote the growth and prosperity of the Northwest Territory” (36 Cong 1, Appendix, 100). Bingham referred to the enabling act passed by Congress and approved by President Jefferson in 1802, by which the Territory of Ohio was invited to form a constitution and apply for statehood. The act qualified that invitation with the condition that the state government “shall be republican in form and NOT REPUGNANT to the [Northwest] Ordinance of July 13, 1787,” which prohibited slavery (34 Cong 3, Appendix, 138, Bingham’s emphasis). Bingham then pointed to similar enabling acts, prescribing the same conditions for the Indiana Territory in 1816 and approved by President Madison, and for the Illinois Territory in 1818 and approved by President Monroe. President Jackson approved of an act of Congress passed in 1836 that organized the Wisconsin Territory (which covered the future states of Wisconsin and Iowa) and that similarly established all the requirements of the Northwest Ordinance, including the prohibition of slavery.

Representative Eliot and Bingham cited a 1798 act of Congress that prohibited the foreign importation of slaves into the newly acquired Mississippi Territory; an 1803 act

that prohibited slaves in the newly organized Territory of Indiana; and an 1804 act that prohibited the foreign importation of slaves in the Orleans Territory (34 Cong 3, Appendix, 137; 36 Cong 1, Appendix, 258). These deeds proved that “the avowed and determined policy” of “the fathers of the Republic” was to “make ‘freedom national and slavery sectional,’” a policy which “met with little or no opposition North or South” (36 Cong 2, 583).

The constitutional convention, the infant states and the early Congress acted together to stop foreign slave importations, protecting the nation on the eastern oceanic flank. By a provision in the Constitution, Congress was barred from prohibiting the slave trade until 1808. Although it permitted continued importations for twenty years, the narrow window did not cause an engorgement of slave trade traffic, and the provision left a valuable proscription of slavery to posterity by which to judge the antislavery character of the Constitution. Gooch refuted proslavery statesmen, who argued that the provision “recognizes and provides for the existence of slavery. Just the reverse is true” (36 Cong 1, 2073). Every one of the thirteen states, he observed, “had the power to continue the slave trade as long as it might please,” but “yielded up that power to a Government which they knew would suppress it as soon as it had authority to do so.” Therefore, the provision showed that “the United States Government was intended and expected to be hostile to slavery and the slave trade. That power was exercised by this Government at the earliest possible moment” (36 Cong 1, 2073).

Furthermore, before the expected slave trade ban, other means of frustrating the trade could be and were employed. Although Madison regretted the postponement to 1808, noted in the Federalist No. 42 and quoted by Representative Washburn, he

nevertheless predicted that the trade would receive “considerable discouragement from the Federal Government.” Furthermore, it might be totally abolished before that date “by a concurrence of a few states which continue the unnatural traffic,” pressured by “the prohibitory example which has been given by so great a majority [of states] of the Union” (36 Cong 1, 267). That is what happened. Many states did abolish the trade prior to 1808. And as a member of the early Congress, Madison acted to lead the Federal Government in discouraging the trade that remained. Vermont Representative Justin Morrill recalled that “Madison and many other southern men in Congress” had tried to hamper the trade by imposing a tax on imported slaves prior to that year, when some states still allowed slave importations. But on January 1st in the year 1808, the first year that the Constitution permitted Congress to ban the importation of slaves, the law banning the trade “was already on the statute-books” (38 Cong 2, 173). By banning the trade, argued California Representative Thomas Shannon, “no new additions were to be made to the stock of slaves then in the country, and it was believed that gradually and without a jar to the Federal system it would become extinct” (38 Cong 1, 2949).

Having hemmed in slavery, denying it replenishment from the eastern ocean, denying it an outlet in the West, and having abolished it in most of the original thirteen states, the founders believed they had cornered and doomed slavery. The Republicans quoted the founders’ approving predictions of slavery’s final demise. Henry Wilson quoted Oliver Ellsworth in the constitutional convention, who predicted that “slavery would soon be only a speck in the country” (36 Cong 1, 570). Doolittle and Willey quoted a 1798 letter from Washington to Lafayette in which he discussed the antislavery effect of the Northwest Ordinance, predicting the eventuality of “a confederation of free

states” (36 Cong 1, Appendix, 104; 38 Cong 1, 1233). Washburn quoted a 1785 letter from Jefferson to Dr. Price, in which he predicted emancipation in Virginia, “the next State to which we may turn our eyes for the interesting spectacle of justice” (36 Cong 1, Appendix, 267). Washburn and Willey quoted an 1814 letter from Jefferson to Edward Coles, in which he said, “The hour of emancipation is advancing” and predicted that it would not “fail to prevail in the end” (36 Cong 1, Appendix, 267; 38 Cong 1, 1232). Fenton, Doolittle, and Washburn quoted a message from Jefferson in 1821, in which he said, “Nothing is more certainly written in the book of fate, than that these people are to be free.”... (36 Cong 1, 823; 36 Cong 1, Appendix, 104; 36 Cong 1, Appendix, 267). Many quoted Patrick Henry’s 1773 letter to Robert Pleasants, in which he predicted, “I believe a time will come when an opportunity will be offered to abolish this lamentable evil” (35 Cong 1, 344; 36 Cong 1, 570; 36 Cong 1, 823; 36 Cong 1, 1886; 36 Cong 1, Appendix, 267; 36 Cong 2, 1090; 37 Cong 2, 1816; 37 Cong 2, Appendix, 102; 38 Cong 1, 1232).

“The old fathers,” Representative John Farnsworth said, “who made the Constitution,” who “fought the battles of the Revolution, fought for the rights of *human nature*, and they believed that slavery was at war with *human nature*.” In framing “the Constitution on such a base, they believed that slavery would die, and that speedily” (38 Cong 1, 2978, original emphasis). Arnold claimed it was “historically demonstrable that the framers of the Constitution in organizing the Government tolerated the existence of slavery as a temporary evil which they believed was in the course of ultimate extinction. They never intended it should be extended beyond the limits of the States in which it then existed” (38 Cong 2, Appendix, 68). Due to the strength of antislavery sentiment and

statesmanship during the founding era, “*Then*, slavery was expected to speedily die out,” according to Justin Morrill (38 Cong 2, 173, original emphasis). Ohio Representative Ashley maintained that the founders “confidently expected” that “with the adoption of the Constitution slavery would cease to exist” (38 Cong 2, 138). New York Representative Daniel Morris averred that the founders “expected it would become extinct under the workings of the Constitution” (38 Cong 1, 2614). Reflecting on the principles and deeds of the founding generation, Daniel Clark asked, “Was slavery to die out? So said and so I think, believed the fathers” (38 Cong 1, 1368).

Constraints on the Republican Fathers

The founders’ “toleration of slavery,” Sumner said, was “absolutely exceptional” to their republican ideas and political establishments (39 Cong 1, 1230). If the founders believed that slavery was inconsistent with and posed a great danger to their republicanism, why did they tolerate the exception of slavery at all? Why hadn’t the founders’ Constitution explicitly “provided for its gradual extinction in the old States and its utter exclusion from the new,” as Daniel Clark remarked, they had not so done (38 Cong 1, 1368)? When the Republicans surveyed why the founders had not done more to annihilate slavery, their discussions pointed to a common answer: South Carolina and Georgia. Although slavery was common to all the states at the moment of national independence, and although other states contained higher numbers of slaves, slavery’s influence on those two political societies was different. Slavery appeared to have always been more deeply embedded in their political character, and antirepublican elements had

always dominated those states. From the beginning, South Carolina and Georgia fit uncomfortably into the Republic.

The representatives of South Carolina and Georgia successfully opposed the slave trade proscription in the first draft of the *Declaration*. Jefferson's draft reported to the Continental Congress included reproaches of the British King for sanctioning the slave trade. The text, quoted by Washburn, Doolittle, Henderson and other Republicans, proscribed the trade but was equally applicable to slavery, describing the trade as "cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people." It emphasized that these persons were not chattel but "men," and referred to their captures as "crimes committed against the liberties of one people" (36 Cong 1, Appendix, 267; 36 Cong 1, 1629; 36 Cong 1, 2207; 37 Cong 3, 353). In Henry Wilson's account, the representatives who won the exclusion of that language came from "a small but powerful class, which clung, in South Carolina and Georgia, with relentless tenacity, to the British slave-trading and slave-extending and slave-perpetuating policy." Those states had already "broken the second article of the association of union, which prohibited the importation and the traffic in slaves" (36 Cong 1, 570).

Those states had also exhibited the unusual spectacle of strong pro-British sympathies during the Revolutionary War. Representative Charles Van Wyck recounted that Tories in South Carolina and Georgia furnished sufficient numbers of soldiers to open "a new seat of war" in the conflict. Endeavoring to make some show of courtesy and avoid naked imputation, he paid tribute to the remembered patriots of that section, mixing praise for them with the claim that most were Tories who had not fully embraced the revolutionary cause for republicanism. Those Tories' "descendants are numerous on

that soil,” Van Wyck claimed, and “with their blood seem to have descended their principles” (36 Cong 1, 1033). Kellogg dubbed South Carolina “famous for Tories and traitors in our Revolution” (37 Cong 2, 325). During the revolution, Indiana Representative George Julian claimed, South Carolina “swarmed with royalists and [T]ories.” The Carolinians who fought for the American revolution were aristocrats who fought for their political interests and not for the principle of the struggle, for, “like the rebels now in arms against us,” they “loved slavery more than they loved their country” (37 Cong 3, 1068). “In South Carolina,” Garfield said, “it is claimed that there were more Royalists than Whigs,” that is, more Tories than revolutionary patriots (38 Cong 1, 403).

With characteristic thoroughness, Sumner presented research in 1854, showing that South Carolina had lagged in supporting the revolutionary cause. He did this in rebuttal to a Senator from that state who had attributed the success of American independence to slaveholding. Sumner viewed this as an attempt to rewrite history, lending the weighty reputations of the revolutionary patriots to the present political effort to extend and protect slavery. During the course of his remarks, Sumner mentioned that, in 1790, the War Department, administered by General Knox, produced a report by the order of Congress on the relative contributions of men to the army during the war. Although the 1790 census showed an equality of population between northern and southern states, northern states furnished three men to the Continental Army for each man furnished by southern states, and four men to the militia for each man furnished by the southern states. “But the disparity swells,” Sumner continued, when comparing Massachusetts to South Carolina. Of Continental troops and authenticated militia,

Massachusetts furnished 83,092 men, while South Carolina furnished 5,508 men, a difference of sixteen to one. In 1778, the regular troops in the southern department of the war were supplied by South Carolina and Georgia and numbered 800 men. The next year, the South Carolina governor offered a proposal to the British to make his state neutral. Washington sent General Nathaniel Greene, a Rhode Island native, to rescue that section of the country. Greene reported, “The Whigs seem determined to extirpate the Tories, and the Tories the Whigs.... If a stop cannot be soon put to these massacres, the country will be depopulated in a few months more, as neither Whig nor Tory can live” (33 Cong 1, Appendix, 1015).

After Sumner’s presentation, an acrimonious debate ensued in both houses of Congress regarding South Carolina’s conduct in the Revolution, a debate that renewed in 1856. At that time, Wilson then entered the field, drawing evidence from the testimony of both Continental army officers and Carolina authorities. Whereas Bostonians forced the British to realize they were not safe in Massachusetts, “where friends always find a welcome, and foes are apt to find a grave,” the British settled comfortably in Charleston. They were well provisioned and unmolested by the city population, while Greene’s army was starving in the country. South Carolina “had a large class of Tories. There was a civil war in that State, and more than that, thousands and tens of thousands of her sons sought protection by the British flag.” Wilson quoted General Barnwell, who had said that Carolinians exhibited “far greater attachment to their interests than zeal for the service of their country” (34 Cong 1, 1404). At another time, Wilson quoted the testimony of South Carolina patriot, Francis Marion. When Baron DeKalb “expressed amazement that so many ‘South Carolinians were running to take British protections,’”

Marion answered, “the people of Carolina form two classes, the rich and the poor. The poor are very poor: the rich, who have slaves to do all their work, give them no employment. Unsupported by the rich, they continue poor and low-spirited.” The poor were uneducated; “hence, they know nothing of the comparative blessings of our country, or the dangers which threaten it; therefore, they care nothing about it. The rich are generally very rich; afraid to stir lest the British should burn their houses, and carry off their negroes.” Marion explained, that “ignorance beget toryism” in Carolina, against which he contrasted New England and its republican people. There, “Religion had taught them... that virtue is not to be attained without knowledge; nor knowledge without instruction; nor public instruction without free schools” (35 Cong 1, Appendix, 172). The abundance of Tory sympathies and indifference to the wrong of slavery reflected the fact that the population of South Carolina, both rich and poor, generally lacked New England’s republican character. This Willey directly confirmed. In South Carolina during the Revolution, he said, “The attachment of the people to aristocratic institutions of the mother country was the hardest to subdue. This attachment was never wholly extinguished” (37 Cong 2, Appendix, 36).

James Garfield and William Kelley distinguished South Carolina’s unrepublican character from all the other states, free and slave alike, in another respect: the state’s opposition to free black suffrage. When the Continental Congress discussed the Articles of Confederation in 1778, the fourth article came up for debate. It said, “The free inhabitants of each of these States... shall be entitled to all privileges and immunities of free citizens in the several states.” South Carolina moved to change the text of the article from “free inhabitants” to “free white inhabitants.” The Congress voted down the

motion. William Kelley recalled this event as well as the South Carolina delegates' persistence. Having lost the vote, they moved to amend the text in other way, replacing "the several states" with "according to the law of such States respectively for the government of their own *free white* inhabitants." The Congress defeated this motion, as well. Through the Revolutionary War and the adoption of the Constitution in 1788, only South Carolina's state constitution "refused the right of suffrage to the negro." Kelley quoted from the revolutionary era state constitutions, which did not acknowledge color in providing for suffrage, and contrasted the South Carolina constitution that began its suffrage qualifications with the statement, "every free white man." Garfield observed that between 1789 and 1812, "Congress passed ten separate laws establishing new Territories," and in all of them, "freedom, and not color, was the basis of suffrage." This changed in 1812 when South Carolina successfully led the insertion of the word "white" in the "suffrage clause of the act establishing a territorial government for Missouri." While most states, slave states included, had not acknowledged color as a pre-condition of suffrage, South Carolina always had (Garfield, 88-89; 38 Cong 2, 283).

Missouri Senator John B. Henderson distinguished South Carolina and Georgia's policies towards slavery from all other states at the time of the Constitution's adoption. Virginia held about half of the nation's 500,000 slaves. Three quarters of the remaining number distributed equally among Maryland, North Carolina, and South Carolina. Virginia had resisted the British slave trade policy and, as a new state, had immediately abolished it. Maryland and North Carolina had also prohibited the further importation of slaves. Georgia had resisted slave importations during the colonial period, but "due to the clamoring of a few," had changed policy. When the Constitution was adopted,

Georgia still had very few slaves, about the same as New York. Though Georgia and South Carolina together contained twenty percent of the slaves owned in all the states, they alone “seemed determined on retaining it as an institution.” In convention, representatives from Virginia, Maryland and North Carolina all spoke against slavery and the slave trade, which they wished to see immediately abolished by the Constitution. But Charles Pinckney, C.C. Pinckney, and the Rutledges, all of South Carolina, and Baldwin of Georgia, all contended that their states would not ratify the Constitution if it abolished the slave trade. Oliver Ellsworth and Roger Sherman of Connecticut palliated the convention’s dislike of leaving the slave trade intact by offering the observation that slavery was becoming extinct. The committee considering the question and recommended allowing the trade until 1800 and allowing a tax on imported slaves. C. C. Pinckney successfully pressured the convention to extend the year from 1800 to 1808. This was accepted, but after the Constitution’s ratification, all the states but one banned the slave trade on their own. The notable exception was South Carolina, which kept its ports open to American slave-buyers and to shipments of new victims from 1803 to 1808, importing by up to 100,000 additional slaves by some estimates (Wilson 1874-1877, I:86-88). The South Carolina and Georgia delegations also persisted at making “representation partially based upon wealth, making it a controlling power in the Government.” But they won representation for a specific kind of wealth: not gold, spinning looms, or whale-boats, but persons who were not free citizens. These would be enumerated by the 3/5 ratio for calculating apportionment of congressional seats to the House of Representatives. Butler of South Carolina moved the provision for the

rendition of fugitive slaves, which was “adopted without protest or even remark by the northern members” (37 Cong 3, 353).

The Republicans widely concurred that South Carolina and Georgia forced the convention to adopt those provisions. Under pressure from those states, “our fathers in an evil hour compromised,” Richard Yates declared (39 Cong 1, Appendix, 100). Kansas Senator Samuel Pomeroy remembered that “Georgia and South Carolina refused to come into the Union until there had been secured three compromises for slavery” (39 Cong 1, 1181). They compromised, Pennsylvania Representative Glenni Scofield said, and tolerated slavery “with the understanding that it should be gradually relinquished. They did not expect both ideas, slavery and freedom, to go hand in hand throughout the whole life of the Republic. Slavery was to recede slowly and freedom follow steadily” (38 Cong 1, 1971). Whether their predilections were reasonable or not, the founders saw the direction of events pointing towards abolition. But why await the working out of justice? Why not risk the refusal of South Carolina and Georgia to ratify the Constitution? Sumner answered, “Our noble fathers submitted only because without them we could have no common national existence” (39 Cong 1, 1225). More skeptical than Sumner, Daniel Morris said that “our fathers permitted slavery from a supposed necessity,” a necessity supposed and not real. The fathers’ toleration of slavery in submitting to the supposed necessity “was their first error” (38 Cong 1, 2614). But Republicans did generally agree that the Fathers believed in the wisdom of compromise with South Carolina and Georgia, which depended upon the soundness of their judgment that slavery was passing away.

By submitting to the demands of those states, the founders allowed the introduction of inconsistency in the Constitution. Clark acknowledged that Madison, “with scrupulous care, excluded the *word* ‘slave’ from the Constitution, but by a fatal mistake allowed the thing itself to remain. He chased away the shadow, but left the substance, with the same fatuity that would induce a parent to call an asp or scorpion a pretty bird, and leave it to sting his offspring to death.” Slavery’s “name was not in the instrument, but her power was there” (38 Cong 1, 1368).

In other words, the constitutionality of slavery mattered less than the effect of the Constitution’s toleration and protection. By the effect of its provisions, slavery received protection, and was thereby practically recognized, even if indirectly so. Clark admitted that Madison and the convention did not concede these provisions with the intention of securing the perpetuity of slavery, for “he and his compeers thought slavery would gradually die out.” Their error consisted in underestimating “the terrific vitality of the fiend which should so grow and strengthen.” If slavery did not possess this “terrific vitality,” slavery might have died as the founders expected, and the provisions protecting the interests of slaveowners would eventually have protected the empty air. On the contrary, the provisions protecting slaveowners’ interests allowed the “terrific vitality” to operate, with the result that slavery’s growth overcame its checks. The founding generation’s many antislavery legislative acts, which supported their confidence in slavery’s ultimate demise, did not contain slavery. The Constitution’s provisions permitted slavery’s increase and amplified slavery’s “voice and her votes,” which “have been of signal potency.” Slavery “gained at a bound the legislative hall and ever since has sat and hissed and writhed about the nation’s limbs” (38 Cong 1, 1368).

Since the founders had expected and desired that legislative authority, rather than court authority, would achieve final abolition, they opened the future to the possibility that proslavery advocates would control legislative authority. Rather than act to abolish slavery, they would act to extend it. This possibility became reality because they had underestimated the “terrific vitality” of slavery, which exploited the Constitution’s provisions. Possessing power over the government out of proportion with their numbers, the advocates of slavery could advance it and even assert slavery’s constitutionality, whether or not a fair reading of the Constitution or its framers warranted those positions.

The Constitution might not have recognized the right to hold a slave, but how it stood on that question was immaterial. The Constitution allowed slavery to gain power, with which it could destroy the Constitution and republicanism. When the founders “admitted into the charter of free government the idea of human bondage,” they placed “two warring forces” into the Constitution. These forces could not co-exist. Clark declined to “call to account or blame the founders of this Government,” for “they were wise and patriotic men” who “had great difficulties to contend with” and who “did the best they could.” Nevertheless, the hard truth was that slavery owed “its giant growth to the Constitution” (38 Cong 1, 1368).

Hence, the insistence of South Carolina and Georgia statesmen during the founding era fatally exposed republicanism to eventual overthrow.

The Passive Expansion of Slavery

The Republicans generally did not recall noisy opposition to the entrance of new slave states prior to Missouri’s application to enter the union as a slave state in 1819. But

neither did they recall any statesman advocating for slavery's expansion on principle. In relative quiet, slavery expanded its domain under the United States government, quickly breaking out of its bands established by the founding generation's legislation. In the meantime, economic changes began to strengthen slaveholders' interest in protecting slavery. Scofield aptly represented Republicans' historical perspective on this period when he averred, "Territorial acquisitions and certain discoveries in the material arts, as it is said, changed the attitude of slavery altogether" (38 Cong 1, 1971). By the time attitudes in public councils changed, slaveholders felt their augmented power.

Kentucky was, in the words of Daniel Clark, "the first-born slave state." It was the first slave state admitted to the union in 1792, only a few years after the adoption of the Constitution (38 Cong 1, 1369). Virginia had previously held both Kentucky and the Northwest territories as its own, and slavery was tolerated in both. The difference between the territories was that Kentucky bypassed status as a United States territory before becoming a state. The Northwest territories became territories of the United States, and under the Northwest Ordinance, which governed all United States territory, slavery was prohibited. However, Virginia continued to hold Kentucky until, by simultaneous action, Virginia released its claim, and the Congress admitted Kentucky as a state. At the time of statehood, abolitionist sentiments did curry favor in Kentucky. In preparation for applying for statehood to Congress, Kentucky delegates met in convention to frame its state constitution and nearly abolished slavery. Arnold wrote, "An effort was made to prohibit slavery which came near being a success, and which would have prevailed, but for the powerful influence of the two great slaveholding families of Breckenridge and Nicholson" (Arnold 1866, 28). As a result, Kentucky's

future political character was sealed. Arnold added to his account that the Breckenridge who saved slavery in the Kentucky constitution was the grandsire of John C.

Breckenridge, a secessionist. Clark maintained that there was “no State among the non-seceding States so wedded to this institution [of slavery]...., halting in her patriotism, limping in her support of the Government, divided betwixt her love for the Union and her love for slavery” than Kentucky.

The next slave state to enter the Union, Tennessee in 1796, did exist as a United States territory prior to admission. But, as Collamer and Wilson noted, North Carolina ceded the territory of Tennessee to the United States government on the condition that slavery be permitted during its territorial status (34 Cong 3, Appendix, 51; 35 Cong 1, 906; 36 Cong 1, 324). Wilson claimed that the Congress accepted this conditional cession “with more or less reluctance to the hard conditions imposed” (Wilson 1874-1877, I:35). Nevertheless, in preparing for application for admission as a state, Tennessee delegates met in convention to frame its state constitution and, like Kentucky, nearly abolished slavery. According to William Kelley, the provision prohibiting slavery in the state Constitution lost by a majority of one vote, but the convention did not impose a color barrier on suffrage. Free blacks could vote (38 Cong 2, 284). Kelley did recount Tennessee’s contingent relation to slavery after its statehood. Less than 5,000 slaves lived in Tennessee upon admission, a lesser number than some northern states then abolishing slavery. In 1801, the legislature “conferred the power of emancipation upon the county courts of the State,” to ease the restrictions on private manumissions. However, from 1790 to 1810, slave numbers had increased to 44,000. This precipitated the formation of Tennessee emancipation societies. In 1812, antislavery citizens

prevailed upon the state government to prohibit the ingress of slaves from outside the state. To show the spirited opposition to slavery in the state, Kelley quoted from an 1817 emancipation society publication, “alluding to the great doctrines promulgated in the *Declaration of Independence*.” It declared “every law passed by Legislatures in favor of slavery is in direct opposition to the principles of our national existence.” But when the delegates met in convention in 1834 to revise the constitution, “the slaves in the State numbered more than one hundred and fifty thousand.” Correspondingly, “the power of the slave oligarchy had increased.” That convention rejected emancipation petitions from sixteen counties and in addition, revoked the right of free blacks to vote.

In 1798, the United States House of Representatives considered legislation for the Mississippi Territory, held by Georgia but not yet ceded. Collamer and Wilson both noted that slavery had already entered that territory before the Georgia cession. Nevertheless, the House acrimoniously debated prohibiting slavery as the Northwest Ordinance had done. The leading proponents of slavery prohibition invoked the principles and purposes of the American Founding in support of their measure. Notably, none of the opponents, though hotly contesting the prohibition, disputed the applicability of those principles or claimed the rightfulness of slavery. Georgia eventually followed North Carolina’s example in ceding the territory on the condition that slavery not be prohibited, although Congress did prohibit the foreign importation of slaves (35 Cong 1, 906; 36 Cong 1, 324; Wilson 1874-1877, I:35-37). Despite that interference, both states formed from that territory, Mississippi in 1817 and Alabama in 1819, entered the union as slave states. When France ceded the Louisiana Territory to the United States in 1803, Doolittle observed, slavery already existed there, protected by French law. Again,

Congress interfered with slavery, forbidding the ingress of slaves for sale from domestic and foreign origins (36 Cong 1, 302; 36 Cong 2, 196). But again, despite that interference, when Congress admitted the state of Louisiana into the union, in 1812, slavery came with it.

By 1819, Congress had admitted five new slave states: Kentucky, Tennessee, Louisiana, Mississippi, and Alabama. But the Republicans did not recall much general opposition to their admission. Somehow, despite the antislavery convictions of the leading founders and of the age, slavery spread. The Republicans did not inquire much into the reason for this relatively uncontested expansion beyond causes particular to each case, but Wilson suggested one general reason. In the Mississippi Territory debate in 1798, Representative William Giles of Virginia argued that by allowing the introduction of slaves into western territories, “and thus spread themselves over a larger territory, there would be greater prospect of ameliorating their condition” (Wilson 1874-1877, I:36). This conjecture assumed that due to the imminent end of foreign slave importations, the numbers of slaves in the nation would do no worse than hold constant. If that constant number were spread over a larger area, slavery would become rarer, and the malign effects of slavery on the slave and on the surrounding republican political society would become evanescent. The number of slaves would decline, denuded by private manumissions and public emancipations. Eventually, the beneficent forces of republican society would cause the last bonds of slavery to drop away. This belief rested on secondary assumptions that slaves’ fertility rates would not exceed the replacement of those manumitted and emancipated, and that the ban on the slave trade would be enforced. Their belief encouraged a less guarded care for what districts in the United

States did or did not tolerate slavery, and in fact, rested on an antislavery argument for the toleration of slavery everywhere.

The Republicans pointed to this period as that during which the slave states were undergoing fundamental change; that is, when the power and rise of oligarchy was quietly gestating. The most important event that accelerated this change was an historical accident. Eli Whitney's invention of the cotton gin at the end of the eighteenth century allowed cotton cultivation over greater parts of the slaveholding states and created the demand for more slaves. Prior to that invention's industrial application, Farnsworth said, "Our forefathers were imbued with the spirit of freedom, emancipation – abolition, if you please," and from that beginning, "we took our departure." But "men became greedy and avaricious. The invention of the cotton gin... made it profitable to raise men and women for the southern market." After that, "the greed for power took possession of the slaveholders" (38 Cong 1, 2979). Delaware Representative Nathaniel Smithers claimed that "the invention of the cotton-gin gave a fresh impetus to [slavery's] expansion, and by rendering it more valuable, stimulated its growth." By "estimating his pecuniary advantages," the slave master "lost sight of the wrong." The "cupidity of the master" overwhelmed his conscience (38 Cong 2, 216-217). In a public speech to his constituents Connecticut Representative Henry Deming declared, "The invention of Whitney adjusted the social position and relations of our Southern brethren, more decisively, than their cotton-perfecting soil and climate" (Deming 1856, 20). That is, the social position and relations of southerners changed from what they were before, and all the Republicans knew that revolutionary oligarchy was the result. Wisconsin Senator Timothy Howe said that "Eli Whitney manufactured the cotton-gin, and the cotton-gin manufactured the

rebellion a great many years ago.” He drew his authority in part, from the 1807 opinion of a Mr. Johnson, judge of the United States circuit court in the district of Georgia, in a case concerning Whitney’s patent. Johnson had written that the invention changed “the whole interior of the southern States.” People “depressed in poverty... have suddenly risen to wealth and respectability. Our debts have been paid off, our capitals have increased, and our lands trebled themselves in value.” The “extent of the value” of the gin “cannot be foreseen.” To show the extent of the gin’s impact, unforeseen in 1807, Howe read the remarks of their recently departed colleague, Texas Senator Wigfall, who had twice proclaimed “Cotton is King!” in speeches intermixed with threats of secession. Then Howe concluded:

If the cotton-gin had not been invented slaveholding would not have been profitable. If slaveholding had not been profitable, slaveholders would not have been rich. If slaveholders had not have been rich they would not have been arrogant. If they had not been arrogant four hundred thousand slaveholders would not have presumed to challenge dominion over twenty million freemen. Slavery without the cotton-gin would have been a monster wrong, but it would not have been dangerous to the Republic. The cotton-gin without slavery would have been of twice the value it has been and still would not have been dangerous to any one (38 Cong 1, Appendix, 117).

Arnold also principally blamed the cotton gin for interrupting the effect of “peaceful agencies” that “would have soon made the republic all free.” The application of the gin created “immediate and enormous profits of cotton growing,” which “gave a power to slavery never before felt.” Consequently, “a powerful cotton and slave aristocracy soon grew up,” founded on an “immense property interest invested in the production of cotton, owning lands and negroes” (Arnold 1866, 30).

Even where cotton could not be cultivated, profits were more immediately realized by slave-breeding than by freeing slaves and employing them. Therefore, the

economic interests of non-cotton cultivating states incentivized them to push for the extension of territories tolerating slavery. Thaddeus Stevens vividly illustrated this point in 1850, in response to Representative Richard Meade of Virginia. Meade had argued for permitting slavery in the territories because the value of Virginia's slaves depended upon demand. "Let us pause," said Stevens, "over this humiliating confession." He continued:

In plain English, what does it mean? That Virginia is now only fit to be the breeder, not the employer, of slaves. . . . Instead of attempting to renovate the soil, and by their own honest labor compelling the earth to yield her abundance; instead of seeking for the best breed of cattle and horses to feed on her hills and valleys, and fertilize the land, the sons of that great State must devote their time to selecting and grooming the most lusty sires and the most fruitful wenches, to supply the slave barracoons of the South! And the learned gentleman pathetically laments that the profits of this genteel traffic will be greatly lessened by the circumscription of slavery! (31 Cong 1, Appendix, 142).

As a result of the cotton gin invention, the increased marginal gains to slavery's investors sufficed to erase the economic attractions of republican society. As Howe pointed out, the gin would have earned cotton cultivators more money without slave labor, but the increases with slave labor were sufficiently large to them that their contemplation of the alternative was destroyed. Possibly, cotton profits saved slaveholders from being forced, by economic want, to consider how to adjust to a slaveless republican society. With cotton profits, the economic allurements of republican society diminished. While slavery might impoverish the countryside generally, it could simultaneously enrich the few. To protect their gains from the votes of the many they impoverished, the few needed to monopolize political power. Fortune handed domestic tyranny a powerful economic incentive to politically strengthen itself, and in turn, to rule over all of society, not just their estates.

In the period before the Missouri controversy in 1819-1820, these economic influences were restructuring slaveholding society while the antislavery elements showed signs of overconfidence. To mark how unaware of these changes the founding generation was, Arnold pointed out that when abolitionist founder John Jay “negotiated what is called ‘Jay’s treaty,’ with England in 1794, he did not know that cotton was an article of export, so small was then the quantity of this staple product” (Arnold 1866, 30). From the adoption of the Constitution to the end of the War of 1812, Wilson wrote, slaves “had doubled in numbers and increased at least fivefold in value.” The demand of cotton cultivation stimulated the domestic slave trade and a black market of smuggled slave importations, annually amounting to several thousand. By that time, “the South, then under the complete control of the slave-masters, was gaining a like ascendancy over the Federal government, and a dominating influence over the non-slave-holding states” (Wilson 1874-1877, I:118). This set the stage for inter-regime conflict within the nation, between revolutionary oligarchy and the founders’ republicanism.

The Missouri Controversy

The crisis dubbed the “crisis of the house divided” or “irrepressible conflict” by Lincoln and Seward, respectively, in the 1850s was the later eruption of a chronic crisis that began with the Missouri controversy of 1819-1820. The struggle decided whether Missouri, and future states carved out of the Louisiana Territory, would come into the union slave or free. In short-hand, the conflict was expressed as between slavery and freedom, sectionally arrayed and equipoised against each other. But, knowing the effects of slavery, the Republicans understood, just as they believed the actors in the Missouri

drama and subsequent territorial struggles understood, the stakes included but exceeded what territories would tolerate slavery. The Missouri controversy inaugurated an inter-regime conflict between maturing oligarchy concentrated among the slave states and maturing republicanism among the free. The United States was tearing apart along an inter-regime divide, the same line dividing the domains of freedom and slavery. The competition for the character of the territories, free or slave, was a competition for the soul of the nation, and for the character of its political regime, oligarchic or republican.

Senator Benjamin Wade of Ohio remembered that, when he was a young man, “how anxiously the people of that part of the country to which I belong looked to the progress of that question through Congress. I remember the fearful struggle that took place between the different sections of the country, and how anxious our forefathers were lest it should prove utterly disastrous to the union of the States which they then cherished” (33 Cong 1, 337). Wade’s recollection that the struggle arrayed sections against each other showed that southern statesmen had been transforming from “slave-holding abolitionists,” allied in the effort to blot out slavery, to sectional advocates for the advance of slavery. This placed a strain on the union between free and slave states that caused anxiety for Wade’s people. But the people of the states of the former Northwest Territory, like Wade’s Ohio, had another reason to be anxious. Many of them, having escaped the domain of slavery, shared a special reason to have sympathy for westward traveling settlers.

From an analysis of census data, Jacob Collamer showed that more native-born Virginians who had emigrated settled in free states than slave states, and many of these Virginian and other slave state emigrants settled in the states of the former Northwest

Territory. Indiana Senator Oliver Morton wrote that his state had probably “a larger proportion of inhabitants of Southern birth or parentage... than any other free state” (Foulke 1899, 368). These people had, Collamer said, removed to free states so that they would “not lose position by caste”; that is, they relocated to a domain where they would become equal members of political society. These slave state emigrants were seeking to settle in republican political society. Collamer quoted the early debates in the Virginia House of Delegates, in which “those gentlemen say their free white population, who are degraded by labor in a slaveholding country, are fleeing” (34 Cong 3, 63). But as slavery spread, non-slaveholding free people would have fewer places to find refuge from oligarchic rule.

Sumner reviewed events, from the onset of conflict in the 1819 Congress to the enacted compromise in 1820. In February 1819, James Tallmadge of New York proposed an amendment to a reported bill, enabling Missouri to apply for statehood. At that time, the slave states of Kentucky, Tennessee, Louisiana and Mississippi had already been added to the union, and Tallmadge’s amendment insured that Missouri would become free. Counter-amendments, negotiations, and a bitter floor debate followed. In the meantime, a pending bill to organize the Arkansas Territory aggravated the ongoing slavery debate in connection with Missouri. And in the same session, Alabama was admitted as another slave state. These two new victories for slavery attended the end of the Missouri question, when a majority voted for a compromise. Congress restricted slavery from above the southern border of Missouri at 36°30’, and allowed slavery below that line (33 Cong 1, Appendix, 264-266).

The concession to slavery below that line officially broke from the free soil policy of the founders in 1787, a policy that had already been breached in the interim without national uproar. The compromise replaced that former policy with a new one, equidivision of new territory between freedom and slavery. That concession to slavery, Sumner said, “was justly repugnant to the conscience of the North, and ought never have been made.” But it was only by that concession that the union was preserved, as Sumner’s remarks made clear. The nation learned that a class of determined advocates of slavery’s extension, unknown among the founders, had risen in the land. Before the Missouri controversy, Americans might have lightly regarded the significance of the admittance of Kentucky, Tennessee, Louisiana and Mississippi as slave states, by reason of exceptional circumstance. But during the Missouri controversy, they now learned, in the words of Sumner, that “the original policy of our Fathers in the restriction of Slavery, was suspended, and this giant wrong threatened to stalk into all the broad national domain. Men at the North were humbled and amazed. The imperious demands of Slavery seemed incredible” (264). The slave statesmen’s power now driving their new policy aim to such an extent that they could force the advocates of freedom to give them title to half the nation’s territory. The new character of slave state statesmen gave an indication that political society in the slave states was changing.

Bingham explained that the reason why members of Congress fought equally hard for the restriction north of that line was that they “doubtless felt, and knew, that slavery was subversive of the ends of all free government, a violation of justice and of the rights of the enslaved, and contrary to the spirit of our free Constitution.” That is, they knew of slavery’s wrong and hostility to the Constitution, and also of its effects on republican

government. That they “knew” these things but also “doubtless felt” them refers to their first-hand, experiential knowledge of slavery’s effects and character. Specifically, the antislavery congressmen “knew, that in the wrong in which this institution has its inception, there was no law to restrain the enslavement of all classes and races of men; that the brute force, by which the inherent rights of the black race had for centuries been cloven down, was not likely to be restrained from inflicting like cruelties and oppressions upon the white race” (34 Cong 3, Appendix, 135-136). Those who were neither masters nor domestic slaves, the free whites, would also become slaves after a certain kind – a vassal class – wherever slavery was planted.

This accounted for why Wade could still remember “how anxiously” his people in Ohio followed the course of the conflict in Congress. When Congress adjourned with the settlement of the Missouri question still pending, Sumner recalled:

The whole subject was adjourned from Congress to the people. Through the press, and at public meetings, an earnest voice was raised against the admission of Missouri into the Union without the restriction of Slavery. Judges left the bench, and clergymen the pulpit, to swell the indignant protest which went up from good men, without distinction of party or of pursuit.

The movement was not confined to a few persons, nor to a few States. A public meeting, at Trenton, in New Jersey, was followed by others in New York and Philadelphia, and finally at Worcester, Salem, and Boston, where committees were organized to rally the country. The citizens of Baltimore, convened at the court-house, with the Mayor in the chair, resolved that the future admission of slaves into the States hereafter formed west of the Mississippi, ought to be prohibited by Congress. Villages, towns, and cities, by memorial, petition, and prayer, called upon Congress to maintain the great principle of the prohibition of Slavery. The same principle was also commended by the resolutions of State Legislatures; and Pennsylvania, inspired by the teachings of Franklin and the convictions of the respectable denomination of Friends, unanimously asserted at once the right and the-duty of Congress to prohibit Slavery west of the Mississippi, and solemnly appealed to her sister States “to refuse to covenant with crime.” New Jersey and Delaware followed, both also unanimously. Ohio asserted the same principle; so did also Indiana. The latter State, not content with

providing for the future, severely censured one of its Senators, for his vote to organize Arkansas without the prohibition of Slavery. The resolutions of New York were reinforced by the recommendation of De Witt Clinton (33 Cong 1, Appendix, 264-265).

Among the outraged in the nation were some members of the now politically declining class of slave-holding abolitionists, in the model of the slaveholding class of American founders. Delaware Representative Nathaniel Smithers recalled how the General Assembly in his slave state responded to the Missouri controversy: “A resolution was adopted by the General Assembly with entire unanimity in the House of Representatives and with but two dissenting voices in the Senate, declaring that in the admission of any State into the Union, it was not only the right but the duty of Congress to require, as an inviolable condition, the fundamental provision that it should forever thereafter be free from slavery” (38 Cong 2, 217).

New Hampshire Representative Aaron Cragin remembered that “a very large majority” of these free states’ representatives refused to vote for the compromise measures, not because they opposed the restriction above 36°30’, but because they opposed the admission of Missouri as a slave state. For these northerners, slavery had extended far enough, and they were unwilling to exchange the founders’ free soil policy for a divided land policy. The compromise, Cragin said, “was generally regarded as a southern victory,” and he brought out the contemporaneous writing of Charles Pinckney of South Carolina to demonstrate southern exultation. “We have carried the question,” Pinckney wrote, which will “*give the South, in a short time, an addition of six, and perhaps eight members to the Senate of the United States*. It is considered here, by the slaveholding States, as a *great triumph*” (34 Cong 1, Appendix, 1162, Cragin’s

emphasis). Continuing, he represented the loss of the territory north of the compromise line to slavery restriction as no loss, since it was a “vast tract, uninhabited.” Pinckney was one of the members of the South Carolina delegation in the constitutional convention of 1787 who had insisted upon the extension of the slave trade. He was not a slaveholding abolitionist founder. The character type of the slaveholding abolitionist statesman, acting in favor of a completely free republic, was becoming extinct. Instead, the new generation of southern statesmen was following the example of statesmen like Pinckney who was partial to spreading and increasing the incubus. The changes the slave states were undergoing appeared to be following the pattern of South Carolina.

In Congress, Arnold reflected that “to the thoughtful observer,” the conflict between the northern democracy and “a ruling class with power based on slavery... was early seen to be ‘irrepressible.’” The Missouri controversy was the “earliest important exhibition of this ‘irrepressible conflict,’ after the adoption of the Constitution.” As a thoughtful observer, the “philosophic statesman” could see the irrepressible conflict brewing and could only hope the conflict would be peacefully resolved (38 Cong 2, 68). The Missouri events, however, were filled with evil portents. Later, Arnold wrote that the strategic importance of Missouri “was not fully appreciated by the free States at that time.” The entrance of Missouri into the union as a free state would have precluded the irrepressible conflict. Missouri commanded “the centre of colonization” in America. If Missouri had been a free state, “free labor would have passed along the valleys of the Mississippi, the Missouri and the Arkansas to the West, and to Northern Texas. As a slave State it crowded off the current of free labor to the Northwest. By this success the

slaveholders secured the most commanding position in Central America, and prolonged the power of slavery for forty years” (Arnold 1866, 33-34).

Vermont Senator George Edmunds described the Missouri compromise as “a hollow truce.” The conflict between liberty and slavery, “the irrepressible conflict of opposing civilizations,’ had been thus postponed for another day.” However, Edmunds continued, “But the theories of government, identical with the one side or the other of that great question, thus left to smother for a mighty conflagration, were in active contest” (Edmunds 1866, 10). Each side was consolidating its forces around its opposing political regime, and contesting the other. From that moment forward, the two political regimes would develop in opposing directions and compete for ascendancy in America.

CHAPTER V

EDUCATION IN THE ANTEBELLUM SOUTH

Empirical Evidence in Support of Reconstruction Republicans' Claims

One easy test of the Reconstruction Republicans' claim that the slave state oligarchy depended upon the perpetuation of widespread ignorance is to study available education data from the period.

Tables 1, 2 and 3 in Appendix B compare the prevalence of adult illiteracy and public school attendance among the states, using data from the United States Census in 1850. The census did not collect education data in 1860.

Table 1 shows illiteracy among free persons twenty years old and older. Every slave state measures higher than every free state except for Indiana and Illinois. It is also a useful contrast of slave and free states to consider illiteracy among the total population. When including the population of slaves, who are assumed to have been illiterate because slave state laws forbade their education, the illiteracy gap becomes much wider. Table 2 shows total illiteracy, counting slaves and illiterate free persons. Every slave state exceeds every free state by this measure. Maine and South Carolina illustrate the strong contrast between the literacy and illiteracy of free and slave state people. At each extreme of the nation, Maine and South Carolina both had a total population of around 300,000 persons in 1850. In Maine, only two percent of their total population was illiterate; in South Carolina, 63 percent were illiterate.

Table 3 shows the percentage of persons nineteen and under attending public school. The census category “public school” did not differentiate between the tax-supported common schools of the free states, which classes of all children typically attended, and the “pauper schools” typical in the slave states, attended by poor children only. Notwithstanding this typical difference in the character of public schools in the free and slave states, attendance in the free states exceeded attendance in the slave states, with two exceptions. Public school attendance in North Carolina did exceed some free states by 1850, due to a new education law in that state, which is explained below. Public school attendance in California ranked below every state, but that state had just entered the union.

The rest of this chapter examines the contrasting developments of common school education in the free and slave states to show that the policy differences of each state reflected a difference in political regimes.

Education at the American Founding

Having broken from monarchic rule and having established a republic, the American Founders commonly understood that the people needed to become as enlightened as possible in order to maintain their fitness as the nation’s co-sovereign rulers. The general diffusion of education would answer for this need (Pangle and Pangle 1993).

In drafting the Massachusetts state constitution of 1780, John Adams framed this condensed thought under the heading of Chapter V, Section II, “The Encouragement of Literature, Etc.”:

Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them... to encourage private societies and public institutions (Adams 2000, 542).

The constitution endued the legislature and magistrates to encourage opportunities of education “among the different orders of the people,” not among one order of privileged, well-born, wealthy children. If government constrained education to the latter order, the rest of the people would less likely govern wisely or virtuously, and might not have sufficient knowledge to understand their interests, particularly their interest in their rights and liberties. Not knowing these rights and liberties well, the mass of uneducated people might not therefore know how to preserve them, or might not discern plots against their rights and liberties. In their ignorance and, right under their noses, they might permit others to transform their republican government into something else, perhaps governed by the privileged class who hoarded education to themselves.

Furthermore, the republican creed of the founders included the belief that while nature endows natural rights and liberties to all members of the human family, it distributes talent seemingly at random “among the different orders of the people,” paying no heed to humanity’s artificial orderings (147, 372-373). The offspring of an artisan might have more talent than the offspring of a banker. If government constrained education to an artificially marked-out, wealthy class, it would commit a second blunder – ignoring the talent nature had sprinkled among the non-wealthy. That talent ignored, the republic would forego the chance to cultivate and raise up many potentially great

individuals, and would restrict itself to finding natural talent and future leaders among the smaller pool of wealthy only. This policy ran the risk of fast-tracking well-born dolts to leading positions in the republic.

Around the same time that Adams was drafting the Massachusetts constitution, Thomas Jefferson was pushing through the Virginia legislature, his “Bill for the More General Diffusion of Knowledge.” The language differed from Adams, but the sentiments were the same:

Whereas it appeareth that however certain forms of government are better calculated than others to protect individuals in the free exercise of their natural rights, and are at the same time themselves better guarded against degeneracy, yet experience hath shewn, that even under the best forms, those entrusted with power have, in time, and by slow operations, perverted it into tyranny; and it is believed that the most effectual means of preventing this would be, to illuminate, as far as practicable, the minds of the people at large...; And whereas it is generally true that ... laws will be wisely formed, and honestly administered, in proportion as those who form and administer them are wise and honest; whence it becomes expedient for promoting the publick happiness that those persons, whom nature hath endowed with genius and virtue, should be rendered by liberal education worthy to receive, and able to guard the sacred deposit of the rights and liberties of their fellow citizens, and that they should be called to that charge without regard to wealth, birth or other accidental condition or circumstance; but the indigence of the greater number disabling them from so educating, at their own expence, those of their children whom nature hath fitly formed and disposed to become useful instruments for the public, it is better that such should be sought for and educated at the common expence of all, than that the happiness of all should be confided to the weak or wicked (Jefferson 1984, 365).

Like Adams, Jefferson looked to education as a surety against tyranny and the violation of rights, and as a helpmate for framing good laws. And, like Adams, he believed that nature endows talent randomly throughout the people. For those reasons, education should be more broadly diffused, “without regard to wealth, birth or other accidental condition or circumstance.” These comprise the elements of the founders’ republican theory of education.

Northern and Southern Education in the Early National Period, 1776-1830

Though the influential Virginian and Massachusettsian founders agreed on what republican government demanded from education, their respective sections' educational development differed in critical respects from the nation's founding until the reform movement of the 1830s and 1840s. The free states did develop towards the ideal of educating all in common schools. The slave states began auspiciously, but entered the school reform period, having already begun hardening class distinctions in their educational policy.

In the first half of the eighteenth century, most northern schools served a local district. In the South, most schools were commonly called old field schools, hedge schools, or forest schools. In these, an itinerant teacher would educate the children of a few families who would jointly pay the teacher's fee. Sometimes, prestigious families would organize, endow and supervise these old field schools, which then became permanent, private academies. A private southern academy might also grow around a tutor serving one, and then possibly more, wealthy families (Kaestle 1983, 13; Knight 1922, 76).

At this early stage, a cultural difference favoring broader education in the North already emerged. Northerners presumed that elementary education was an indisputable necessity. Educational historian Carl Kaestle gives several examples useful to demonstrating this point. New England colonial legislatures required that towns maintained schools and that parents attended to their children's education. Although Kaestle downplays the laws' significance, pointing out that the towns did not appear to have always observed them, the laws' enactments at least reflected the New England

culture's devotion to education. In addition, the northern literacy rate exceeded the South's rate during the founding period. The northern people also exhibited some sense that their communities were incomplete without a school. When northern populations grew at a distance from an existing school district, the distant people demanded a school district for themselves. In another instance, Kaestle illustrates this tendency, quoting the reminiscence of a resident in Lancaster, Pennsylvania: "Whenever a neighborhood felt the need of a schoolhouse, one was erected at some point convenient to those who contributed towards its erection. The patrons selected trustees, whose duty it was to take charge of the school property and to select a teacher for the school." In short, education appeared to be a community affair in the North, rather than a temporary business for a few families, or a temporary or permanent business for fewer rich families as it was in the South. The evidence for this is that northern school attendance rates exceeded southern school attendance rates at the earliest points in the nation's history. It appears that northerners had already taken to heart Article 3 of Jefferson's famed Northwest Ordinance of 1787, which read, "Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged" (Kaestle 1983, 3, 4, 13, 27; Knight 1922, 115; see also Cremin 1970).

After the nation's founding, the republican leaders of the original southern states immediately attempted to implement the republican theory of education within their domain. They could not rely upon a more generalized acceptance of the necessity of education among their people as northern, or at least New England, republican leaders could. So they attempted to put into operation the founding generation's republican

theory of education in the one way they were able: from the top-down. The delegates who framed North Carolina's state constitution in 1776 included an educational provision requiring the state to provide for education broadly among the people. Whereas in the Massachusetts constitution, the language of Adams encumbered the "legislatures and magistrates" to "encourage" and "cherish" institutions of learning, the North Carolina constitution, following Pennsylvania, explicitly ordered its legislature to establish schools and to make them available "at low prices." The Georgia constitution of 1777 similarly ordered that "schools shall be erected in each county, and supported at the general expense of the State" (Knight 1922, 119).

In his autobiography, Jefferson counted his "Bill for the More General Diffusion of Knowledge," proposed to the Virginia legislature in 1779, among the four bills that "formed a system by which every fibre would be eradicated of antient or future aristocracy; and a foundation laid for a government truly republican." The other bills were the repeal of the laws of entail, the abolition of primogeniture, and the restoration of the rights of conscience. Of these Jefferson wrote to John Adams in 1813: "At the first session of our legislature after the *Declaration of Independence*, we passed a law abolishing entails. And this was followed by one abolishing the privilege of primogeniture... These laws, drawn by myself, laid the axe to the foot of pseudo-aristocracy. And had another which I prepared been adopted by the legislature, our work would have been complete. It was a bill for the more general diffusion of learning." These bills numbered among 126 that he and Virginian republicans Edmund Pendleton, George Wythe, George Mason and Thomas Lee had prepared in committee for the Virginia legislature. After leaving the Continental Congress that signed his drafted

Declaration of Independence, Jefferson rejoined the state legislature and moved to revise the Virginia laws so that they could be “adapted to a republican form of government.” The legislature assigned Jefferson’s committee for that task. Hence, the origin of the education bill followed a chain of events linked to the political principles of the *Declaration* inaugurated by the new nation (Jefferson 1984, 37, 40, 44; Dabney 1936, 7).

Education scholars consider this bill a revolutionary proposal. The bill outlined three levels of education, and the best students would matriculate upwards according to their performance, with no regard for family wealth. For the provisioning of elementary education, the state would divide the counties into smaller districts, one school per district. All children, male and female, would receive their education for free, funded by a county tax. The elementary school headmasters would select the best students for the next level, grammar school, funded by the state. The best students from the grammar schools would be eligible for the College of William & Mary, which the state would expand and support. Education historian Edgar Knight observed that while the Virginia legislature “did receive the plan with some interest,” the bill did not pass at first. But this initial legislative failure did not portend too much. Pennsylvania refused to pass a similar bill presented by Benjamin Rush (Kaestle 1983, 8-9; Knight 1922, 124-126; Dabney 1936, 3-19).

In 1796, the Virginia legislature did adopt Jefferson’s plan. Testifying to the republican principles and aims of at least a majority of the legislators who passed the bill, the preamble declared:

[H]owever favorable republican government, founded on the principles of equal liberty, justice, and order, may be to human happiness, no real stability, or lasting permanency thereof can be rationally hoped for, if the minds of the citizens be not

rendered liberal and humane, and be not fully impressed with the importance of those principles from whence these blessings proceed: With a view, therefore, to lay the first foundations of a system of education, which may tend to produce these desirable purposes, Be it enacted (Knight 1922, 126-127).

They recognized that the stability and permanence of republican government depended upon broadly diffused education.

At first, other southern states seemed to move towards educating for republican citizenship. In 1811, South Carolina Governor Henry Middleton sent a message to the legislature in which he brought to their attention “the propriety of establishing free schools, in all those parts of the state where such institutions are wanted.” Consistent with founders’ republican theory of education, he argued that “one of the first objects of a government, founded on popular rights, should be to diffuse the benefits of education as widely as possible.” Citizen petitions for free schools flowed into the legislature, which duly responded, passing a free school act with massive support. The bill organized school districts for each electoral district of the state’s lower house; it also required state funding. All citizens of the state could attend the schools for free (Knight 1922, 130-132).

In 1783, Georgia Governor Lyman Hall sent a message to his legislature, urging the establishment of seminaries of learning to cultivate the “principles of religion and virtue ‘among our citizens.’” The legislature responded by permitting the endowment of at least one free school in every county. In 1785, the legislature created and endowed the first state university in the United States: the University of Georgia. Part of its mission was to oversee and advise the public schools instituted by the state government (Knight 1922, 133-134).

These and all southern efforts in the early period after the American Founding failed to develop common schools. While the legislation articulated republican principles and appeared to put them into practice, the effect of their measures was anti-republican.

When the Virginia legislature adopted Jefferson's plan in 1796, they modified the bill with an apparently innocuous but far-reaching clause (Knight 1922, 127). In his autobiography, Jefferson lamented,

And in the Elementary bill they inserted a provision which completely defeated it, for they left it to the court of each county to determine for itself when this act should be carried into execution, within their county. One provision of the bill was that the expenses of these schools should be borne by the inhabitants of the county, everyone in proportion to his general tax-rate. This would throw on wealth the education of the poor; and the justices, being generally of the more wealthy class, were unwilling to incur that burden, and I believe it was not suffered to commence in a single county (Jefferson 1984, 43).

Knight corroborates Jefferson's comments that none of the counties commenced establishing the plan, and the "law soon became a dead letter." Virginia's leaders apparently found themselves caught between the demands of their republican ideals and their wealth, and they settled for protecting their wealth. Events proved that Virginia's leaders were penny-wise but pound-foolish. For saving a margin of their wealth, they contributed to the loss of republicanism.

Gradually, future Virginian leaders could justify spending their portion of tax revenue for others' education, although not due to the motive of republican public spirit, but rather due to the more aristocratic motive of condescending, stigmatizing paternalism. Agitation for free common schools had not abated when, in 1818, the legislature set aside a portion of the state's educational fund for the education of poor children, rather than for the establishment of common schools for all children. The state charged the county

courts to provision this system of schools, which became known as “pauper schools.” This became the basis for popular education in Virginia until the Civil War. The same 1818 law established the University of Virginia, which showed that Virginian leaders did not mind spending others’ portion of tax revenues for the benefit of their own class (Knight 1922, 128-129).

Knight observed that the South Carolina legislature that passed the 1811 education law did so under the pressure of complaints. The grounds for complaints were that the state had already established South Carolina College, but had done nothing towards the establishment of free common schools. The enacted law appeared to address this, but in operation, if not in intent, the effect of the law deepened class division rather than working to erase it, as the founders’ republican theory of education so aimed. The law required the district commissioners to prefer the poor for admission to the free schools, which became schools for the poor, and repelled others. And, in order to gain state aid, the poor had to take a “pauper’s oath.” But the law also gave the commissioners the flexibility to give state funds to private academies (Knight 1922, 130, 132; Huff 1995, 94).

After 1785, Georgia did not execute its plan to establish common schools, but private academies expanded, liberally funded by the state legislature. In 1821, Georgia divided its state educational appropriations for schools, setting aside half for the academies and half for “the poor school fund.” As a result, the growth of academies accelerated and those not wealthy enough could receive an education at the public expense only by agreeing to stigmatize themselves as “poor” (Knight 1922, 134, 136).

Slave state educational development in the early national years followed these patterns. Most, if not all, of the slave states had differentiated between education for the wealthy and education for the poor. By providing separately for “poor schools,” the slave state governments “discouraged the patronage of the schools by all classes.” While the republican idea of the free common schools remained mostly a dream in the South, private academies and higher education flourished. They were often supported by state bounty, while reserves were set aside to educate the children of those willing to publicly label themselves paupers. Many scorned this humiliation and preferred no education for their children. In the slave states, education policy increasingly served the few (Knight 1922, 141).

In contrast, the North was growing towards the republican common school ideal. The proportion of children enrolled in elementary school was rising more quickly in the Northeast than elsewhere, particularly among female children. By 1830, most white Americans in the North had access to elementary education. Enrollment rates in the South were lower (Kaestle 1983, 24, 62).

These developments in the North took place regardless of the degree to which state governments supplied encouragement. In 1789, the Massachusetts legislature passed a law, similar to its colonial law, requiring that towns maintain a school. But most towns already did maintain a school and did offer a partially free elementary education. Responding to New York Governor George Clinton’s complaint that a 1795 law favored educating “the children of the opulent,” the legislature passed a law lavishing aid on local common school committees for five years. The law was not renewed, yet enrollments of under-twenty pupils in New York increased from an estimated 37 percent to 60 percent

from 1800 to 1825. Connecticut did provide generous financial support to “local school societies,” approximating a district system, and some American and foreign commentators regarded the common school system so funded the best in the country (Kaestle 1983, 10-12).

The diffusion of elementary education through common schools resulted from local community effort, custom and funding. The towns in which most inhabitants of the North lived usually had a district school, which was tightly bound to its community and served most everyone. Kaestle also locates the source of northern common school development in the urban charity schools, which began as free schools for the poor. Unlike southern “pauper schools,” however, these schools transformed into common school systems, the precursor of modern public school systems, serving all for free. In addition to private benevolence, fear of city-dwelling youth growing into adult criminals motivated the establishment and funding of charity schools. In time, advocates for poor school funds used republican views in their arguments. Boston’s city missionary, Joseph Tuckerman, argued that “if every child in our country, and in the world, between the ages of four and fourteen were in a school... and should receive as much instruction as could be given to them, it would be found that in the diversity God has made of human capacities... there is an ample provision for the whole number which is wanted for every service.” In other words, since God or nature diffuses talent irrespective of artificial human distinctions, the education of all children helps them develop their natural talent and rise to stations fitting their natural individual capacities. Education of the poor should not be ignored, nor should it provide them with meager training for a low station in life. Nobody should assume he or she knows to what high or low station any child is

predestined by nature or God. These arguments attended the transformation of poor schools into common schools, where poor children and others could receive a respectable education. The urban charity schools gradually became more organized and eventually attracted and admitted children from higher socioeconomic positions. The charity school systems of New York and Philadelphia first changed into common school systems. After 1820, urban common school systems grew and received public funds and oversight. According to Kaestle, a major argument in support of this development was “that children of different classes should attend the same school.” Or in other words, the urban charity schools should do, and did, what the northern district schools had already been doing since before the Revolution (Kaestle 1983, 10-12, 29, 36, 60, 30-61, 62).

The School Reform Movement in the Free States, 1830-1860

The noteworthy educational reformers of the 1830s and 1840s included Horace Mann of Massachusetts, Calvin Stowe of Ohio, Henry Barnard of Connecticut and John Pierce of Michigan, all of whom were born in New England. All of them primarily rested their arguments for reform on the need to educate for republican citizenship. All of them fervently believed in education’s power to elevate character and develop individual potential as far as the pupil’s talent could go, no matter how humble or unfortunate the child’s origins. Only in America, or at least in the free states, could personal merit advance to socially respectable positions despite one’s origins; therefore, the urgency to preserve American republicanism increased and education was republicanism’s surest prop.

Kaestle is guilty of understatement when saying that these reformers “were from families of modest resources.” Barnard, who came from a middling Connecticut family, best deserves that description, but not the others. Mann descended from the “plain people” of Massachusetts. When he was thirteen, his father died, and he thereafter well experienced privation and toil. Stowe, also from Massachusetts, was six when his father died, leaving the family destitute. Pierce, raised in Massachusetts and New Hampshire, probably suffered the most as a child. His father died when he was two. His mother was unable to care for him, and he spent his youth bouncing among relatives, and was often overlooked, disliked or mistreated. Mann, Stowe, Barnard and Pierce all received their elementary education from common schools, though Barnard also later attended an academy. Their common schools gave them their love of learning and to each, a fair start in life. They worked hard, rose, and then became evangelists for the republican institution of common school education, and by extension, for American republicanism, to both of which they owed so much. It is not too much to say that had not their New England forebears taken up the republican policy of generally diffusing education, they would not have been in the position to attempt to diffuse it further still, within their own New England and beyond. In the discharge of their shared mission, each must have been well aware of this fact (Kaestle 1983, 75, 105-106; Steiner 1919, 7-8; Hinsdale 1898, 75-78; Barnard 1859, 344; Hoyt and Ford 1905, 56-60).

The reform movement they led succeeded in the North and Midwest, but, as both Knight and Kaestle maintain, barely impacted the South. The reformers primarily aimed at programmatic public management over education, so that education would be more efficient, uniform and consistent with national purposes. They favored the institution of

state superintendents of public instruction, organization directed by the state government, and increased public expenditures, again, directed by the state. In the North and Midwest education had developed unevenly. This is not surprising, given that local northern communities had independently overseen their schooling practices, though that is not to say that communities did so without regard to other communities' practices. The reformers saw the opportunity to increase uniformity and efficiency through state intervention (Knight 1922, 197, 266; Kaestle 1983, 103, 104-135).

Their arguments for reform drew from traditional American republicanism. In Calvin Stowe's 1837 *Report on Elementary Instruction in Europe* delivered to the Ohio Legislature, the closing words of his introduction were, "Republicanism can be maintained only by universal intelligence and virtue among the people.... And do not patriotism and the necessity of self-preservation, call upon us to do more and better for the education of our whole people, than any despotic sovereign can do for his?" (Stowe 1838, 9) Preservation of republican government and way of life depended, like any form of government, on the prudence and virtue of the ruler, as well as the ruler's affection for the political regime. In the American Republic, the people were the co-sovereign rulers, and they, therefore, required education to make them prudent rulers, virtuous and patriotic. A more regularized system of education for all citizens, especially teacher training, Stowe promised, could deliver these goods.

In his third report to the Michigan legislature in 1838, John D. Pierce, the first superintendent of public instruction in Michigan, reported:

[N]o form of government, and no constitution within the power of man to devise, can provide such security. Our safety is not in constitutions and forms of government, but in the establishment of a right system of general education; in the

development and culture of those moral, as well as intellectual, powers implanted in the nature of man. . . . Generally diffused education, combining the great powers of intelligence and a pure virtue, is the only safeguard of our public and our private rights; and upon the progress of this alone, depends the future permanence and character of all our republican, institutions. The object of education is to raise up, not to pull down; to improve the condition of man, to advance the interests of the whole people, while increasing the individual happiness and prosperity of every member in the commonwealth (Pierce 1839, 191).

Our constitutions – “parchment barriers,” to borrow a Madisonian phrase – could not by themselves protect or develop America’s republican government or way of life. Only a republican people can. Education must help the people rise to that character and responsibility by cultivating their intelligence and virtue. Like Stowe, Pierce exhorted the Michigan legislature to increase efforts to improve education in order to perfect American republicanism.

In 1871, as the first Commissioner of the newly created United States Department of Education, Henry Barnard aimed farther than the goal of “generally diffused” education for republicanism. Barnard wrote, “The problem to be solved under a republican government—the government of all for all—is not the education of the few or even the many, but of all. And any system of public schools must be considered defective and insufficient which does not provide, induce, and secure the universal education of the entire juvenile population of the community for which it is instituted” (Barnard 1871, 142). This was indeed arguing to “leave no child behind,” for the purpose of sustaining republican government and of properly enjoying and appreciating freedom under it.

Horace Mann perhaps dilated on the necessary dependence of republicanism on education probably more than any other of his compeers. As Secretary of the

Massachusetts Board of Education, Mann directly stated this relation in his Tenth Annual Report in 1846:

[S]ince the achievement of American independence, the universal and ever-repeated argument in favor of free schools has been, that the general intelligence which they are capable of diffusing, and which can be imparted by no other human instrumentality, is indispensable to the continuance of a republican government. This argument, it is obvious, assumes, as a *postulatum*, the superiority of a republican over all other forms of government; and, as a people, we religiously believe in the soundness both of the assumption and of the argument founded upon it (Mann 1872, 531).

Republican government requires general intelligence, which only free schools can impart, because,

Once, the law prescribed the actions and shaped the wills of the multitude; here, the wills of the multitude prescribe and shape the law. With us, legislators study the will of the multitude (Mann 1855, 158).

Therefore, general intelligence will improve the chances that the wills of the multitude shall be better directed, and the legislators who pay heed to the multitude, will frame good laws.

Buoyed by the appeal of these arguments to their public, Mann and his coadjutors did generally succeed at centralizing the oversight and funding of education at the state level in the free states. They pushed for a lengthened annual schooling period, higher teacher wages, libraries, uniform textbooks, teacher training schools, education periodicals and other reforms. All of these aimed at improving or maintaining the quality of education while increasing the scale of schools, students and teachers under education officials' supervision. Although free state school enrollments were already rising when Mann and his coadjutors began their reform work, enrollments further increased through 1860 (Kaestle 1983, 105-107, 135).

The Condition of Elementary Education in the Antebellum Slave States

In one respect, the aims of the northerner-led school reform movement were mostly responding to northern conditions. They were attempting to wrest supervision of common schooling away from local communities, which always had overseen educational development in the North, and to lodge that supervision in the state governments. But in the South, the state governments always had a controlling influence over the issue of free, common school education. They met the issue by choosing to establish and fund pauper schools for some, and by assisting private academies and higher education for others. The reason often given for slave state governments' reluctance to establish free, common school systems in the South, as local communities had established them in the North, was that southerners practiced a "laissez-faire" philosophy of government. They practiced the principle, "that which governs least, governs best," despite the fact that northern state governments practiced that principle more faithfully than southern state governments did, towards education.

Charles Dabney, an historian of southern public school education, was one of these who indulged in this error. In one instance, he refers to a high profile public debate in 1876 between "the father of the writer" and Virginia's then first superintendent of public instruction, William H. Ruffner, to illustrate this laissez-faire principle applied in opposition to public schools. Charles Dabney's father, Reverend Robert L. Dabney, was a professor at Union Theological Seminary of Virginia, Chief of Staff to Stonewall Jackson, Jackson's biographer and an aristocrat. He opposed free public schools as "part of a vicious scheme" to destroy civilization, and held to "the laissez-faire theory of government," believing that the sole duty of government was to protect the family and to

“not interfere with any of its functions, the chief of which is the training of children.”

But if laissez-faire was his principle, Reverend Dabney ought to have held forth for the New England townships as the model to emulate. There, education broadly thrived before the latent intervention of state government, whereas in the South, state government educational policy actively shaped class distinctions. Though Dabney *films* may have been historically correct to identify the laissez-faire argument with southern opponents of free, common schools, southern aristocrats like Dabney *père*, who justified antebellum southern policy by the principle, were inconsistent. Southern governments lived by the laissez-faire principle when abstaining from taxes for common schools benefiting the whole southern people, but they abandoned the principle when funding the academies and colleges that benefited the wealthy alone, leaving some funding for schooling the poor. This is selectively applying the laissez-faire principle, which is not laissez-faire at all. Their policy is roughly the equivalent to the state abstaining from funding community centers open to all, while financially aiding exclusive country clubs and leaving soup kitchen funds to those willing to swear a pauper’s oath. Contemporary education historians, Kaestle included, miss this inconsistency when attributing the laissez-faire principle to free, common school opponents in the South (Dabney 1936, 47, 154-155).

From the school reform period until the Civil War, sometimes the southern people and sometimes southern governors and legislators, on behalf of the southern people, agitated for better schooling. These efforts resulted in few victories, and fewer of any lasting substance. In the earlier period, the slave state governments had institutionalized class distinctions in educational policy, and this established the foundation of future

educational politics. The competing interests of the many and the few structured all conflicts on educational policy.

In 1826, Virginia Governor John Tyler appealed to the legislature to create a free school system as New York had, “embracing all, and alike available to all.” But Tyler lost re-election, and the bill that the education legislative committee drafted in response to Tyler’s call did not pass. The legislature then passed a “district free school law” in 1829. This gestured towards free schools, but was perhaps designed to placate advocates without providing sufficient means to break up and reconstruct the practiced system. By the 1829 law, the state authorized the county commissioners to divide their counties into districts for the establishment of free schools, open to all free white children. If voluntary contributions reached an amount sufficient to build a schoolhouse, the commissioners could direct tax revenues to the support of these schools. In operation, most county commissioners ignored the local voluntarist efforts and instead devoted their energies on the pauper schools.

However, Washington County in the southwestern corner of Virginia did successfully implement the policy. By 1835, 38 of 54 districts created within the county maintained free, common schools, supported by local taxation. According to the 1830 census, this western Virginia county was a low slave population county; 16 percent of its residents were slaves, in comparison to the state’s population of 39 percent slaves. In general, slaves and wealthy aristocratic planters were more extensive in the eastern part of the state. Most of the colleges and academies were likewise in the east. But in the west, Knight says, a middle class had been gestating, and he attributes the cause to limited slaveholding. From that section came the agitation for common schools and the

votes for Virginia's education laws of 1796 and 1829. As a result of the 1829 law, Washington County began to accomplish what early northern townships did, relying on their own pooled efforts and resources. The educational developments in low slaveholding Washington County in 1835 and low slaveholding northern townships in the founding period were parallel, linked by the common characteristic of fewer slaves (Kaestle 1983, 1999-201; Knight 1922, 200-201, 206; Historical Census 2004).

In 1837, Governor David Campbell from western Virginia renewed appeals for a common school system. He communicated his alarm at the magnitude of illiteracy and general under-education of the people to the legislature. The pauper school system was wholly inadequate to remedy these evils. Teachers in the pauper schools were incapable, negligent and inattentive, and the legislature provided meager funds for them. An entirely new system was needed. Campbell commissioned a report to the Virginia House of Delegates by Benjamin Smith, who attacked the Virginia government's practice of funding a university serving the wealthy, funding schools for the poor, which were highly deficient, yet doing nothing to educate those who were neither wealthy nor would take poor aid. At these signals, advocates, especially western Virginians, made much noise for school reform throughout the 1840s. Conventions for common schools were held, including one presided by Henry Ruffner, the father of Dabney's debate opponent. These agitations precipitated legislative activity, but eastern legislators buried good school bills, and the enacted laws contained the same fatal provisions that had always doomed Virginian common school plans. The plans could be killed at the county level by a minority vote or by commissioner passivity. Knight reports that the counties most

generally continued to provision pauper schools only, up to the Civil War (Knight 1922, 204-207, 209; Kaestle 1983, 209).

To best characterize the feelings of common school opponents, Knight points to 1850s counter-conventions, representing “the interests of the academies and colleges of the State,” that is, the wealthy. The chief report read at one of these counter-conventions addressed the expenses of the state’s literary fund. It complained that a disproportionate amount of these funds applied to the pauper schools, and asked, “Is it right to take the property of the many and bestow it exclusively on the few? ... They are the privileged class – the aristocracy of poverty. Now, is it right to exclude from all the benefits of the literary fund all the children of this glorious old Commonwealth, except those who put in the plea of rags and dirt?” Virginia had sharply broken from its republican leaders during the early national period. At that time, leading Virginians recognized the need to educate all for republican citizenship, but they had succumbed to avarice in preference to their republicanism, which may have nevertheless been a widespread and genuine republicanism. But by the 1850s, it was clear that the early republicans’ private avarice had transformed into a political principle, the scorn for the many, which was openly declared (Knight 1922, 210-211).

The comments of Virginian James Mason on the floor of the United States Senate in 1859 gave credence to the view that free common schools systems were absent not only in Virginia, but in all the antebellum slave south. This absence was not due to neglect, however, but rather to active opposition. Mason spoke against the bill authorizing the sale of public lands to fund agricultural colleges because the Constitution did not positively grant the Congress the power to pass such legislation. He equated the

proposed land grant to bribery offered to the states. This method could be turned to a more sinister use, in his view. If the land grant bill was passed, he warned southern senators,

Would it not be in the power of a majority in Congress to fasten upon the southern States that peculiar system of free schools in the New England States which I believe would tend, I will not say to demoralize, but to destroy that peculiar character which I am happy to believe belongs to the great mass of the southern people. Ay, those New England free schools, upon which they pride themselves, and that system of social organization in reference to those free schools, might just as well be engrafted on the policy of all the States, by means of this same bribing process by which they here propose to establish agricultural colleges (35 Cong 2, 718).

By this time in the political development of the slave South, those in power wished to suppress the education of the people for republican citizenship because it would destroy the peculiar character of the southern people. Strange as it seems, Mason professed his happiness that the southern people lacked elementary education. It is not so strange if Mason belonged to an exclusive, inter-state ruling class that preserved its exclusive rule over the people due to the people's ignorance.

Although North Carolina included an educational provision in its constitution of 1776, the legislature enacted nothing worthy of notice to providing for elementary education until 1839. Early governors of the state called attention to the state's delinquency, framing their messages to the legislature with the founder's republican theory of education. In 1805, Governor James Turner reminded the legislature, "As the most certain way of handing down to our latest posterity, our free republican government, is to enlighten the minds of the people... too much attention can not be paid to the education of youth, by promoting the establishment of schools in every part of the State." In 1811, Governor Benjamin Smith tacitly warned legislators of the consequences of their

neglected duty since, “in despotic governments, where the supreme power is in possession of a tyrant or divided among an hereditary aristocracy... the ignorance of the people is a security to their rulers.” But in a republic, popular enlightenment is a security to the rulers, the co-sovereign people. Therefore, “in a free government, where the offices and honors of the state are open to all, the superiority of their political privileges should be infused into every citizen from their earliest infancy.” Smith recommended that “a certain degree of education should be placed within the reach of every child of the state.” Addressing North Carolinian leaders’ presumed resistance to taxation for carrying out this scheme, he added, “I am persuaded a plan may be formed upon economical principles that would extend this down to the poor of every neighborhood, at an expense trifling beyond expectation, when compared with the incalculable benefits” (Coon 1908, 43, 80).

The legislature did not carry out a common school plan. Whatever the original cause, they were undermining the development of republicanism and ripening the conditions for an aristocracy to ascend to political domination, according to Governor Smith. For decades, legislators sometimes attempted to frame common school laws, but legislative majorities deemed tax requirements in the laws odious, and consequently voted them down. Teachers were notoriously bad, and Knight goes so far as to say that the profession was held in popular contempt. Without state intervention from the top-down, nor an inherited foundation for education to develop from among the people, the population of North Carolina slunk into deeper illiteracy and ignorance. Newspapers expressed disbelief at the state governments’ disregard for popular education. The 1839 law radically changed the state’s direction. It provided for the establishment of county

boards of education, which would then divide the county into school districts. These schools were open to all. The law required county courts to levy a tax to support the schools. However, this plan would only be put into operation in counties that voted for it. When given this chance, a majority of counties did. North Carolina, alone among the antebellum slave states, built for itself a common school system *ex nihilo*. The state also became the first among the slave states to create the office of state superintendent of public instruction. Kaestle regards these late but earnest steps as an exception to the rule of slave state government resistance to common schools.

These measures passed because the inter-sectional balance of political power within North Carolina was altered by the 1835 amendments to the state constitution. The low-slaveholding western section of the state demanded common schools, while the high slaveholding eastern section usually opposed them, a pattern repeated all over the slave South. The North Carolina constitutional convention of 1835 retained the eastern legislators' disproportionate representation, but weakened its strength. In combination with the greater increase of western North Carolina's white population and the provision changing the electors of governor from the members of the legislature to the people, the amended constitution sufficiently tipped the scales on the common school question to the side favored by the western part of the state. Hence, the North Carolina convention of 1835 directly led to the enactment of the 1839 education law. Kaestle has trouble explaining why the 1839 law passed because he misses the significance of the constitutional revisions. Knight praises the law, but shows that North Carolina's prior history was difficult to overcome. In 1852, the state legislature created the office of state superintendent of public instruction, the only such office created by any antebellum slave

state. Despite the indefatigable efforts of Calvin Wiley, the first appointee, progress was slow. This explains why, by 1850, North Carolina had the highest adult illiteracy rate in the nation, but a public school attendance rate rivaling the free states. The state's efforts were too late to substantially impact the character of the state people by the time the Civil War broke out (Knight 1922, 145-154, 233-238; Kaestle 1983, 210-212; Hamilton 9-13).

The state movement towards common schools corresponded with the relative decline in power of the high slave holding section of North Carolina. Louisiana followed this pattern. Louisiana's progress and decline towards the common school ideal also corresponded with the relative power of its high slave holding section in the southern part of the state. From the time of its territorial condition, private academies had flourished, supported by government's largesse. The parishes that distributed state aid had to reserve limited school enrollments for those designated poor. Louisiana, too, had created the distinction between the poor and the rich in their educational laws. But common folk had emigrated to the northern part of the state in large numbers in the 1830s and 1840s, creating a new bulge of political power in that low slaveholding section, counterbalancing the power of the high slaveholding southern section. At the state convention of 1844, a precedent to the new state constitution of 1845, the secretary of the education committee reported the same education complaints heard all over the slave states. Publicly funded teachers were incompetent and negligent, and they only seemed to be in the business of taking state money. Enrollments were down. Only the wealthy were enjoying a good education. A Mr. Mayo, the secretary, assigned two causes for these problems. Firstly,

The expenditure of the funds of the State, distributed to the parishes generally, has been that indigent children only have been entitled to the benefits of the public funds. Men of the high sentiments and noble feelings that characterize the citizens of this State feel a repugnance at the thought of educating their children by the use of a fund that none but the poor and needy can be partakers of. Hence it is believed that many persons, unable to educate their children at their own expense, have too much pride and feel that it would be humiliating to themselves and their children to partake of a bounty thus offered.

Secondly,

Large expenditures have been made for building colleges and academies for the promotion of the higher branches of literature, before providing the means for teaching the first rudiments of a common education.

The 1845 constitution the convention framed included an educational provision for the first time, providing for a state superintendent of public instruction, a public school fund, and free schools supported by taxation. The reforms aimed at replacing the stigmatizing poor school system with a competent public school system for all. The constitution also eliminated property qualifications for voting, which enfranchised the new mass of common folk in the northern section. Louisiana commenced building a free school system on the model of northern states.

However, slaveholders in the southern section struck back not long afterwards. They found new devices to compensate for what the elimination of property qualification did to their section's power. They were able to secure the apportionment of representation in the legislature by enumerating total persons, slaves included. This was placed in the new constitution of 1852. That year, the legislature abolished the office of parish superintendent, cut the state superintendent's salary, and relieved the superintendent from visiting the parishes. These changes, Knight concludes, "seriously crippled" the embryonic free school system. The state movement away from the

establishment of common schools corresponded with the relative increase in power of the high slave holding section of Louisiana (Knight 1922, 94-96, 242-245; Wall 2002, 127-128, 130; Louisiana Constitutional Convention 1845, 317; Suarez 1971, 117-118).

Knight shows that South Carolina's school policy did not change much since 1811 until the Civil War. The most the legislature did to encourage schooling at the public expense was to vote appropriations to the poor schools. As in other slave states, disputes over education policy followed inter-sectional lines within the state. The low-slaveholding upcountry, the northwestern section around Greenville and Spartanburg, agitated for an improved popular educational system. But because the high slaveholding low country enjoyed disproportionate representation in the legislature, the legislature resisted calls for common schools, sometimes with open hostility. As a result, the white majority never had access to respectable education. The poor school teachers, at one point, were generally adjudged as being "unqualified for their stations." The county school commissioners often neglected their oversight of the schools. Widespread illiteracy remained in South Carolina.

Two examples drawn from antebellum South Carolina gainsay the argument that southern governments abstained from establishing a true common school system due to their fidelity to the laissez-faire principle. These cases support a different explanation, that the state government's educational policy socially engineered society in a way adverse to the people and favorable to the wealthy. The state government divided funds for the pauper schools according to the same malapportioning formula by which the low country slaveholders dominated the legislature. Hence, in a given year in the 1840s, the poorer, low slaveholding Spartanburg District received \$1,500 of the school funds, while

the wealthier, high slaveholding St. Phillip's and St. Michael's parishes received \$5,100 in funds, despite the higher number of voters in Spartanburg than in either parish. The state government, therefore, was not practicing laissez-faire; rather, it actively appropriated more state funds for those who needed less, and appropriated less state funds for those who needed more (Knight 129, 217ff, 223-224; Sydnor 1948, 62).

In the second case, the state government actively prevented the poorer sections of the state from helping themselves. In 1855, South Carolina State Senator Thomas Patterson Brockman appealed to his colleagues to pass a law allowing the people in the free school districts to tax themselves as each district might or might not wish, and to use the funds to establish common schools. A "great many" of his constituents from low slaveholding Greenville abstained from taking state funds, he said, because they refused to be regarded as paupers. But he had ascertained from his constituents that, although their means were modest, the people would accept a capitation tax for the purpose of establishing a common school system. They would attend the schools if they knew that their own funds, and not funds appropriated for paupers, provided the support. This would remove the pauper stigma from the free schools. These funds, combined with the funds appropriated by the legislature to the district school commissioners would provide enough to support the broader diffusion of elementary education.

In the lower branch of the legislature, two representatives from Greenville and Spartanburg, respectively, supported legislation with a similar funding provision along with a provision for the establishment of a state superintendent of public instruction. Representative Duncan supported the capitation tax, "in confident expectation that the day will arrive when my children, your children, and the children of us all, will be

educated out of the common treasury.” These bills failed. One of the arguments in the opposition was that the tax power belonged to the legislature, and therefore, the local people did not have the right to tax themselves on their own volition. Here is more proof that slave state government opposition to the establishment of true common schools can be shown to be at odds with the laissez-faire principle, even though this principle was often claimed to be their justification for opposition. In this case, the poorer, low slaveholding people in the upcountry desired to pool their small resources and establish a common school system themselves, as the western Virginians and early northern townships did. But a majority of the state legislature, rather than letting them alone to “do it themselves,” actively blocked them. The South Carolina doctrine of local self-government, proclaimed as state rights against centralization in national councils, apparently did not apply to a parallel case, a local section within South Carolina in conflict with the state legislature (South Carolina Legislature 1856, 23, 35, 178).

In searching for an explanation for the lack of free common school systems in the slave South, Knight presents many factors. He refers to inherited patterns of living, explaining that southerners simply continued to concentrate on providing for their material needs, suggesting that education was a distraction to their traditional way of living. Families looked upon education “as a private interest.” The wealthy preferred their private schools, and the less prosperous avoided the free option because of the pauper label. The South was not ready to accept “Jefferson’s theories on education.” Democracy was growing although it grew more slowly in the South. Southern views on education were “colored by an aristocratic conception.” The school laws were defective. The South’s reluctance to embrace the school reform spirit owed much to slavery, “which

tended to pronounce class and social distinctions.” Also, “class and sectional struggles appeared within several of the Southern states, and held back the cause of schools.”

Knight adds several more reasons: “Objection to taxes”; “a state system of schools was visionary and impractical”; and that the South was “essentially rural,” retarding attendance (Knight 1922, 155-156, 263-265).

Kaestle examines why there was more opposition to common school measures in the slave states, and why instead the southern record for enrollments rated below the North. He also examines why the slave states established and “tenaciously” clung to the distinctions between wealthy and pauper education. He diminishes the importance of the South’s sparse settlement, because free schools did develop on the free frontier or in other sparsely settled free states. He diminishes the importance of the South’s economic busts, because free states’ economic difficulties did not interfere with the development of common schools. He endorses the explanation that the South proved more resistant to accepting taxation, which a common school system required. This resistance derived from southern agrarian, pro-slavery ideology, which was naturally hostile to capitalism and capitalism depended upon free schools. But he probes further into the anti-tax explanation because northern states often resisted state taxes for common schools as well. Why was the South more intransigent on taxation than the North? This question is more vexing because although Kaestle recognizes that the slaveowners enjoyed disproportionate political power, their pro-slavery ideology became racial, which meant that their acceptance of establishing common schools for upcountry whites became more plausible. The upcountry whites, for that matter, opposed the aristocratic planters and wanted more democratic institutions like common schools. The slaveowners might have

tended towards supporting common schools had it not been for the rise of North-South sectionalism. The association with Yankeedom tainted common schools. Slavery was the central variable; wherever slavery existed, slavery-influenced factors proved hostile to common school acceptance. Ultimately, “geography, class structure, economic development and cultural heritage combined to tip the scales in favor of state systems in the North and against them in the South.” In other words, it was a close call, and a handful of factors rooted in slavery spelled the difference (Kaestle 1983, 192-193, 198-200, 203-217).

To varying degrees, Kaestle and Knight accept a number of facts that can be pieced together into an order, from which a much more straight-forward explanation becomes obvious. They recognize that after the American founding, southern leaders took steps to provide for common school education, without encountering as much principled opposition as later. They admit that in the early national period, southern leaders more readily supported the philosophy of common schools, in contrast to a more pronounced, anti-common school, aristocratic conception of education later. They recognize that, in the later antebellum period, where slavery was dense, aristocracy was strong, and that where aristocracy was strong, hostility to common schools was strong. Kaestle and Knight both admit that southern states were politically torn between slaveholding aristocracy and low-slaveholding, upcountry whites, who wanted more democratic institutions like common schools. They occasionally recognize that the aristocratic sections of states dominated southern government. They admit that the aristocracy resented taxes for common schools, but accepted taxes for pauper schools and for academies and colleges.

While Kaestle does see a difference between the magnitude of southern and northern resistance to state taxes for common schools, he does not see a difference in the character. This inhibits him from identifying the crucial difference between the character of northern and southern political societies. The evidence provided by Kaestle shows that northern anti-state tax, anti-reformers were not resisting common schools per se. On the importance of common schools to republicanism, the northern school reformers and the anti-reformers did not seem to disagree. The north already was steadily developing common schools before the reform movement began. The northern anti-reformers opposed the means by which the reformers proposed to change the common school program. In short, the anti-reformers opposed proto-statism and favored local control and local contributions, which had already been succeeding at developing towards universal common school education. However, the opposition to common schools in the South in the antebellum period was more philosophical.

Kaestle quotes a writer for the *Southern Review*, who did not approve of “equal education” for the children of workingmen, because they are predestined for manual labor. He quotes *DeBow’s Review*, arguing that education should focus on the wealthy since they must maintain their status as the privileged class. He quotes Virginia Senator James Mason, who rejected the free school system of New England because it would destroy the “peculiar character” of the South. Kaestle quotes another southern paper for the same reasons, rejecting the northern common school system as “bad education,” which is worse than “no education.” All of these sentiments reflect the educational position of an anti-republican, ruling oligarchy. The earlier southern leaders advanced towards the common school ideal because they were more republican in character than

their sons. In time, the resistance of southern slaveholding aristocrats and their political adjuncts to common schools showed their changed, anti-republican character. The slave South had been developing away from republican aspirations towards actual oligarchic rule (Kaestle 1983, 207, 212-213).

The oligarchic political regime of slaveholders thwarted the diffusion of common school education in order to defend the oligarchy's rule. Kaestle and Knight (and others) avoid this parsimonious explanation because they assume, *a priori*, that the whole United States was democratizing. But their findings run counter to their assumption. Their evidence shows that the slave South was developing in the opposite direction, towards oligarchy. Knight explains certain national changes, including changes in the South, around 1835, by the "rapid growth of democracy." The reform movement of the 1830s and 1840s, which he admits affected the South less than the North, owed its origin to the "ideal of democracy." The same *a priori* assumption afflicts Kaestle's analysis. He writes that the antebellum period saw "the increasing democratization of southern politics." This assumption interferes with both authors' interpretations. The evidence of poor whites' demands for common school education shows that a *demos* existed, but the people's demands and struggles for their interests consistently met disappointment, which shows that the people did not rule (Knight 1922, 121-122, 197; Kaestle 1983, 207).

Henry Barnard and Horace Mann against the Oligarchy

By his own admission, on political matters Henry Barnard was not an outspoken man. But he was an active, behind-the-scenes political operator, and so it is more difficult to find clear evidence that efficiently proves what he thought of the southern oligarchy.

Judging from his works, and his collaboration with Horace Mann, who was politically outspoken for a time, both he and Mann knew that common school education foundered on the shores of the southern oligarchy. They knew that common school education and southern oligarchy were inherently antagonistic, and they knew that the effect of successful common school education would be the cultivation of a republican people. Over the course of their careers, they attempted to plant common school education in the antebellum South, knowing the destructive effect of that education on oligarchic rule. It seems likely that in these projects, they knew they were engaging in quiet pro-republican insurgency within the slave South.

In 1838, Barnard met with the senior officials in the Van Buren administration and successfully convinced them of the necessity to include educational statistics in the 1840 census. Barnard and Mann used these statistics to show the “utter inadequacy of existing means of popular education to meet the exigencies of a republican government.” Thereafter, Barnard remained active in national politics, arguing for the centralization of educational authority in the national government, and he visited Washington every year until 1861 (Steiner 1919, 104-108).

Though based in the free states, he and Mann were also looking southward “to meet the exigencies of republican government.” Some antebellum southern cities, including Mobile, Charleston, New Orleans and Savannah, did establish credible common school systems that were supported by public funds and attended by broad classes of children. Naturalized foreign educators or transplanted northerners founded all these systems. In Charleston and New Orleans, Barnard and Mann played active roles, as Knight recognizes. Barnard visited Charleston and New Orleans and planned the school

system for the latter city. Mann selected the New Orleans administrator, a close associate from New England. Barnard and Mann corresponded with and groomed southerners interested in developing free, common schools, and they assisted the southern efforts. Barnard corresponded with the slave South's first state superintendent of public instruction, Charles Wiley. Mann and Barnard's correspondence reflects intimate knowledge of the slave state educational systems (Newman 1990; Knight 1922, 228, 243n1; Knight 1943-1954, V:336-337, 317-381, 374-375).

Charleston, South Carolina, built up one of the best of these southern common school systems in the 1850s. Henry Barnard's visit to Charleston in 1848 marks the origin of the system. The year 1848 followed close on the heels of the 1840 census that first reported national educational statistics as Barnard had wanted. After Barnard's Charleston visit, Christopher Gustavus Memminger and other local South Carolinians who embraced Barnard's plans carried the inchoate system forward. Memminger traveled north to study northern common schools. Northern teachers staffed the school system and brought with them the practices that had generated good results in Boston and New York. The school system became successful. Memminger corresponded with Barnard as late as 1856, at which time he communicated the considerable local opposition to his work. The success of the common school system attracted notice by the expected opponents who tellingly opposed the plan because the state had only authorized aid for free schools for the poor, not common schools for all. The opponents did not mind discriminatory educational funding for the poor on the one hand, and the wealthy on the other. They did strongly object to the common school ideal, which, as the reformers and apparently the South Carolinian oligarchy knew, was the product of the

republican theory of education: to advance the republican way of life and government (Knight 1943-1954, V: 344, 373-374; United States Bureau of Education 1872, 344; Capers 1893, 110-113; Ingle 1896, 174).

Some sharing the oligarchy's interests discerned what Barnard and Mann were up to – they were maintaining a quiet policy of republicanizing the antebellum South. In New Orleans, New England teachers were called “mischievous spies and agents,” which, in a sense, they were. Evidence suggests that southerners with republican views on education connecting them in a natural alliance with northern reformers knew they ran the risk of punishment at the hands of the oligarchy. In one touching letter to Mann in 1839, a Mississippian in Natchez, who was “in search of information on the subject of education” and was “entirely deprived of almost every opportunity of obtaining it from any source whatever,” ardently pleaded with Mann to send him materials. He added a postscript, “Please Sir, not to make this communication public.” What man in a democracy like America could have reason to fear discovery of his want for education? The answer suggested by this correspondence is that he was living at a time and place where the people did not rule, and he feared the reprisals of an oligarchic regime determined to keep the people in ignorance (Kaestle 1983, 212; Knight 1943-1954, V:334).

Barnard's biographical sketch of his friend and collaborator, Horace Mann, in 1858, sheds light on how the two men viewed the problem in the South and their different approaches to solving it. Barnard wrote an approving synopsis of Mann's twelve annual reports to the Massachusetts Board of Education. In one of the reports, Barnard said, Mann considered the

beneficial effects of a universal diffusion of intellectual education on the community and especially a community situated like Massachusetts, he shows, by numerous illustrations, that the only efficient preventive of the division of society into a wealthy aristocracy and a poor and dependent laboring class, is that intellectual culture, which shall make the poor in money the equal of the rich, in intellectual power, in inventive genius, and in that skill and creative energy which, whatever may be their employment, will prevent them from remaining in the ranks of the poor (Barnard 1858, 636).

Though Mann believed Massachusetts needed reform, both men knew from their census statistics that the South yet lagged behind Massachusetts. What Barnard's commentary shows is the agreement of both men on the theory that where education is lacking: "the division of society into a wealthy aristocracy and a poor laboring class" would tend towards permanency. That fitly described the condition of the South.

Barnard later remarked on Mann's career as a member of the United States House of Representatives, from 1847 to 1853. "Of Mr. Mann's political career, this Journal is not the place to speak in detail." Barnard explained his prudent reticence in contrast to his friend's outspoken approach. Congress

took him from a field purely beneficent, in which he was more widely known, and more highly appreciated, than any man living, and where he was every day gaining the willing attention of a larger audience, from all creeds and parties in every part of the country. By throwing himself, with his usual earnestness, and universally acknowledged ability, into the discussion of questions on which the country was already bitterly and widely divided, he cut himself off from the sympathy of a large portion of the people.... Whoever wishes to exert a powerful and permanent influence in the great field of school and educational improvement, must be able to command the attention and sympathy of large portions of all the great political parties into which the country, and every section of the country, is divided and sub-divided. Whatever hopes Mr. Mann, or his friends, entertained, as to his ability to induce the general government to aid, directly or indirectly, the establishment of an educational bureau, in connection with one of the departments at Washington, or with the Smithsonian Institution, were disappointed (Barnard 1858, 641).

Barnard might well have agreed with Mann on his position on sectional issues, but it was better for the successful advancement of common school education in the South, and hence better for the advancement of republicanism, not to say so. By withholding critical analysis of the South's anti-republican political society, republican educators like Barnard and Mann could better spread common schools and republicanism. But Mann fell into the trap of contentious, sectional politics that undid his reputation in the South. Barnard prevented himself from making that mistake.

Prior to entering Congress, Mann elaborated his theory that he would later apply to the South on the floor of the House of Representatives in 1848. In his tenth report, he again argued that republics depend on enlightened citizenry, and that an enlightened citizenry depends on free schools.

But if this be all, then a sincere monarchist, or a defender of arbitrary power, or a believer in the divine right of kings, would oppose free schools for the identical reasons we offer in their behalf. A perfect demonstration of our doctrine — that free schools are the only basis of republican institutions — would be the perfection of proof, to his mind, that they should be immediately exterminated (Mann 1872, 531).

Mann repeated exactly the same thought that Governor Smith of North Carolina had in 1811, that in governments ruled by the few: “the ignorance of the people is a security to their rulers.” If slave state governments were not genuinely republican, its rulers had every reason to suppress the establishment and development of free, common schools. Anti-republican governments would prevent intelligent citizenship to allow its few rulers to govern unimpeded by a majority that understood and vied for its right to participate in ruling.

When giving the dedicatory address for a Normal school in Bridgewater, Massachusetts, Mann explained the importance of formally training skilled teachers. He connected the erosion of educational quality with the erosion of republican political life and self-government. The process of educational and political erosion would terminate in educational conditions mirroring those in the South and in a specific form of government that Mann would later publicly impute to the South:

Neither the art of printing, nor the trial by jury, nor a free press, nor free suffrage, can long exist, to any beneficial and salutary purpose, without schools for the training of teachers; for, if the character and qualifications of teachers be allowed to degenerate, the Free Schools will become pauper schools, and the pauper schools will produce pauper souls, and the free press will become a false and licentious press, and ignorant voters will become venal voters, and through the medium and guise of republican forms, an oligarchy of profligate and flagitious men will govern the land (Mann 1846, 283).

In 1848, when arguing against the extension of slavery in the territories on the floor of the House of Representatives, the “Father of American Education” attacked “the oligarchy who rule the South.” He cited legal precedents authorizing the disputed right of Congress to exclude slavery by legislation. He continued to the effects of slavery on southern society. Slavery destroyed industry and made the majority poor. Of particular notice are his comments on the effect of slavery on educational culture:

The slave must be kept in ignorance. He must not be educated, lest with education should come a knowledge of his natural rights, and the means of escape or the power of vengeance. To secure the abolition of his freedom, the growth of his mind must be abolished. His education therefore, is prohibited by statute, under terrible penalties (Mann 1850, 238; 30 Cong 1, Appendix, 836).

The necessity of maintaining rule over slaves explained why slave states were interested in prohibiting domestic slaves from learning. Mann then laid the theoretical

foundation for why slave states' educational institutions differed in arrangement from northern institutions:

Without a cultivated intellect, man is among the weakest of all the dynamical forces of nature; with a cultivated intellect he commands them all. And now, what does the slave-maker do? He abolishes this mighty power of the intellect, and uses only the weak, degraded, and half animated forces of the human limbs.

The commanders of the South hoarded for themselves the opportunity to gain a cultivated intellect, but denied that opportunity to those they needed to remain weak, for political necessity. The necessities of slavery habituated the slave masters to strive for a monopoly on learning, while denying education to all others. Slavery made "the general education of the whites impossible. You cannot have general education without common schools." And no slave state had a true common school system.

The Providence of God is just and retributive. Create a serf caste and debar them from education, and you necessarily debar a great portion of the privileged class from education also. It is impossible, in the present state of things, or in any state of things which can be foreseen, to have free and universal education in a slave State (30 Cong 1, Appendix, 837).

Without slavery, Virginia

could support in abundance the whole population of New England. With such a free population, the school children would be so numerous that public schools might be opened within three or four miles of each other all over its territory- the light of each of which, blending with its neighboring lights, would illumine the whole land. They would be schools, too, in point of cheapness, within every man's means. The degrading idea of pauper schools would be discarded forever. But what is the condition of Virginia now? One-quarter part of all its adult free white population are unable to read or write; and were proclaimed to be so by a late Governor, in his annual message, without producing any reform. Their remedy is to choose a Governor who will not proclaim such a fact. When has Virginia, in any State or national election, given a majority equal to the number of its voters unable to read or write? – *A republican* Government supported by the two pillars of slavery and ignorance! (original emphasis).

Mann's sarcastic reference to the Virginian government as "republican" government punctuated his discussion of the state, and he tore into the useless pauper school fund of South Carolina. He summoned his command of educational statistics to show that "in many of the slave States there are beautiful paper systems of common schools – dead laws on the statute books." Ohio alone had 17,000 more primary school scholars than all 17 slave states and territories combined. He pointed out the "munificent" funds had been set aside for education in some of the slave states, yet "Governor Clarke, of Kentucky, declared, in his message to the Legislature, that – 'one-third of the adult population were unable to write their names;' and in the State of Tennessee, according to the last census, there were 58,531 of the same description of persons." But the slave state schools were deficient in comparison to the free state schools in quality as well as quantity.

Mann claimed to have extensively corresponded with "the intelligent friends of education in the slave States" for the prior ten years, but they could not make headway.

They procure laws to be passed, but there is no one to execute them. They set forth the benefits and the blessings of education, but they speak in a vacuum.... If a parent wishes to educate his children, he must send them from home...; or he must employ a tutor or governess in his family, which few are able to do. The rich may do it, but what becomes of the children of the poor? ... All this is the inevitable consequence of slavery; and it is as impossible for free, thorough, universal education, to coexist with slavery, as for two bodies to occupy the same space at the same time. Slavery would abolish education if it should invade a free State; education would abolish slavery if it *could* invade a slave State.

But slavery could not precisely "abolish education." It was those supremely interested in slavery who did accomplish that: the southern legislators. With respect to them, Mann said, "In one thing the South has excelled – the training of her statesmen." They were the ones who made sure to withhold the blessings of education from others.

Free states and slave state presented a contrast of opposites, republican versus oligarchical: “The free schools of the North lead to the common diffusion of knowledge and the equalization of society. The private schools of the South divide men into patricians and plebeians; so that, in the latter, a nuisance grows out of education itself” (838). Educated people outside the ruling class were a nuisance to the rulers who wanted no competitors to their hold on sovereignty. Due to their regime interest, the oligarchy’s hostility to popular education made sense.

Barnard never publicly made views like these. Having avoided contentious political controversies, Barnard positioned himself as an attractive candidate to a broader constituency for first Commissioner of the Department of Education, appointed by President Andrew Johnson in 1867. Then, during Reconstruction, he was in a position to officially resume his prior, informal work of “republicanizing” the South (Steiner 1919, 107).

Turn of the Century Southern Educators on Education in the Antebellum South

Not long after slavery, the Civil War and Reconstruction, southern educators themselves corroborated the Reconstruction Republicans’ analysis of antebellum education in the South.

At meeting of the members of the National Education Association’s Department of Superintendence in 1879, Georgia State School Commissioner Gustavus Orr presented a paper on “The Needs of Education in the South” (Orr 1879, 46-56). To account for the present needs, he said, it was necessary to review “the history of educational effort in the Southern States.” But because the antebellum South and the postbellum South were “two

civilizations” and “distinct,” his review of history was “more necessary.” The educational policy of antebellum southern states differed from the new southern civilization’s policy inclinations, inasmuch as the two civilizations differed.

Orr claimed to intimately know the educational history of his own Georgia, which he said mirrored the rest of the antebellum South. Most of his state government’s efforts aimed at developing institutions of higher education, especially after 1835, and these efforts succeeded. Georgia’s four institutions of higher education, the University of Georgia, Oglethorpe University, Mercer University and Emory College, produced 5,500 alumni, whose lists Orr studied. Among them, he found the names of men “who have filled with honor high places in all the departments — legislative, executive, and judicial—of the national and of their respective State governments,” as well as distinguished men in law, medicine, theology, science, literature, and education. In addition, the private county academies educated men and women “with respectable academic attainments” (48). These academies sometimes received aid from the state, but operated on private tuition. Orr proudly dared anyone to contravene the claim that this was “great educational work.”

But on the subject of elementary education, the “inferior schools,” Orr admitted to approaching “the weakest point” in Georgian policy, and by extension, southern policy. The teachers of elementary institutions “were often incompetent” (49). No level of his state’s governments offered teaching institutes, associations, libraries, periodicals, examinations or licenses, or supervision. The teachers answered only to the patrons, who “were often utterly incompetent to judge the teacher’s qualifications.” Although the state government did sometimes fund the private academies and institutions of higher learning,

it “did not propose to make even these inferior schools free.” The state did provide funds for “the education of the poor,” but its policy was not to establish separate, free schools for indigent children. Rather, state magistrates would identify “poor scholars,” and schools that received these children would also receive a portion of the state’s poor fund. This “so-called system had not system in it” and “was full of defects.” Orr admitted that in the antebellum South “our inferior schools were indeed *very inferior*” and “far behind” the northern states (50, original emphasis).

The antebellum southern states never attempted to educate “colored people,” and eventually prohibited their education. Although Orr morally objected to these statutes, he did offer an explanation. “Viewed from the standpoint of statesmanship,” one could justify prohibiting the education from a class of persons universally known to predominate the ranks of slaves, because the security of the state necessitated the measure.

Orr proposed the general rule that “Education by the state rests upon the sole basis of self-protection.” What kind of state is protected by an education policy that provides for private academies and institutions of higher education, but withholds or absolutely forbids elementary education from the majority? Orr did not directly answer that question, but it is clear from his account that the southern state governments during the antebellum civilization placed a premium on the education of the few. Only an aristocratic state protects itself by contriving an educational policy like that. But “minds of thinking men” in the new postbellum southern civilization were changing (53). They were now beginning to accept the necessity of education’s “greater universality.” According to Orr’s general rule, this change portended a change in the state,

corresponding to the change in southern civilization. The old civilization was more aristocratic than the new one that was emerging.

Delivering his address to the Southern Education Association in 1899, Alabama State Superintendent John Abercrombie used the terms “Old South” and “New South” to distinguish the antebellum and postbellum South (Abercrombie 1899, 267). The Old South was “of aristocracy and bondage.” Regarding that Old South, Abercrombie assumed that his audience of southern educators agreed with him when he said, “We rejoice that it no longer lives save on the pages of history.”

Yet, Abercrombie began his speech by defending southern achievements in one area of educational endeavor during the days of “aristocracy and bondage.” He said, “It is generally thought that we have always occupied in educational matters a conspicuously subordinate position when compared with that section of the country commonly termed the North,” but it was not true “in reference to higher education.” Though claiming only one third of the nation’s population in 1861, “the South excelled the North in the number of colleges and college professors; equaled her in the number of students enrolled in academies and colleges and universities, and approximated her in the amount of money expended for higher education” (267-268). State aid “in whole or in part” supported these colleges and universities. In turn, they produced graduates “who have not been excelled” in “science, art, literature, education, and statesmanship” (268).

But the South neglected schools for industrial training, because the “old South did not awaken to a realization of the truth that industrial trades are as respectable as business and professional callings.” That is, the old South, the South of “aristocracy and bondage” believed in a different truth, that the industrial trades were not respectable. Similarly, in

“the matter of common school education the old South did not keep pace with the North” (269). Why? Abercrombie assigned blame to a vague cause, “peculiar conditions that for generations surrounded the people.” These conditions “were not conducive to the growth of the free common school idea.” That is, conditions in the old South of “aristocracy and bondage” militated against the growth of the *idea* that all children in political society should receive a general education together, at the public expense. Abercrombie does claim that, before the war, many states had taken steps towards the establishment of common schools, but “not one of them made any considerable progress.” But if “aristocracy and bondage” militated against the growth of the *idea* of free common schools, then it is likely that the free common school policy failed because it encountered *principled* opposition. And why not? Conditions in the old South *had* favored the alternative idea that a privileged few children should receive advanced education at the public expense. Education policy in the antebellum southern states favored aims conducive to aristocracy.

Abercrombie does indicate that southern educators favored an entirely new approach to education, which he connected to the maintenance of free government. “We fully realize that, in a government like ours, the preservation of free institutions depends upon the general intelligence of its citizens, and that it is to the government’s highest interest, that it is to the people’s greatest good, to establish and maintain within the reach of every child the means of securing such instruction as will qualify him for an intelligent discharge of the responsible duties of citizenship” (270). Whereas government in the old South preferred educating the few, and viewed general education with hostility,

“universal education at governmental expense is now a well-established Southern doctrine” (271).

In 1906, the Ninth Conference for Education in the South convened in Lexington, Kentucky. Missouri Governor Joseph W. Folk urged the conference audience to pay “more attention to the education of the many instead of devoting nearly all our energies to the education of the few.” Noting the generous allotments of public funds to universities in comparison to scant resources to common school education, he illustrated, “This is like putting a million dollar dome on a thousand dollar house.” He conceded the need for universities, but concluded, “It is more important that all of the people have some education than that some of the people have all of the education.” Why? Because the United States is a Republic. In “foreign lands ruled by Kings and Emperors,” only a single child needs an education “with special reference to the duties of sovereignty that will be devolved upon him in after years.” But in the United States, “every child will be a sovereign,” and so attention must be paid “to instilling into the minds and hearts of the youth of the land the sacred duties of sovereignty in a free country where every man is a King” (Conference for Education in the South 1906, 20).

Mrs. Beverly B. Munford delivered her “Report Upon Women’s Educational Work in Virginia,” in which she exhorted the women of the South to “preach in season and out, at home and abroad, the gospel of the common school, as the first requisite of a democratic, free government” (40-41). Dr. Edwin A. Alderman, a native North Carolinian and President of the University of Virginia, continued the theme, connecting free government to common school education: “It has been settled that the chief business of a democratic State is to educate its children at the common cost, the property of all the

State contributing its share for this purpose.” In addition, “It has been settled as a necessity of democratic education that further class distinction in education shall not enter in the public schools.” He continued by saying that both “the son of the banker and the son of the artisan shall study the same subjects, in the same fashion” (148).

The American people of other sections of the United States would probably have regarded these southern declamations on the necessity of common school education to the success of republican or democratic government as commonplace. In the American South in 1906, memories could not allow educators to take these commitments to universal education for granted. Dr. Alderman delicately recalled the “civic battle of thirty odd years, whether wisely or unwisely I shall not discuss,” which ended in a settled victory for the principle of democratic education (148). The battle to establish that principle was too fresh to dispense of prudent speech.

The reality of democratic education still lagged behind the principle. Another speaker at that conference, Alabama State Superintendent I. W. Hill, announced, “It was not until 1898 that public schools attracted much attention in Alabama” (47). Alderman indicated that the South had been resistant to this democratic educational movement just now gaining ground in the South. In the days of slavery, Alderman averred, common schools did not exist, where “the son of the banker and the son of the artisan studied the same subjects in the same fashion.” But that time “was the golden age of the private academy” attended by the sons of the wealthy, and those southern academies “in the middle of the last century probably excelled the rest of the nation” (146-147).

Writing for the Association of Collegiate Alumnae in 1900, a daughter of the South, Celestia Parrish, similarly recalled the pre-Civil War period. In those days,

“Massachusetts and Connecticut were making education possible to every boy at least,” and in the southern states, the “poorer classes in the meantime were not educated at all.” To Parrish, this disregard for the majority of the southern people fit with the ideas that justified slavery. Noting that the poor usually could not read nor write, she asked in the voice of the slave-master, “Why should they? Had not God ordained that some men should serve others?” (Parrish 1900, 49). Education in the South, however, thrived among “the upper classes,” who sometimes employed “tutors of the traditional type for the education of their boys, and were sending their sons back to Oxford and Cambridge for the higher training.” In the South, education “was distinctly aristocratic,” and “developed a splendid superior class” (50). In her present time, Parrish noted the ongoing establishment but limited provisioning of southern public schools. She stood for universal elementary and high school education as necessary for citizenship. Yet in her day as in the past, “A few wealthy people are still unwilling that their money should be taken to educate their neighbor’s children” (48). Her present, she said, was “impossible to understand” without “recalling some of the conditions of the past,” and clearly, she located the origin of those conditions in the dominating political influence of aristocracy.

The descriptions of antebellum slave state education by southern educators does not portray a political society striving to educate co-equals together for citizenship, but instead portrays a splendidly educated ruling class and a ruled class kept in ignorance.

Nevertheless, Alabama Superintendent Hill blamed widespread illiteracy in his state on congressional misrule of Alabama during Reconstruction, appearing to be unaware that free adult illiteracy in Alabama exceeded the illiteracy rates of every free state in 1850. Ironically, the educational principles espoused by Hill and other turn-of-

the-century southern educators aligned exactly with the principles of Reconstruction Republicans Hill blamed. Their educational principles also aligned with the principles of the American Founders, as well as with the principles of the educational reformers of the 1830s and 1840s, including Horace Mann of Massachusetts, Calvin Stowe of Ohio, Henry Barnard of Connecticut, and John Pierce of Michigan. As mentioned earlier, all of these men were born in New England. In the 1800s, slave state policy on education opposed those principles, as the Reconstruction Republicans claimed, and instead discriminated between the ruling class and the ruled.

However, the South did not begin that way. When the United States became a nation, leading Americans in the North and the South advanced arguments and framed laws calculated to secure a general education for free Americans. Over time, the free states did diffuse education more widely among the people. In the slave states, government policy departed from the educational aims of the founders.

CHAPTER VI

PROPERTY IN THE ANTEBELLUM SOUTH

Empirical Evidence in Support of Reconstruction Republicans' Claims

Studies of the United States Census of 1860 partially substantiate the Republicans' claim that the slaveholders tended to monopolize southern land. State by state variance in land distribution generally correlated with relative slave density. Ransom and Sutch (2001, 268-272) show that where slave density was highest, in the black belt counties of the southern states, the average size of landholdings was over 250 acres per farm. This exceeded the average size of landholdings anywhere else in the nation. But within the slave states, the average size of landholdings considerably dropped when slave density likewise dropped. In the free state counties, the average size of a farm rarely exceeded 100 acres per farm, with the exception of some counties in Illinois. Atack and Passell (1994, 260-262) show that that the size of landholdings throughout the free states generally remained closer to a middling range, between 40-100 acres per farm. The size of landholdings varied much more within the slave states than in the free states. The variable that correlated with landholding variation was relative slave density.

My independent research supplements these conclusions. Tables 1, 2 and 3 in Appendix C present my findings.

The 1860 census counts the number of farms per county within seven ranges: 3 to 9 acres, 10 to 19 acres, 20 to 49 acres, 50 to 99 acres, 100 to 499 acres, 500 to 999 acres

and 1,000 acres and above. Since 40 to 100 acres per farm is the most common free state range in Atack and Passell's research, I consolidated the third and fourth categories (20 to 49 acres and 50 to 99 acres) into one: 20 to 99 acres. This best represents the 40 to 100 acre range as a control. I consolidated the categories in the ranges below 20 (3-9 acres, 10-19 acres) into one category, and I consolidated the ranges of 100 acres or more into one category. Then I counted the number of counties wherein the modal size of a farm was below, above and within 20 to 99 acres. I only used states that had entered the union at least ten years before the 1860 census, so that patterns of development prior to statehood do not distort the findings. This eliminates one free state, California, which does present larger farm sizes. The results are in Table 1.

The top eight states measured by the number of counties with modal farm size of 100 acres or above were slave states. Ten of the eleven states that had no counties with a modal farm size of 100 acres or more were free states. More striking is the comparison between the sectional aggregations of the data. Table 2 shows the distributions of counties by modal farm size, per section: the free state section, slave state section, and border / slave state section. In 93.6 percent of free state counties, the modal farm size was 20-99 acres. In the slave states, only a slightly higher percentage of counties fell within the 3 to 19 acre size than in the free states. This tends to undermine half of the Republicans' claim, that slavery impoverished those that slavery did not enrich. A much larger percentage of slave state counties fell within the 100 acre and above range than in the free states. This does support the other half of the Republicans' claim, that the slaveholders engrossed a disproportionate share of land. In sum, a great many more

farms were larger and some smaller in the slave states than in the free states, where the modal range is almost universally 20 to 99 acres.

Although 25.7 percent of all slave state counties had a modal farm size of 1000 acres and above, this percentage does not tell the total acreage of large landholdings per county. To gain a better picture of how expansive large landholdings were in the free and slave states, I have broken out the total number of farms on the high end of the scale.

Table 3 shows the raw number of farms in the census reported ranges of 500 to 999 acres and 1000 acres and above, per state. The contrasts in this table are also striking. Georgia, Virginia, Alabama, Mississippi, South Carolina, Louisiana, North Carolina, and Kentucky had 18,290 farms in these higher sizes. Twelve of the thirteen states with the fewest farms (811 farms) in these ranges were free states. The total population of the top eight states was just shy of eight million persons, of whom 20 percent (Kentucky) to 57 percent (South Carolina) were slaves. The total population of the bottom thirteen states was just below thirteen million persons, of whom 2,000 to 3,000 were slaves (all in Delaware). New York, with a total population of 3.9 million free persons, had 246 farms of these sizes, while Florida, with a population of 140,424, of whom 44 percent are slaves, exceeded New York, with 288 farms of these sizes.

These quantitative representations of landholdings are helpful but imperfect, because they do not adequately reveal the variation of landholding and landlessness in relationship to slaveholding within every slave state. Since the Republicans claimed that the slaveholders' power grew from slavery, we would expect to find the highest intra-state variation in landholdings in states where the percentage of slaves to total population was highest. We would expect to find the smallest farms, and the highest prevalence of

tenancy and landlessness, in close proximity to clusters of the largest plantations where slavery was most dense. We would expect to find more landholding equality where slavery was least dense. Scholarship has not yet reached a consensus on the character of land distribution in relation to slavery, probably because variation in landholding and landlessness (factoring out non-agricultural employment) across all geographic areas has not yet been studied as comprehensively and in sufficient detail to warrant firm conclusions. One problem with this is that local tax records tend to present better data than census data, but are more difficult to efficiently aggregate. This problem will be addressed later in this chapter.

Land Ownership at the American Founding

The American Founders commonly favored the broad diffusion of property ownership as a necessary requisite of republican government and the republican way of life (Huston 1993).

John Adams avowed the position of James Harrington, that “power always followed property.” A balance in property ownership would prevent power from concentrating in the wealthy few, which would put at risk the civil and political liberties of the many. Though the law might guarantee the civil and political equality of all, the result of concentrated wealth could be that the wealthy few might overturn the spirit, if not the letter of the law. Therefore,

The only possible way, then, of preserving the balance of power on the side of equal liberty and public virtue, is to make the acquisition of land easy to every member of society; to make a division of land into small quantities, so that the multitude may be possessed of landed estates. If the multitude is possessed of the balance of real estate, the multitude will take care of the liberty, virtue, and

interest of the multitude, in all acts of government (Adams 1850-1856, IX:376-377).

Adams immediately added, “I believe these principles have been felt, if not understood, in the Massachusetts Bay, from the beginning.”

Thomas Jefferson shared Adams’ views on the advantage to republican government of relative property equality. Jefferson endorsed measures “lessening the inequality of property” and believed that measures such as these insured “the equality among our citizens so essential to the maintenance of republican government” (Jefferson 1984, 841; Jefferson 1892-1899, X:370). To encourage the diffusion of property ownership, “legislators cannot invent too many devices for subdividing property, only taking care to let their subdivisions go hand in hand with the natural affections of the human mind” (Jefferson 1984, 841). However, neither Adams nor Jefferson favored outright redistribution of property without regard to ownership. Both numbered the right to property among the natural rights of mankind (e.g., Adams 2000, 230; Jefferson 1892-189, X:24).

The challenge for republican legislators was how to prudentially facilitate the broad diffusion of property so that the wealthy few, even those who might have justly acquired their wealth, were not able to acquire rule and oppress the many, whose liberty belonged to them by natural right. If the wealthy few did acquire power over the many, they might also use their power unjustly, to engross all the wealth of the community and block the majority from exercising their natural right to acquire property. Then a struggle would commence between the few and the many, the former staking their claim on the right of property, the latter staking theirs on their right to liberty. Adams illustrates this

case, using the Roman contest between patricians and plebeians for his example (2000, 290-291). In these contests, nobody wins. The many threaten the property of the few and the few threaten the liberty of the many. But both liberty and property are safe under wisely administered republican government.

Both Adams and Jefferson maintained that nature randomly bestows talent. Consequently, the impartial protection of individuals' natural faculties alone might broaden property ownership. Under laws impartially protecting the unequal talents, one poor child might earn wealth while a rich child might not increase his holdings. Fortunes might rise amidst poorer parts of society and balance other historically wealthier parts. Laissez-faire governmental policy on economic questions logically follows the principle that the impartial protection of naturally occurring unequal faculties results in the general diffusion of property accumulation. The advisability of laissez-faire government depends upon whether the inherited conditions of society are already conducive to the advancement of talent. Where conditions are not equal, and natural talent is suppressed, the republican legislator might need to invent more devices aimed at subdividing property ownership. These legislative efforts, Jefferson recognized, run the risk of offending personal attachments to property, or in his words, "the natural affections of the human mind" (Adams 2000, 372-373; Jefferson 1984, 841, 1305-1306).

In his 1792 essay for *The National Gazette*, Madison, elegantly summarized the problem of property and its solution under republican government. Madison defined property as "that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual." By this definition, property includes both personal rights and liberties, i.e., "property in rights," as well as the right to

possessions. When “an excess of power prevails, property of no sort is duly respected.” This rule applies to Adams’s example of the conflict between the few and the many (patricians versus plebeians in Rome). There, the possessions of the wealthy few, which are one species of property as Madison defined it, were not safe from the grasping many, who would force redistribution whether the possessions were justly or unjustly acquired. The liberties of the people, which were another species of property as Madison defined them, were not safe from the oppressive rule of the patricians. Each party attacked the property of the other. But Madison averred, “Government is instituted to protect property of every sort.” The only government that is “*just* government” is that which “*impartially* secures to every man, whatever is his *own*,” both possessions as well as rights and liberties. Praise “should be sparingly bestowed” upon governments that withhold this impartial protection or acts with partiality, favoring the infringement or assault on either right to liberty or the right to possessions (Madison 1900-1910, VI:101-103, original emphasis). He concluded:

If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property, and the property in rights: they will rival the government that most sacredly guards the former; and by repelling its example in violating the latter, will make themselves a pattern to that and all other governments.

On the question of property, justice dictated that the United States not commit the excesses of either the party of the few or the many. The United States should protect, rather than dispossess, the possessions of anyone, an outrage that the party of the many sometimes committed on the few. But the United States should also avoid violating the people’s property in their rights, as governments favoring the party of the few often did. As long as government protected these broadly construed property rights, government

would satisfy the claims of natural right, with favorable results for republicanism. Talent, naturally scattered throughout society, could rise to the acquisition of wealth. If citizens from any sector of society could rise to prosperity, the maintenance of republican society and government would be secure.

Land Ownership and the Formation of the Nation

When Adams said that his countrymen in the Massachusetts Bay colony had always felt and understood the principles of broad property ownership, he seems to have been correct. In his day, New England laws already required that in the event a property-owner died intestate, the inheritance had to be partitioned among the heirs, which precluded primogeniture, or inheritance by the first-born son. Adams believed these inheritance laws portended broad property ownership. New England's economic history tended towards that result, however much those laws actually contributed to it.

Ante-dating the writings of John Locke, the earliest New England settlers already had "a growing sense that property rights were to some extent God-given human rights that no government could abolish," and they resisted the efforts of government to impede their free use of their land. Between 1620 and 1630, New England moved quickly towards land privatization. They adopted the fee simple (complete ownership) method of holding land title before the mother country did. As government further established property rights, agricultural commerce flourished, with the result that land-owning farm families conducted most production and consumption. The availability of land and the growth of commerce drove up wages, to the point that in Massachusetts, "it was difficult to distinguish gentlefolk from servants." By the end of 1640s, New England had begun

to develop a diversified economy. By the 1700s, per capita income in New England was lower than the southern states, but more evenly distributed. Not surprisingly, these communities conspicuously broke from the old feudal order. Landowners did not acquire political and social privileges with the acquisition of larger estates. The landowner did not possess any right to rule his neighbors less endowed with land, and the smaller proprietors or tenants refused to accord honors to the larger landowner that feudalism otherwise entailed. In New England, republican liberty had already emerged from under the domination of property, long before the American Revolution. The laws and commercial activity of New Englanders had provided the right economic foundation that Jefferson and Adams believed the maintenance of republican government needed (Huston 1993, 1070; Freyfogle 1985, 728, 730, 732-734; Newell 1998, 38, 40, 46-47, 55-71, 244; Newell 2000, 55).

On the other hand, Jefferson and his Virginia countrymen had work to do to “republicanize” his state with respect to property, and he knew it. Among the four bills Jefferson wrote to adapt the laws of the newly independent state of Virginia to “a republican form of government,” and to eradicate “antient or future aristocracy,” were two concerning property, the laws of entail and primogeniture. By these laws, undivided estates were passed intact through the generations of inheritors. Of the laws of entail, Jefferson wrote:

The repeal of the laws of entail would prevent the accumulation and perpetuation of wealth, in select families, and preserve the soil of the country from being daily more and more absorbed in mortmain (Jefferson 1984, 44).

Of primogeniture, he wrote:

The abolition of primogeniture, and equal partition of inheritances, removed the feudal and unnatural distinctions which made one member of every family rich, and all the rest poor.

Virginia, unlike New England, had not yet required partible inheritance if a property owner died without a will. The laws Jefferson drafted would remove the legislative acts that had actively prevented the broader diffusion of property and actively favored a landed aristocracy. Americans generally seemed to believe that the removal of primogeniture and entail removed the key supports of aristocracy and inequality. But despite this American optimism, and despite the republican professions and efforts of Jefferson and other southern statesmen, the economic development of the South was heading in a direction unfriendly to their aims (Huston 1993, 1090).

Here is how Jackson Turner Main described Virginia in the 1780s:

[A] majority of the adult white males were not landowners.... [F]rom one half to three fourths of the adult males, exclusive of town dwellers, were landless. Virginia society therefore included a majority of men who were either tenants on land owned by others or who worked as laborers. Most of these landless men were very poor. Seven out of ten owned no slaves, and half had not even a cow. Nearly 30 per cent of all the adult males had so little property that they were obliged to work for someone more fortunate. Among them were many who did not even pay their own poll tax. The rest owned sufficient property, such as several cows or horses, to indicate that they had access to land. Some of these used land owned by relatives; others, amounting to perhaps one eighth of the adult males, were probably tenants (Main 1954, 244).

The proportion of landless men to total population varied in proximity to large estates, where slavery was more common. The highest percentage of landless men, 75 percent, was found in the Northern Neck region. There, large estates predominated, but only two-fifths of all households owned any land. While a great many were poor in Virginia, a very few were land-wealthy. One out of 25 men owned 500 acres and 20 slaves. Where slave density decreased, property inequality diminished. In the

southwestern part of the state where slaves were few, there were more middle-sized farms and few large estates, and only ten percent of the men had no property. The proportion of the landless and very wealthy to total population was lower there than in any other state region (Main 1954, 249, 255; Kulikoff 2000, 133).

Main's account of economic disparities in 1780s Virginia equally applied to colonial South Carolina. Wealth distribution in all regions of South Carolina had been fairly equal until 1710. Just prior to that time, a wave of immigrating British planters from Barbados began to change South Carolina's low country where they settled. As these planters became established, slavery increased. By 1720, slaves outnumbered whites in the low country parishes by an estimated seven or eight to one. By 1730, wealth was concentrating in the low country planter class while, simultaneously, low country poverty began to rapidly increase. In a study of one lowland parish for 1763, 39 percent of landowners possessed fewer than 500 acres of land, while 38 percent possessed over 1,000 acres of land. By 1793, landowners possessing fewer than 500 acres dropped to 23 percent, and landowners possessing more than 1,000 acres of land increased to 49 percent. By the early 1800s, the average size of a low country farm was 871 acres.

Away from the low country, in South Carolina's Midlands, where plantation agriculture was not yet firmly established, wealth distribution was still comparatively egalitarian in the colonial period as the low country had been. Farthest away, in the Backcountry, most practiced subsistence agriculture and wealth was the most equalized. Combined, the Midlands and Backcountry in 1768 accounted for only eight percent of the colony's slave population, and the percentage of slaves to total population in those two

regions was 19 percent. In the Backcountry (also known as the Upcountry), slave ownership continued to remain markedly lower, and property ownership continued to diffuse more broadly relative to the low country through the antebellum period (Waterhouse 2005, 65-66; Coclanis 1989, 69-70; Weir 1997, 174-175; Ford 1988, 48-51).

Studies of the Chesapeake region show that by the time Jefferson was praising farmers of mid-range properties, or yeomen farmers, as “the most precious part of the state,” land was not diffusing but concentrating among fewer owners. In that region, yeomen farmers were most plentiful in the 17th century but were becoming vestigial. In the 1660s, 70 percent of the free population in the Chesapeake region owned land, but with the increase of slavery, the percentage of the free population owning land decreased. By the American Revolution, 50 percent of the free population owned land. In Prince George’s County, Maryland, landlessness grew from 33 percent in 1660 to 50 percent in 1750, to 69 percent in 1800, and to 75 percent in 1820. At the same time, large landowners increased their share of total land ownership. The larger landowners were also engrossing a larger share of the slaves. From 1800 to 1820, the percentage of nonslaveholding landowners and landless slaveowners dropped. The pattern then in formation was that middling farmers were becoming fewer, with some becoming large, slaveowning landowners and others becoming smaller nonslaveholding landowners, tenants or landless (Jefferson 1984, 842; Sarson 2009, 64, 70-71, 75, 81-84).

The distinction between northern and southern states on the dimension of land ownership was less uniform during the Revolutionary Era than it became by 1860. For example, land distribution in Georgia through most of the colonial period more closely resembled the free states of 1860. As late as 1752, fewer than 12 percent of all land

grants in Georgia exceeded 50 acres. In contrast, the average size of a farm sold in southeastern Pennsylvania before 1750 was 200 acres. At that time, the slave population of Pennsylvania exceeded that of Georgia. These trends began reversing just before national independence, and again correlated with slavery. Under the influence of transplanted South Carolinians, Georgia began to legally import slaves in the 1750s. From 1750 to 1766, the estimated slave population in Georgia increased from 500 to 7,800. Under opposite influences, Pennsylvania gradually abolished slavery after national independence, but in 1780, the estimated slave population peaked at 6,855 (Oaks 1995, 87, 91; Wood 2007, 126; Nash and Soderlund 1991, 7).

From the perspective of Jefferson and his southern republican friends in 1776, the prospects for broad diffusion of wealth in Pennsylvania and Georgia might have appeared somewhat indistinguishable, or possibly favoring Georgia, which had been granting land in smaller acreages and which had no significant slave population until very late in the colonial period. But from the late colonial period, land distribution patterns dramatically changed as slavery grew in Georgia and disappeared in Pennsylvania. As Table 3 shows, the total population of Georgia in 1860 was slightly over one million, of whom 44 percent were slaves. The population of Pennsylvania almost reached three million free persons. Georgia farms in excess of 500 acres numbered 3,594; in Pennsylvania, there were only 76. Table 1 shows that the modal size of a farm exceeded 100 acres in 51 of 132 Georgia counties, but in only six of 65 Pennsylvania counties.

Early American Statesmen on Property, and the Southern Turn

Not long into the early national period, American statesmen recognized that slavery created economic inequality among free Americans. When queried in 1795 about the abolition of black slavery in Massachusetts, John Adams attributed the cause, in the first place, to the people's principled belief in the rights of mankind. He said he never knew a Massachusetts jury to "determine a negro to be a slave." But he attributed the material cause to "the multiplication of labouring white people, who would no longer suffer the rich to employ these sable rivals so much to their injury." The common white laborers, he explained, insulted and scoffed at the slaves to such a degree that the masters found it economical to assent to abolition. Had the state not abolished slavery, Adams conjectured that the common white people would have killed the slaves and the masters. This letter neatly combines the practical and moral response of the common people of Massachusetts to slavery. As jurors, Adams observed, they held to the natural rights principles that constituted their political society's opinion of justice upon which their republicanism was grounded. Their practical experience taught them that slaves and masters injured their economic advancement. Their bold response, flouting the master's legal control of the slave, suggests that the injustice of the master's gain and advantage over the people inflamed their wrath. The master advanced at the expense of the people due to an advantage offensive to their republican sense of justice. The people might have judged economic advancement on the basis of individual effort and prudential management of justly acquired assets as advancement fairly won. The people learned that legalized slavery conflicted with the impartial protection of each individual's economic advancement, which was an aspect of their republican way of life. This they

held so dear that they might have been willing to kill to be rid of the threat. In this instance, Adams gave an example of how the New England people both felt their republicanism in practice and understood their republicanism in principle, in the encounter with slavery. Their responses showed that, in their view, slavery was an anti-republican institution (Adams 1878b, 401-402).

In 1804, United States Representative John Lucas of Pennsylvania recognized the injury slavery inflicted on the poor. After the South Carolina legislature re-opened the slave trade, the United States Congress considered taxing slave importations into that state in 1804. Lucas argued that the slave trade ought to be taxed

because the importation of slaves into the United States operates injuriously on the poor whites who draw their subsistence from labor. Their comparative situation in relation to the rich, is reduced; for if you increase the black laborers, so as to make them work for a lower compensation, you virtually reduce the value of the labor of the whites, and proportionally lessen the chance of a poor white man getting employment on favorable terms. It is well understood that competition always reduces the price of an article in the market; and although the blacks may not, in all respects, enter into a competition with the whites, yet, so far as respects labor, the competition will be complete. The rich part of the community will not employ a white man who feels the spirit of a freeman, and who will not submit to be subservient to the caprices of his employer, so long as they can employ a slave whom they can control as they please, and at a smaller expense. The indisputable effect, therefore, of the introduction of additional slaves will be the reduction of the value of labor, and the augmented severity of the lot of the poor white man, who is entirely dependant on his labor for the support of himself and family (8 Cong 1, 1009).

The economic effect of slave importations would not be constrained to South Carolina only, Lucas continued. The “thirst for gain” was, in his view, “more alive in this country than ever,” and if the Congress did not check this “inordinate appetite,” 100,000 slaves might be imported.

The opening in South Carolina will virtually amount to the same thing as if the importation of slaves were admitted into every State in the Union; for once

introduced into one State, and they will soon find their way into the others where slavery is allowed. Wherever they go, the poor white man need not fix himself; for his labor and relative importance in society will be as nothing (1010).

In the hotly contested Missouri debates of 1819-1820, free state congressmen opposed to Missouri's admission as a slave state emphasized slavery's effect on free labor's economic inequality and in turn, their unequal standing in political society.

Speaker of the House John Taylor of New York argued,

If slavery shall be tolerated, the country will be settled by rich planters, with their slaves; if it shall be rejected, the emigrants will chiefly consist of the poorer and more laborious classes of society (15 Cong 2, 1176).

Taylor favored the slavery prohibition to encourage poorer and industrious Americans to reside in Missouri and build their fortunes. These were a people whom he expected would refuse to "take rank with negro slaves," which was the fate of free labor in slave society. Neither did these laborers have "the ability nor will to hold slaves themselves," and would "labor cheerfully while labor is honorable." But in allowing slavery, the Congress could not degrade labor

more effectually than by establishing a system whereby it shall be performed principally by slaves. The business in which they are generally engaged, be it what it may, soon becomes debased in public estimation. It is considered low, and unfit for freemen (1177).

Taylor then suggested that common laborers, suffering under the ban of slaveholders' opinion, could not rise in slave society. He was willing to acknowledge, at this point, that the southern states protected common laborers' civil rights. But he objected to the status in which the slaveholders held them. Their economic place in slave society determined their political rank, whatever their ability or education might be:

[W]hat ideas do you suppose are entertained of laboring men by the majority of slaveholders? A gentleman from Virginia (Mr. Barbour) replies, they are treated

with confidence and esteem, and their rights are respected.... In this country, no class of freemen should be excluded, either by law, or by the ostracism of public opinion, more powerful than law, from competing for offices and political distinctions.... But whom of that class have they ever called to fill stations of any considerable responsibility? When have we seen a Representative on this floor, from that section of our Union, who was not a slaveholder? Who but slaveholders are elected to their State Legislatures? Who but they are appointed to fill their executive and judicial offices? I appeal to gentlemen, whether the selection of a laboring man, however well educated, would not be considered an extraordinary event?

This banishment of common laborers to a subordinate political station, the inevitable consequence of slavery, had no place “in a country like this, where the people are sovereign, and every citizen is entitled to equal rights.”

In the other house, Senator Jonathan Roberts of Pennsylvania opposed slavery in Missouri, first, for the principled reason that “the great act of the Congress of 1776... declared, before the Supreme Judge of the world, that slavery was a violation of His truth, and admitted the binding obligation to remedy the wrong, when possible” (16 Cong 1, 121). In the following month of the debates he offered the practical reason that

A man who is conscientiously averse to holding slaves, and who cannot, therefore, employ the slaves of others, is forbidden to settle in a land where free labor cannot be procured. Such must be the case where slavery exists unrestricted (16 Cong 1, 336).

Since Roberts expected free laborers to refuse to “take rank” with slaves, he likewise expected that an ambitious and conscientious man, faithful to the natural rights principles of the *Declaration*, would avoid settling where he could only procure slave labor. He could not imagine such a citizen becoming either a slaveholder or “taking rank” with slaves. Later in his speech, Roberts objected to South Carolina Senator Smith and Virginia Senator Barbour, who both had lauded the affectionate, unequal relations between master and slave. The principles of the *Declaration of Independence* to which

Roberts had recently alluded did not govern the practical lives of Smith and Barbour's slave society, a domain that honorable free labor would avoid. He described the North's different way of life, where those principles did govern relations between labor and the employer of labor:

I have had occasions to listen before now to comparisons drawn by Southern gentlemen between the laborer of the North and the Southern slave. In ordinary cases such a parallel could hardly justify a reply. The white laborer is always a free man, generally an honest man; often an intelligent and informed man. He knows his rights, and understands his duties. Free laborers, who are housekeepers, are seldom without their newspapers and means of information. These channels of intelligence are everywhere established with us. . . . The relation between laborer and employer, where the latter is a freeman, is that of equals. Each looks to the other for the fulfillment of the covenant between them. They often stand in the relation of friends. Their intercourse is almost always respectful and courteous. I have been forcibly struck with how equal a share of happiness, to say the least, was enjoyed by the man of opulence and the cottager in the Northern States (343-344).

An employer and employee are political and social equals; economically, they are each free agents contracting with each other. Intelligence, education and integrity in the discharge of contractual duties command mutual respect, regardless of wealth inequality or the character of their business relationship. To modern eyes, this account might seem too idyllic to be true, but Roberts was a credible witness. Roberts had been an apprentice for three years beginning when he was sixteen; it was a harsh experience, he recalled, and difficult enough that he spared his sons of it (Roberts 1938, 76-82). An apprentice some might say was partially free, yet in Roberts' view, the existence of the apprentice system in Pennsylvania did not prejudice him against the liberal way of life of his state, nor did it soften his condemnation of slavery. He saw a sharp difference between the paternal condescension of his slaveholding colleagues in Congress towards their slave laborers, and the equality between employers and employees in his state.

Among the reasons why Pennsylvania Representative John Sergeant opposed admitting slavery in Missouri was slavery's transforming effect on republican equality. He maintained, "Free labor and slave labor cannot be employed together." If free labor did enter slavery's domain, one of two consequences would follow: either "those who go there must become slaveholders"; or if slavery did not banish free labor, it "places it under such discouragement and opprobrium as are equivalent in effect." By admitting slavery into Missouri, Congress would "shut the country, then, against the free emigrant, who carries with him nothing but his industry." Sergeant then carefully risked obtruding into affairs in the slave states, venturing to say, "It seems to me that the people of the South have a common interest with us in this question... The cultivation by slaves requires large estates. They cannot be parcelled out or divided." This is to say, the planters of the South were despoiling the people of the South of their share of land. The people of the South had to "look elsewhere to find employment for their talents, and scope for their exertion." Slaveholders' engrossment of land blocked the naturally talented, industrious southerners from rising. Sergeant suggested an alternative: "What better provision can they have than free States, where they may fairly enter into competition with freemen, and every one find the level which his proper abilities entitles him to expect?" In contrast to slave states, free states did not impose any artificial limits on the advancement free labor. Free laborers could rise as far as their industry and innate talent allowed (16 Cong 1, 1213).

In his speech, Sergeant professed the principles of the *Declaration* as the source of his opposition to the admittance of slavery in Missouri and as the source of American republicanism. The injustice of the systemic harm to free laborers in slave society

violated natural equality that the *Declaration* proclaimed the end of government was to protect. Justice warranted the removal of artificial limits and impartial protection of the free laborers' right to pursue what each individual's ability and industry could achieve. Slavery threw up artificial limits in front of free labor. To overcome those limits and advance, a free laborer would have to abandon his republican principles and become a slaveholder himself, an agent of the system that unjustly limited the advancement of those without a portfolio of land and slaves.

When early free state statesmen addressed the economic evil of slavery in terms of free labor versus slave labor, just as later Republicans did, they were simply adjusting their expressions of American republicanism in its economic dimension to meet slavery's defenders in debate. Eric Foner (1995) is right insofar as he claims that "free labor" was a response to arguments made on behalf of slavery. Without the heavy presence of slave labor in the nation, nobody would have needed to distinguish free labor by the word "free"; free labor would be just referred to as "labor." However, "free labor" was not a distinct ideology developed to counter slaveholders' critiques of nascent modern industrial capitalism in the North. As just shown, early free state statesmen were already referring to the superior life of free labor and the threat posed by slavery to free labor, before Calhoun, Fitzhugh and Hammond began celebrating slave labor and denigrating free laborers as mud-sills.

A free laborer was a republican citizen engaged in the pursuit of happiness. Economic inequality among republican citizens was morally acceptable if it resulted from the equal protection of unequal abilities and effort. It was not acceptable if it resulted from unjust advantage. Free state statesmen demonstrated their belief that the effects of

slavery on society unjustly inhibited that pursuit of happiness. It is not clear how far back in time this belief prevailed and how widespread it tended among Americans prior to these expressions in national councils, because free state statesmen only advanced free labor arguments as the defense of slavery gradually stiffened, stiffening notably during the Missouri crisis. What is clear is that their articulation of the harm done to free labor, and the need to protect free labor from slavery, directly applied the principles of the American Founders' republicanism and applied their own opinions on the effect of slavery. As an application of the American Founders' republicanism, free labor reasoning can probably withstand the test of general consistency in its observed appearances, from the founding of the United States through all free state opposition to slavery and the founding of the Liberty Party, to the founding of the Republican Party. Allusions to the *Declaration* are frequently close to free labor arguments condemning slavery's injustice to both slaves and free labor, because those condemning arguments derived from those principles. In other words, free state opinion on the conflict between free labor and slave labor never significantly changed in substance from the Revolution to the Civil War, but the noise of the free labor argument amplified or quieted depending upon the seriousness of political conflict with slavery's defenders.

It can also probably be shown that southern statesmen, taken as a group, from American Founding through the Civil War, did change. Jefferson and Founding Era southern republicans did embrace the republican principles of natural right and applied those principles to the puzzle of property. Jefferson and Madison's southern heirs, it could probably be shown, gradually moved away from those principles and then fully rejected them. Never far from later southern statesmen's principled substitution of slave

labor for free labor was their rejection of the principles of the Declaration. The principles of natural inequality cannot easily distinguish between economic inequality resulting from the equal protection of unequal talents, and inequality resulting from artificial limits imposed on the many by the strong few. This is because all limits restraining individuals are deemed part of the natural order. “You of the Liberty Party,” wrote George Fitzhugh, “think you follow nature, but in truth you are superficial observers of nature.” The Liberty Party votaries were superficial observers of nature because they believed in his southern forebear’s fallacious declaration, that all men are “born entitled to equal rights!”” Wiser students of nature will conclude that “some were born with saddles on their backs, and others booted and spurred to ride them,’ – and the riding does them good” (Fitzhugh 1973, 101; 1854, 179).

In saying that, Fitzhugh directly contradicted Jefferson. Close to death and declining an invitation to celebrate the fiftieth anniversary of independence, Jefferson had written:

All eyes are opened, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God (Jefferson 1984, 1517).

Fitzhugh’s reversal of Jefferson’s sentiments marked the South’s complete reversal of the principles that supported the establishment of American republicanism. The new principles of inequality that justified slavery tended to justify inequality generally, including the inequality of free labor. “No institutions,” Fitzhugh continued, “can prevent the few from acquiring rule and ascendancy over the many.” Nature is indifferent to laws that provide equal protection of unequal abilities. The strong will

master the weak no matter how much misguided legislators attempt to establish laws faithful to their false ideals. Therefore, the complaints of suffering free labor against the limitations imposed on them are quibbles. They will end up receiving a smaller share of rights and property, no matter how much the laws attempt to favor the broad diffusion of wealth. The wise legislator is not guided by a concern to achieve that utopian end.

Late antebellum sentiments like those boldly put forward by Fitzhugh and southern leaders shocked free state opinion. Free state Americans stood their ground on the principles of the founders' republicanism, which they regarded as American republicanism, not distinctly northern republicanism. Setting before the reader excerpts from Fitzhugh's writings praised by leading southern papers, the editor of the northern journal, the *Friend*, commented:

It would seem incredible that men born and brought up in these United States, who had any opportunity for having their mental powers developed by education, let it have been in what part of the country it might, could be so lost to all just sense of the rights of man and the justice and benevolence of his Creator, as openly to advocate the opinion that slavery is a divine institution, and that it was and is in accordance with the divine economy for the poorer classes,—the classes which have to work,—to be in servile subjection to, or in other words, slaves to those who may be possessed of a little more of this world's goods than themselves (Anon., the *Friend* 1856, 338).

To the editor, Fitzhugh's opinions seemed un-American, a departure from the opinions of those who established and maintained the United States. The *Friend* then noted the ratio of non-slaveholders to slaveholders as somewhere between six to seven millions to 150,000. These nonslaveholding millions, "according to the representations of Southern authors," were "agreeable to the doctrine advocated by the extracts given," and "ought to become the slaves of the masters who are tyrannizing over the poor blacks" (338-339).

Fitzhugh was a southern writer, not a political leader, and scholars sometimes regard Fitzhugh as an eccentric, an extremist, even among proslavery southerners (Ford 1993, 594-595, 598; Faust 1985, 18; Olsen 2006, 35; but see McPherson 1988, 197; Genovese 1988, 129). But it is possible to show that at least some southern leaders took his position, and affirmed that the slave states governed with Fitzhugh's ideas. In *Cannibals All!*, Fitzhugh included apprentices in his definition of slaves, comparing apprentice-slavery with the kind of slavery practiced by the Jews on each other in the Bible. This slavery was milder than Africanized domestic slavery, he said, but nevertheless apprentices were the property of their master (Fitzhugh 1973, 28, 80, 200). In 1858, a short time after Fitzhugh published *Cannibals All!*, the United States Senate debated a harsh apprentice law in Kansas passed by the proslavery legislature. The debate between the free and slave state Senators quickly turned to the crux of their disagreement: the meaning of apprenticeship. To the disgust of the free state senators, the slave state senators argued that an apprentice was the property of the master, culminating in this speech by James Mason of Virginia:

Another of their [northern] dogmas just as untenable, but asserted by them as though it were a maxim in law received in all civilized countries, is that there is no property in man.... What is the relation of master and apprentice but a property in the apprentice...? There are laws of general police in most of the States, (certainly there are in my own, and police laws are very much the same everywhere,) providing that men who wander about society without having any visible means of support, *shall be arrested and sold* to those who will undertake to support them for their time (35 Cong 1, Appendix 79-80, emphasis added).

By Virginia law and, Mason assumed, other states' laws, the rich could possess the poor as property. But there was more. The necessity behind the law, he explained, was "the great moral example of society to make all contribute to the common good by

the proper employment of their time.” The sovereign power of Virginia used its treatment of the poor as a demonstration case to teach a great moral lesson to *all* members of its political society. Virginians were intended to learn that they could be forced to labor in the same manner that the poor were forced to labor. The law specified that the poor lost their “property in rights,” to put the case in Madison’s terms, to their purchaser, who obtained the right to direct them. The completed analogy would hold that all Virginians lost their “property in rights” to their purchaser, the sovereign power, who obtained the right to direct all of them. Not just the poor but all Virginians were thralls of the rich. To Mason, the loss of liberty by those so directed was a trifle; the gain was universal contribution to the common good. Who was the sovereign power directing Virginians? In the case of the poor, the power over them was whoever wealthy enough to purchase their “property in rights.” The completed analogy would hold that the purchaser of all Virginians was whoever sufficiently wealthy to purchase their liberty. The wealthiest within political society would therefore fit the definition of the sovereign power. The apprentice law taught the oligarchic character of Virginia to all. All Virginians were slaves to the sovereign power, the wealthy, who defined the common good and directed the labor of all to the common good as they defined it.

Dumbstruck free state senators rejected the claim that the apprentice was property. They countered that an apprentice and a mechanic were free individuals, with mutual rights, bound by a contract to a mutual obligation, the one to provide labor, the other to teach vocational skill.

Whether slave state law could divide the wealthy and the poor in the way Mason openly did depended in large part on the control and division of wealth in the antebellum period.

Property Inequality in the Antebellum South

In recent decades, scholarship has produced a fairly complete picture of the economic condition of the late antebellum planter class. Scholarship has delivered better research on the economic condition of whites outside the planter class, but still more research is sorely needed.

One of the most balanced and influential studies that explores slavery economics of the late antebellum period is *The Political Economy of the Cotton South* (1978) by Gavin Wright. Wright affirms and explains why agricultural wealth had always been more unequally concentrated among fewer farmers in the slave states, whereas agricultural wealth was more evenly diffused in the North (32, 38-39). However, wealth inequality in the slave South did not necessarily mean both that the few were very rich and the many were very poor. The rich planters were fabulously wealthy, but he does not find a disproportionate number of very small farms in comparison with the North (35, 39). He finds that northern and southern landholding was similarly distributed, with the exception of a great many more large farms in the South.

The wealthy were very wealthy in land and slaves, and their large landholdings and large slaveholding were tightly correlated (27-31). Wright acknowledges that the average number of slaves owned only increased from eight to ten between 1790 and 1860 (32). But this small increase conceals a significant increase of slave wealth concentrated

in fewer owners. From 1850 to 1860, the percentage of slaveless southern farms increased from 40 percent to 50 percent, while the fraction of southern families owning slaves decreased from 36 percent in 1830 to 31 percent in 1850 to 25 percent in 1860. Of the 25 percent of slaveholding families, 55 percent fell in the lowest category of slave ownership, of one to five slaves. Twelve percent of slaveholding families owned the great bulk of slaves (Huston 2003, 36). To put this another way, only 11,000 southerners owned more than 50 slaves; 2,358 owned more than 100. A majority of slaves labored on enterprises of 20 slaves or more (Jones 1999, 63). At the same time that slave ownership had concentrated, the overall slave population had increased from just below two million slaves in 1830 to just below four million by 1860, and the price of slaves was rising. By the end of the cotton boom of the 1850s, the price of slaves had reached their highest level, linked to the expected profitability of their use (Wright 1978, 140). By 1860, therefore, a substantial but shrinking minority of slaveholders possessed an increasingly large share of increasingly greater wealth. The average slaveholder was five times wealthier than the average northerner and ten times wealthier than the average southern nonslaveholder. Slaveholders possessed 90 to 95 percent of all agricultural wealth in 1850 and 1860, and their share of wealth was rapidly outpacing the growth of southern nonslaveholders' wealth. The slaveholders, Wright claims, "constituted the wealthiest class in the country by far" (35).

Central to Wright's study is his explanation of the microeconomics of slave agriculture versus northern agriculture. The feature of southern agriculture he chooses to contrast to northern agriculture to demonstrate the microeconomics of slavery is the phenomenon of large southern plantations versus the generally uniform sized small to

medium northern farms. Farm labor was scarce in the free states because land was readily available and the people preferred to purchase and develop their own farms rather than to work for other farmers. They usually depended upon themselves and their family members for labor, and farmed as much land as their families could handle. Farm size was therefore limited by the amount of labor supplied by the family. In contrast, southern farms in the South could expand beyond those limits in the free states with slave labor. The size of a cultivated southern farm, therefore, could grow beyond the limits in the North by as much as the landowner could purchase slaves (44-55). This explains why the distribution of landholdings in the North and South are relatively close in the small to medium range. In the small and middle ranges, both northern and southern farmers tended to rely on family hands. The use of slaves explains why many more southern farms fall in the large range.

In early New England, where slavery was not widespread before its abolition, economic development followed Wright's "northern" logic. Most farms were family-owned. Wright argues that family farming encouraged entrepreneurs to explore opportunities outside of agriculture because family farms' economic growth was constrained by the limits of family labor (Wright 1978, 114-117). This might substantially explain why the New England economy quickly diversified from family farming into new fields of activity well before the turn of the 17th century. Wright's "southern" logic partly explains the impact of slavery on colonial Virginia, South Carolina, Maryland, Pennsylvania and Georgia. Wherever and whenever slave density varied, property inequality increased or diminished, but his southern logic only explains

the inequality by accounting for the inordinate increase in wealth caused by the use of increasing numbers of slaves.

The difference between Wright's southern and northern logic explains the difference between the development of the northern and southern economies. Overall, wealth inequality in the late antebellum slave South and in the industrializing North was about equal. Southern wealth was slightly more concentrated than northern wealth. But the concentration of northern wealth was on account of new industrialization, which makes sense, since the limits of family farm labor biased entrepreneurial investments away from agriculture, encouraging diversified economic growth. However, the agricultural sector was still the main area of employment in the nation, despite the diversification of the northern economy. From 1800 to 1860, free American employment in the agricultural sector declined from 89.5 percent but remained the dominant category, accounting for 58 percent of all labor. Manufacturing and mining increased from 1.2 percent to 18.5 percent (Huston 1998, 89). Obviously, the North-South difference in manufacturing and mining employment is not captured by these statistics. Controlling for the agricultural sector, wealth inequality in the South, which was a dominantly agricultural society, did greatly exceed wealth inequality in the North (Fogel 1989, 82-83, 88; Wright 1978, 39).

Scholarship still has not satisfactorily pinned down the economic condition of the white southerners outside the 12 percent of southern families who owned a disproportionate share of slaves and land. Robert Fogel suggests that the idea that a poor southern white class existed is largely a myth. Slavery did not "pauperize" the free

population; on the contrary, though the planter's wealth grew most rapidly, wealth generated by the slave economy lifted all boats (Fogel 1989, 83).

James Huston insists that free southern whites outside the planter class must have tended towards impoverishment. He defends the free labor argument of northerners, that slavery depressed free labor wages, impoverishing those who did not own any or very few slaves (2003, 91-93). It does make some sense that slavery constrained the conversion of free labor to capital by depressing free labor wages and farm tenancy income, and it generally increased the cost of capital requirements to own a farm. These effects would have limited upward mobility into farm and slave ownership, and possibly forced free southern labor to live on decreasing incomes. Wright does not extend his explanation of the microeconomics of slavery to cover these possible implications, the most important implications to those born without an inheritance. It is possible to extend Wright's explanation of the microeconomics of slavery and form a hypothesis that this is what happened.

He demonstrates that slave agriculture, but not free labor agriculture, was immensely profitable to scale (see also the gang system in Fogel and Engerman 1974; Fogel 1989). This meant that slave labor remained the dominant, attractive alternative to the southerner with capital to invest. Wherever southern farmers could and did invest in slave labor as an alternative to free labor to productively farm larger tracts of arable land, wages and tenant income for free southern labor in those locales would be expected to drop. The free man born in the slave South without access to capital would have difficulty accumulating investment capital from hiring out his labor. Meanwhile, the total profits of increased agricultural production would increase the slaveholders' stock of

capital, which meant that in bidding for good land desired by the slaveholder, the southern free laborer was at a double disadvantage. In the North, Wright shows, labor was scarce, which would have the effect of lifting wages for free labor and of enabling a man born poor to accumulate sufficient investment capital by hiring out his labor. Because northern laws prohibited landowners from profiting from slave agriculture, agricultural wealth was more equal and the position of the industrious poor man in bidding for good land would be expected to be more competitive. The free man could purchase more with his own labor in the North than in the South. This expected consequence of slavery's close proximity to free labor is what free state statesmen claimed did happen, and it accounted for slavery's tendency to generate extreme poverty as well as extreme wealth.

Regional wage research by economic historians does not support this hypothesis. Antebellum southern wages, including wages for common farm labor, competed well against northern wages (Margo 2000; Margo 2004; Earle and Hoffman 1980, 1066-1067; Fogel 1989, 88). Earle and Hoffman are explicit that southern wages were sufficiently high to allow free laborers to accumulate capital investment and move up the economic ladder. On the other hand, Huston claims that the wage findings are distorted by the antebellum practice of slaveholders renting out their slaves for wages, negotiating for the highest possible price from land owners who could pay, and then claiming these rents as wages. In support of his position, Huston points to the proslavery social and economic writers who fully expected free labor to expire as an economic category, squeezed out by the depressing effect of slavery on wages (2003, 93-94). In addition, Earle and Hoffman might be regionally and occupationally biased in their sampling of wages.

As for northern wages, the evidence supports the claim that northern free labor could work, save and accumulate sufficient capital to purchase farms, as free labor advocates claimed. In his study of Midwestern capital formation, William Parker writes, “To one acquainted only with a sophisticated industrial and commercial system, the proportion of farm capital formation created by farm labor, and so in a sense self-financed, is truly astonishing” (Parker 1994, 171). If southern free labor wages were competitive with northern wages, we would expect to find evidence that the 75 percent of nonslaveholding families, too, could accumulate capital. We would expect to find proof of nonslaveholder capital formation by their investments either in slaves, land and non-agricultural economic activities.

Since southern nonslaveholders, like northerner farmers, also had to rely on family labor, they would be expected to have directed their capital accumulations and entrepreneurial activities away from agriculture. We would expect to find non-agricultural economic sectors growing from the capital accumulations of nonslaveholding families. But that is not the case. The South did not develop non-agricultural economic sectors anywhere close to the North, from nonslaveholder investments or from planter investments. This suggests that the nonslaveholding families could not work, save and accumulate investment capital.

Maybe, more nonslaveholders directed their capital accumulations to investments in slaves. That is, perhaps more nonslaveholders became slaveholders. But since slaveholding dropped from 31 percent of all slave state families in 1850 to 25 percent in 1860, fully 20 percent of families owning slaves exited the slaveholding business in that decade, despite the new aggregate wealth created by the simultaneous cotton boom.

Fewer buyers were picking up the slaves sold by exiting slaveholders. Rather, the net of the number of slaves transacted were concentrating, probably in the increasingly wealthy planter class. Wright admits that the prices of slaves were rising beyond the means of more southerners to purchase them (1978, 42, 141).

If slaves were the ticket to prosperity, why did fewer rather than more southerners purchase more of them or any of them at all? We are talking about a very large segment of the white southern people – 75 percent nonslaveholding families and 13 percent low slaveholding families, owning one to five slaves. If the slave economy lifted all boats, it would have to be shown that the 12 percent of families owning the bulk of slaves, spent or invested their income in adjunct economic activities that employed other white southerners. But that is not the case. Wright shows that the profitability of slave agriculture encouraged repeated reinvestments of southern capital in slaves, not in employing whites. By rolling profits back into slaves, planters were also not investing in new economic sectors unrelated to slave agriculture that would employ other whites.

It is possible that other factors constrained the nonslaveholders from investing in non-agricultural opportunities and slaves, and that they rolled capital accumulations into more land, which Wright assumes was virtually universally available (11).

Nonslaveholders accumulated land in distinct regional patterns. Their farm acreage predominates outside the black belt and is scarce inside the black belt where the land was best, and large, staple-crop slave plantations owned the dominant share of cultivated acreage. To be sure, some small nonslaveholder farms existed in the black belt regions, and large plantations existed outside the black belt, but the nonslaveholder farms that did

exist in the black belt, appear to have fallen in the smallest ranges of sizes, and account for a negligible share of total acreage (Wright 1978, 23, 27, 28).

Jacqueline Jones claims that in the last decades before the Civil War, small farmers vacated the black belt because it became too expensive to remain, ultimately due to the rising price of slaves (Jones 1999, 64). Donald Schaefer's findings bolster her claim. In a quantitative analysis of factors influencing settlers to migrate and where to settle in the 1850s, Schaefer finds a high positive association of nonslaveholders leaving high density to low density "black population share" (Schaefer 1989). Since we know that the black populations peaked in the black belt, the removal of nonslaveholders from the black belt implies that they were unable to form capital from labor and invest in slave agriculture in the black belt land, buttressing the free labor argument.

Could nonslaveholders become wealthy slaveholders by migrating to new, unsettled slave territory and finding affordable, good land? If they tried this to improve their prospects, they would probably find the prime land already priced beyond their means. In the slave territories, the price of prime land versus inferior land could be 60 times higher (Fredrika Teute cited by Sarson 2009, 84n3). This suggests that a pattern of economic segregation already began forming, before statehood. It also suggests that the comparative equality in northern and southern land distribution in the low and medium ends of the scale is misleading. It conceals the inability of southern nonslaveholders to purchase good land. The relative equality in size does not account for land quality.

These patterns raise the question again of upward wealth mobility in the slave south economy. Even if nonslaveholders were able to raise some capital, the step to prosperity seems quite a leap in terms of the capital required (see also Coclanis 1989,

154n120). Economic studies of antebellum wealth mobility do support the conclusion of general upward mobility in the United States, but those studies do not segregate the slave South and the free North, or segregate the black belt and upcountry regions within the slave South (Pope 1999, 268-269).

Some studies have found evidence of broader impoverishment in the late antebellum period. Lacy Ford estimates that 20 percent of the South Carolina Upcountry white population were landless tenants (Ford 1988, 85n99). Charles Bolton gathered data from multiple micro-studies of the antebellum South showing between 30 to 50 percent of the white southern population were landless (Bolton 1994, 192n9). Bolton also found that more than one half of impoverished households in the nonplantation central Piedmont of North Carolina remained impoverished over time. Steven Hahn studied the nonplantation Georgia Upcountry and discovered an isolated world of self-sufficient households and farmers who were not prosperous but not groveling poor, either. Unlike northern farming communities, they cut themselves off from general society, and did not realize the benefits of economic exchange in a broader context. Their communities markedly differed from the planter communities. The upcountry folk relied upon family labor much like northern farms, slavery was sparse, and they held out against the encroachments of planter interference (Hahn 1983).

One probable cause of the difference between microstudies of local nonslaveholders and general studies of nonslaveholders is that the former studies often use local tax records which provide a different picture of nonslaveholders' economic condition than census records, which are the documents upon which general studies tend to rely. For example, in *A House Dividing* (2000), John Majewski compares the

economic development of Cumberland County, Pennsylvania, and Albemarle County, Virginia, from 1800 to 1860. From tax records, Majewski discovers that land distribution was much more unequal in Virginia than the census records capture (176n3). The counties began their national careers in a similar economic condition, but after Pennsylvania abolished slavery, Cumberland County's economy diversified, exchanged with outside communities, and prospered, as predicted by Wright's model. Albemarle County's economy remained stagnant.

What is still missing in the studies of the political economy of late antebellum slavery is a more comprehensive picture of the economic condition of nonslaveholders across the slaveholding states. Since studies so far suggest that the economic condition of nonslaveholders within the black belt was worse than the economic condition of nonslaveholders outside the black belt, research segregating nonslaveholders in each of these regions would help us better understand the effect of the slave economy on nonslaveholders. We also could benefit from having more comprehensive research on the upward wealth mobility of nonslaveholders and low slaveholders.

This research is needed because from more recent research, we can confirm what Mason indicated, that the economic condition of white southerners did correspond to their social and political rank.

The Political Consequences of Wealth Inequality in the Antebellum South

Although economic studies can point to the similarity of wealth inequality in the antebellum North and South overall, economic measurements cannot differentiate

between the political character of wealth in the slave states and free states. It was a substantial difference.

Senator Mason had indicated that poverty brought individuals, regardless of complexion, down to the level of slaves, and his comments seem quite on the mark. Research is now showing that poor whites and slaves exhibited class affinities. Timothy Lockley studied nonslaveholding whites in one part of the black belt where planters predominated, the Georgia low country (Lockley 2001). These nonslaveholding whites probably constituted more than half the white population (28), and were mostly poor. Most revealing is the picture he draws of the relations between these whites and blacks. Slaves, free blacks and nonslaveholding poor whites socially mixed in many ways, showing that if their social rank differed, it did not differ very much. This does not mean that they always “got along.” It does mean that from the perspective of a member of the planter class, like Mason, or of one of its defenders like Fitzhugh, or of the poor whites and slaves themselves, poor whites were close to the level of slaves.

Similarly, another study of women and sexual control in the North Carolina Piedmont showed how the degradation of impoverished white women found its way into law. Poor white women did sometimes sexually mingle with black men, casually or through prostitution, and sometimes they established families together. The state’s response was to vigorously punish them and to use the apprentice laws to seize children from these unions. From the perspective of these poor white women and the law, their conduct showed little class separation between themselves and the slave class, and the law meted out a kind of justice to them fit for slaves (Bynum 1992). A speech by United States Representative Philemon Bliss of Ohio in 1858 corroborates this research. Bliss

acknowledged and agreed with southern congressmen that the slave states did not in fact protect the poor's right to their liberty, and he specifically identified the treatment of poor white women as slaves. On the House floor, Bliss said he knew this to be true because, he said, "I have, since a member here, contributed to purchase for redemption white Virginians, and to prevent their forced denizenship of the brothel." Continuing, he contested the principle that the poor had no right to their liberty, reading extracts from southern newspapers to demonstrate that "the more honest advocates of slavery have already repudiated the idea that it should be the sole condition of any race" (35 Cong 1, Appendix, 399).

A new study of local legal records in North Carolina and South Carolina presents research heightening the plausibility that economic standing determined political standing, and places examples like those just cited in a broader flow of political change in the slave South (Edwards 2009). Between the 1820s and 1840s, slave state law recombined elements drawn from the liberal conception of rights and possessions, and created a new doctrine. The law transformed the right to liberty into a possession, no longer regarding it as inalienable from each individual's equal human nature. The logic of the new legal order entitled those with a larger share of possessions to a larger share of rights. Rights, like possessions external to body and soul, were alienable, and commensurate with property-owning status. By this conception in slave state law, rights, like possessions, are co-extensive with one's personal dominion; by the American Founders' republican conception, one's personal dominion extends only as far as naturally fixed rights determines in equal measure for each person. "Attachment" replaced inalienability in characterizing the connection between rights and person. The

difference between the two is that attachment is a function of the passions, whereas inalienability is the work of human nature's Creator, and is respected or violated according to restraint and right reason. The realization of rights in the first sense is a function of human power; in the second sense, the realization of rights is a function of human nature's Creator, or divine power, and those rights can neither be taken away or augmented by human power. This explains and enlarges the meaning of northern attacks on the slaveholders' impiety.

The same conception of rights that appeared in slave state law by the 1840s governed the individual character of southerners in 1785, according to Jefferson. They were "zealous for their own liberties, but trampling on those of others," whereas northerners were "jealous of their own liberties, and just to those of others" (Jefferson 1984, 827). That is, Jefferson understood that the conduct of his fellow southerners did not align with the conception of rights he penned for the nation in 1776, but the conception of rights enshrined in southern law by the 1840s did align with their 1785 conduct. By bringing this principle of conduct into law, the slave South had reintroduced domination as a lawful principle of civilized government. But the American Revolution had explicitly broken from the idea that domination was a lawful principle of civilized government.

In Jefferson's estimation, northern conduct in 1785 did align with the proper conception of rights. That they were just towards the liberties of others meant that they respected the dominion that nature's God had allotted in equal measure to each person. And that they were jealous of their liberties meant that they were protective of the dominion that nature's God had allotted to each one of themselves. Jefferson's approval

of this conduct is implicit in the *Declaration*, which said that it was the right and duty of the people to rebel against encroachments upon their personal dominion of liberty. Jealousy of one's liberties was a right and duty, and the northern people had it. The difference between zeal and jealousy as Jefferson uses the terms is that jealousy is a protectiveness of what belongs to you by natural right, whereas zeal is passionately seeking after things that do not belong to you by natural right and trampling on others to get it. The difference may be expressed in another way as the difference between the soul of the tyrant and the soul of the citizen: appetites govern the former and self-regulation governs the latter. By the 1840s, the South had officially broken from the conception of justice that animated the political regime Jefferson and his revolutionary peers attempted to establish in 1776.

Madison had defined the natural right to liberty and the natural right to possessions as two forms of property. He analytically separated the two forms of property apparently in order to adjudicate the historical problem of the rich few, when strong and unjust, of seeking dominion over the many; and the historical problem of the many, when strong and unjust, of seeking to dispossess the rich. What generally goes wrong is that each side defines justice by the form of property they hold in abundance, and become covetous of the other form of property held by the other side. The many, who hold liberty in abundance, do not include the right to possessions in their opinion of justice, and become covetous of the wealth of the few. The rich, who hold wealth in greater abundance, do not include the inalienable right to liberty in their opinion of justice, and become covetous of the liberty of the many. Slave state law codified the legitimacy of the covetousness of the rich for the liberty of the many. The rich few

obtained the legal sanction to dominate others. To Madison government like this is unjust government, for which praise should be “sparingly bestowed.” This result should not be surprising since the rich had accustomed themselves to swallowing up millions of persons whole, their natural right to liberty and all.

The new legal order broke down the American Founders’ conception of inalienable rights inherent in the humanity of the person, regardless of wealth. Although the language of the American Founders and the founding generation’s moral fervor for their rights did not seem to change in the new legal order in the slave South, the meaning of rights fundamentally changed. The picture Jonathan Roberts drew of the relation between employer and employee as political and social equals, each mutually respecting the other’s inviolable right to liberty, regardless of wealth, would seem to have been inconceivable in the late antebellum slave South. The employer was a lord with dominion over the employee. Success and power conferred moral right on one over the other. The weak were contemptible objects of paternal care, not equals in liberty.

This difference distinguished property inequality in the South from the North. Economic historian Robert Fogel said more than he meant when maintaining that, “In the North the top one percent of the wealth holders were mainly urban merchants and manufacturers whose businesses were based on wage labor, while in the South the top one percent were mainly rural planters whose businesses were based on slave labor” (Fogel 1989, 83-84). He calls both North and South “plutocracies,” which confuses rule with cross sectional wealth distribution patterns (regardless of wealth mobility and sector diversification), and disregards how the ruling principle in a political regime regards wealth. In the South, poverty meant you were politically unequal in a much more

profound sense than in the North. Wealth determined personal dominion and liberty. Comparatively, liberty was determined by law, consistent with natural law, regardless of wealth, in the free states. If this seems doubtful, one might consider the contrast between the progress of labor movements in the North, and the fate of labor movements in the Old South, otherwise known as slave revolts.

The Political Character of the Economic Classes in the Antebellum South

The character of all southern classes exhibited the oligarchic principle that shaped their political order.

At one time scholars pinned the “pre-bourgeois,” “pre-modern” or “feudal” label on the planter class because their high-minded character and landed rule seemed reminiscent of feudal aristocracy, or of ruling classes in non-Western societies. They seemed out of step with modernity, capitalism and democracy (Phillips 1918; Genovese 1989; Moore 1966). But then economic historians discovered that the planter class utilized markets, managed to achieve profitability, and were more modern and richer than previously thought, and a new view of the planters emerged as “plantation capitalists” (Hartz 1983; Fogel 1989; Ransom and Sutch 1993; Oakes 1982; Pessen 1980). They were at home in modernity, “liberalism,” capitalism and democracy. Take away the slaves, and there is not much difference between entrepreneurs Jefferson Davis and John D. Rockefeller. Edward Pessen, with one eye on similar wealth inequality of North and South, and another on his egalitarian critical standard, finds both societies modern, capitalistic and oligarchical (Pessen 1980, 1148). James Oakes points out that the dream of becoming a planter galvanized all members of southern society to seek to own slaves

and prosper. He also finds that those who did become planters rose from diverse origins. He accepts these attributes as decisive proof of capitalism and democracy in the slave South (Oakes 1982).

This debate between the pre-bourgeois school and the plantation capitalist school is essentially a debate over the correct category of historical development to attribute to the planter class. The debate assumes a foreordained, Marxist plan of history: first, aristocracy and feudalism, and then, democracy, capitalism and modernity. The class of rulers and the principle by which the class rules are overlooked, in favor of matching the attributes of slave society to the attributes of the “correct” historical category, as if history is thought to determine the form of government and society. With due respect for patterns of international political events, we ought to consider defining a political society by its characteristics, rather than by its place in an assumed pattern of history. Market sophistication and the profit motive can attract modern tyrants in the present and future. Democratic governments have existed in the distant past, and aristocratic governments may exist in the future. Shall we say that Athens was not democratic because it existed before the bourgeoisie took down the thrones of Europe? Shall we say that the members of the House of Saud are at home with democracy and are “oil capitalists,” excluding recognition of them as the ruling monarchic family, because they have developed sophisticated methods of managing to profit, utilizing markets, etc.?

Certainly, it is not surprising to discover that many dreamed of owning slaves in the South, since slaves were the key to landed wealth in the slave South. This does not make the slaveowners a piece with American democracy, as if dreaming of success is the defining attribute of American democracy. The “American Dream” seems to coin the

perception that America promises better prospects for upward wealth mobility, not that Americans only dream of success. Many have dreamt of becoming princes or kings, or owning slaves, and have failed. Some have succeeded, and antebellum statistics prove that few succeeded to achieve the southern dream. The fact that the southern planters came from diverse backgrounds has nothing to do with the question of whether they ruled over or shared political power with the rest of southern political society. Only by answering that question can we determine if the slave South was a democracy. William the Conqueror, the son of a tanner's daughter, aspired to make himself King of England, and won the throne. Does his half-common parentage mean that England under William was a democracy? Shall we call the brutal tyranny of Sicily under Agathocles a democracy because he aspired to rise from poverty and did? We don't call these regimes democracies because we reflexively obey a tradition that tells us not to do it, but we seem to have forgotten why. Monarchs are not monarchs because they wear ermine and royal purple, luxuries that many "democrats" can afford today, but because they held the sovereign power, judged all, ruled through obedient magistrates, and their word was law. Stalin was a monarch.

It has already been established that the planter class was disproportionately wealthy, the wealthiest class in America. By their own open and repeated admissions, their political power grew from economic power. The character of their economic power, based on domestic slavery, determined the character of their political power, domination of all outside their class. Southern leaders had overthrown the natural rights republicanism established by the American Revolution, long before secession.

In 1835, South Carolina Governor George McDuffie addressed the state legislature, requesting that they not adjourn until they passed a law, setting an example for all the slaveholding states, meting out death without benefit of clergy to anyone circulating antislavery “pamphlets, papers and pictorial representations” (Thatcher 1915, 83). McDuffie then launched into a justification of slavery. “Whether we consult sacred scripture, or the lights of nature and reason,” one man could justly procure other persons’ alienable ‘property in rights’ as a personal possession. This truth was “abundantly apparent,” “as if written with a sunbeam from the heavens” (86). This directly contradicted Alexander Hamilton, for example, who had written that, “The sacred rights of mankind are not to be rummaged for among old parchments or musty records. They are written, as with a sunbeam, in the whole volume of human nature, by the Hand of Divinity itself, and can never be erased or obscured by mortal power” (Hamilton 1850, 80). McDuffie and Hamilton used the same language of sunbeams, nature and rights, but did so to describe the political nature of mankind in fundamentally opposite terms. Hamilton maintained that nature and nature’s God fixed each person’s “property in rights.” That is, those rights were inalienable, and no mortal could give them or acquire them. McDuffie claimed that nature and nature’s God gave mankind alienable “property in rights,” with the intention that the strong would take possession of, and care for the weak. Possessory title in the weak belonged to the strong.

Customary ownership of others’ “property in rights” formed the backbone of “the most perfect system of social and political happiness that has ever existed” (Thatcher 1915, 88). The condition of the free poor in other societies, who still retained possession of their alienable “property in rights,” was miserable, but because masters in possession

of the laboring class's rights cared for the laboring class, the condition of laborers was happy in slave society. This justifies the acquisition of others' "property in rights." The system was good for masters also, because it produced "an indomitable spirit of liberty," which consisted in dominion over others, and not liberty within one's personal dominion over oneself only.

The absolute, personal possession by some men of others is superior to "political slavery," McDuffie argued, because kindly feelings between master and slave are unknown in the relations between rulers and ruled free persons (89). Political slavery is the only alternative to absolute dominion over labor, because "no community has ever existed" that did not inevitably divide between employers and employees, between servants and masters (90). If the servants are free, "a dangerous element is introduced into the body politic." McDuffie recognized the historical conflict between the rich few and the many, but he did not think that the "property in rights" of the many was inalienable or a thing to be cherished in preference to ownership of others' "property in rights" and paternal care. The many, unfortunately, do not know that slavery is best for them, and so they clamor for their right to liberty. "Hence," McDuffie said, "the alarming tendency to violate the rights of property by agrarian legislation." The many, feeling their right to liberty abused, return the favor and seek to reclaim possession of themselves and the possessions of the rich. But the rich feel that they are entitled to the liberty of the many as their possession just as much as the rich feel entitled to their land and movable wealth. Laws that promote the interests of the many with due respect for their equal rights are wrongheaded and "agrarian," because the few deserve title to the entire society, people included, and can take better care of the many than the many can

take care of themselves. McDuffie observed this agrarian tendency in the free states. The few who employ did not “own” society as they properly should, and therein lies the difference between northern employers and southern employers.

As economic inequality develops, as it inevitably will in every society, and “universal suffrage prevails without domestic slavery,” the agrarian tendencies will perpetuate. If labor can vote, they will contest the rightful ownership of society by the few. McDuffie too deplored the contest of the few and the many, as Madison did. But McDuffie’s resolution was not to frame laws impartially protecting both individuals’ right in held possessions and individuals’ property in their rights. The just resolution of the conflict was to give the few the title to possess everything in society. He came firmly down on the side of the rich few. The problem to solve was how to protect this property right from the objecting clamors of the many, for “No government is worthy of the name that does not protect the rights to property.” That is, the only just government is government that protects the title of the rich few to everything. Old governments solved the problem of how to keep the agitations of the many at bay by establishing “political orders” and “artificial barriers,” and McDuffie said that “it will be fortunate for the non-slaveholding States” if they did not have to do the same in 25 years. He imagined that the laboring many would continue to vote for dispossession of the rich, which would precipitate a reaction by the rich. McDuffie assumed that the natural development of every political society was towards the rule of the few over the many, which revealed the character of the society he experienced. Through that experience, he could not imagine that the wealthy and poor of the North might have thought of themselves more as equal citizens, not as superiors and inferiors. To preserve their natural superiority, rich

northerners would realize the necessity of having to create some kind of institution to serve the purpose that titled nobilities served in feudal Europe. Titles preserved the distinction between the rich few and the laboring many.

The South, however, was blessed with an institution that accomplished the very same purpose. Its “institution of domestic slavery supercedes the necessity of an order of nobility, and all the other appendages of a hereditary system of government” (90-91).

McDuffie openly proclaimed that slavery provided for nobility in the absence of titles. Slaveholders were not simply lords over slaves; possession of slaves made them lords over political society. That is, slavery achieved a result that the Constitution’s Article I, Section 10, sought to suppress: “No Title of Nobility shall be granted by the United States.” Slavery raised up a ruling privileged few, absent formal hereditary titles. On the prohibition of titles in the Constitution of 1787, Madison had written:

Could any further proof be required of the *republican* complexion of this system, the most decisive one might be found in its absolute prohibition of titles of nobility, both under the federal and the State governments; and in its express guaranty of the republican form to each of the latter (Hamilton, Madison and Jay 2003, 238-239, emphasis added).

Yet, McDuffie went on to say, “Domestic slavery, therefore, instead of being a political evil, is the corner stone of our *republican* edifice” (Thatcher 1915, 91, emphasis added). But Madison had said that the absence of nobility was decisive proof of the republican character of the government blueprinted by the Constitution!

In 1836, Thomas Dew defined republicanism as equality among the rich who possess the laboring class. He, too, contended that in a state with no slaves, inevitable wealth inequality would produce an “aristocracy of wealth” arrayed against free common laborers (Dew 1836, 277). The many would either “take dictation from their employers,”

or would “look with eyes of cupidity upon the fortunes of the rich.” Then would commence the struggle of the few and the many, and the many would inevitably plunder the rich. In the South, the struggle between the rich few and the laboring many never could develop because the rich possessed the many. Dew readily admitted that, “Political power is thus taken from the hands of those who might abuse it,” – the laboring poor – “and placed in the hands of those who are most interested in its judicious exercise” – the rich. Dew and McDuffie did not entertain another possibility, that the many and the few agree to impartially protect both the right to liberty and the right to possessions, both of which Madison regarded as natural rights deserving of impartial protection. Labor, in the view of McDuffie and Dew, always abuses its political power and plunders the rich. This justifies preemptive and unabashed acquisition of labor’s “property in rights.” Their system, Lincoln wrote, held “the *liberty* of one man to be absolutely nothing, when in conflict with another man’s right of *property*.” Therefore, “We must repulse them, or they will subjugate us.” But Lincoln’s Republicans were “for both the *man* and the *dollar*” – the impartial protection of the right to liberty and property (Lincoln 1989b, 18, original emphasis). Madison, Jefferson and Adams shared exactly that sentiment. To Dew and McDuffie, the rich should rule and own labor. As slaves, labor would be relieved of the cares of self-sufficiency, and become happy and contented. Their loss of their “property in rights” was their gain.

This system, Dew continued, described “the frame work of our southern society,” which was “better calculated to ward off the evils of this agrarian spirit.” Slavery secured “that spirit of equality among freemen, so necessary to the true and genuine feeling of republicanism.” But the freemen to whom he alluded were those whose liberty was

gained by acquiring dominion over common laborers. Freeman means the rich and strong, the increasingly small portion of southern society that owned a disproportionately large share of cultivated acreage in the black belt and a disproportionately large share of slaves. Dew's republicanism was the equality among the rich and strong. Liberty consists in dominion over the muzzled many whose clamors for their lost liberty have been silenced, for their own good. Dew concluded with the wish that the whole nation would one day regard slavery, "the sheet anchor of our country's liberty" (Dew 1836, 277, 279). In sharp contrast, Lincoln regarded the *Declaration*, and its affirmation of the equal, natural right to liberty, as "the sheet anchor of American republicanism" (Lincoln 1989a, 328).

Clearly, the definition of "republican" presented by Dew and McDuffie was at variance with that of Madison, the founders, Lincoln and the antebellum free state statesmen. All used the same word, "republican," but its meaning to the one party and to the other was entirely dissimilar.

Many examples could be brought forward to show how antebellum slave state statesmen and ideologues were breathing new, oligarchic meaning into the founders' republican language. Scholars often observe that because antebellum northerners and southerners both laid claim to the founders' mantle, or because both sides used the same language of the founders, that the slave and free state societies were more similar than different. In other words, their fundamental political principles were species of the same genus established by the founders (Ericson 2000; Fox-Genovese and Genovese 2005, 26). But it is not a true rule that competing claims cannot be judged, nor that the difference between two apparent similarities must be inscrutable. In this case, the differences in

meaning were glaring, and their similarities were superficial. Their common political language was the vestige of a common political faith, but as the slaveholding state institutions and principles developed towards oligarchy, they preserved much of the old language expressing a new political faith.

If the political principles of the southern oligarchy on the one side, and the free state Republicans and the American Revolutionaries on the other, are in the same family of thought, then the family containing them is as broad as human thought, and embraces all. To call their political principles kindred principles is meaningless. Lincoln expressed the difference of their principles in stark terms: “The one is the common right of humanity and the other the divine right of kings” (Lincoln 1989a, 810-811).

Antebellum southern leaders kept the name “republican,” but reinterpreted it, hollowing it out and refilling it with the form and substance of oligarchy. They could then claim that they were a fit resemblance to the American Founders, because “they were republicans,” too. But that was a patent fiction, as their evident discomfort with the *Declaration* proved. Not even Calhoun the master wordsmith could subtly reinterpret those plain words into a charter for oligarchy, so his band of southern leaders had to denounce the Declaration’s falsehoods. Confronted by the claim of equal natural liberty inscribed in that founding document, southern leaders were forced to reveal their true character. For having “the coolness, forecast, and capacity to introduce into a merely revolutionary document, an abstract truth, applicable to all men and all times, and so to embalm it there,” Lincoln gave “all honor to Jefferson” (Lincoln 1989b, 19). In the *Declaration*, Jefferson left behind a test of republicanism, and when scratched by it, the southern leaders’ republicanism proved to be fool’s gold.

Their much vaunted conservatism placed its referent point in old Europe, not America. However much they tried to pretend or believe they were the true heirs of the American Revolution, their natural affinity for the old aristocracy blotted out their American affection for the rights of mankind. Fox-Genovese and Genovese recount that the aristocracy seriously attempted to revive medieval fairs and tournaments in the South, emphasizing chivalry, courtliness, martial virtue, crownings and maids of honor (Fox-Genovese and Genovese 2005, 356-357). The southern romance with the European age of chivalry served a political purpose. They needed to develop a character befitting their prided dominion over the wealthy South, and no models existed in republican America. What else could have inspired them to imitate the manners of dead European nobility on American soil? But while they dipped into the past for old aristocratic models of conduct to reinvigorate, they looked forward. They thought historical progress favored their mode of rule (Fox-Genovese and Genovese 2005, 313). In his cornerstone speech in Savannah, Confederate Vice President Alexander Stephens appealed to the forces of history and to new truths of modern science to justify the progressive character of the new southern political order, culminating in the founding of the Confederacy. History and science had made the founders' natural rights doctrine obsolete, and a new political age was dawning that would reestablish a very old form of rule (Jaffa 2000, 222-224). The senses in which they looked forward and backward go together. They were not jousting with each other in Alabama to poignantly relive days that would never come again. The Genoveses are convincing that the slaveholders scorned attempts to restore the past and that they were modern men (Fox-Genovese and Genovese 2005, 307). They miss the sense by which the slaveholders scorned restoration. They scorned historically

anachronistic, “pretend,” aristocracy, and embraced genuine aristocracy. They were bringing old aristocratic habits and manners back to life and refining them for a new era of aristocratic rule. They looked towards a new aristocracy, their own aristocracy.

The laboring poor class included domestic slaves and poor whites. The domestic slaves were most obviously a ruled class. By their general conduct, the impoverished whites showed that they accepted their status as an abject, degraded class, on par with slaves. The fact that they did not depart from the presence of their political masters for freer regions, when not even shackled, shows the completeness of their degradation. One cannot imagine the Sons of Liberty in Boston in 1776, no matter how poor, accepting this contempt for their liberties. They would sooner have hanged together, and their grandsons too. The southern oligarchy discovered after 1861, that they had mistaken northern restraint for a deficiency in zeal for liberty. But this strategic misunderstanding serves to illustrate how profoundly different political regimes shape life differently, and hence how easily political regimes misapprehend each other because they know themselves all too well. When the oligarchy publicly denounced northern labor as mud-sills deserving slavery, they can be forgiven for assuming that the mud-sill democracy would go down easily, because the working labor they knew best were the degraded classes of poor whites and slaves under their feet. They did not understand that northerners were an altogether different kind of laboring people. For example, on the eve of war, Ohio Representative Sidney Edgerton warned them on the House floor, “The giant North, at last, stands erect” (36 Cong 1, 932). Among the poor whites and domestic slaves, only the rarest individual nature could have overcome their degradation and defied the planters like that.

If a southern nonslaveholder in the black belt did not prosper, he risked falling into the political rank of a poor white or a slave, and he could not resist that fate. He and his nonslaveholder friends were up against a power far greater than the small-time gentlemen slaveholders of Massachusetts, whom John Adams said were intimidated by the common people into assenting to abolition. The nonslaveholders living in close proximity to the planters could hardly expect to duplicate the Massachusetts achievement and force republicanism onto the black belt.

If a nonslaveholder defied the odds and gained a foothold on the ladder of upward mobility in the black belt, he would have had to own some slaves and land. His political status then would graduate to a higher class. In *Masters of Small Worlds* (1995), Stephanie McCurry studied yeomen farmers, who were, by her definition, slaveholders owning less than ten slaves in the South Carolina low country. She finds them in a political condition that I find best described by the term “minor nobility.” In the 1860 low country parishes she studied, planters owned more than 90 percent of improved acreage and slaves, although they constituted a small numerical percentage of farmers. The yeomen owned a small share of total improved acreage and slaves though constituting a disproportionately larger share of the farmer population (94-95). The planters accepted the independence of the yeomen’s households on account of their having achieved mastery over dependents. To put this in Jefferson’s terms, their liberty was achieved by having successfully trampled on the liberties of others. However, in conflicts with the planters over such things as common land use and slave discipline, the planters prevailed, which demonstrated the political legitimacy of the same Jeffersonian logic (116-117). The planters’ greater liberty was achieved by trampling on and

acquiring the liberties of the less wealthy yeomen. Hence, the planters possessed a portion of the yeomen's "property in rights" on account of the planters' possession of greater wealth. Landed wealth determined the extent of the dominion of liberty - yeomen over poor whites and slaves, planters over yeomen. The relationship between planters and lesser slaveholders does compare with the medieval relationship between lords and vassals.

It would be more accurate to describe the political condition of the antebellum slave South in Nietzschean terms rather than in Marxist terms. The degree of liberty one possessed was co-extensive with one's degree of wealth possession and power over others, from the bottom to the top of the economic scale. These conditions encouraged strife among people struggling to be free of oppression and free to oppress others. The ambitious nonslaveholder, conscious of his weakness yet zealous for his liberty, might strive for power by both seeking to attain wealth while at the same time morally attacking the planters whose wealth he envied. The career of William Lowndes Yancey demonstrated this.

Yancey began life as the northern education reformers did, losing his father when very young. His family's means were modest but due to his stepfather's relocation, he gained an education in the North. Returning South, Yancey settled in the South Carolina Upcountry, away from the black belt. In 1834, he became editor of the Greenville *Mountaineer*, and attacked Calhoun, nullification, and disunion, and contested South Carolina's sovereignty above the supremacy of the United States. His future patron, South Carolina Governor Benjamin Perry, admiringly recalled that Yancey "wielded a fierce and terrible pen" (Walther 2006, 30). Yancey caricatured Calhoun as an aristocrat

under false republican concealment, “the Duke of Pendleton, Ruler in and over the said State of South Carolina,” and denounced the state legislature’s treason bill as a violation of the American right to free speech (Dubose 1892, 67). He attacked Calhoun supporters as misguided and “perfectly prepared to be made a slave by the very man whom he thinks almost a god, or to be made a tool of, in his hands, to enslave a fellow citizen.”

Calhoun’s theories were “the loathsome offspring of foiled *Ambition*.” He compared Calhoun to Aaron Burr; they were “two fallen archangels” (Walther 2006, 30-31, original emphasis).

Yancey understood the ruling class. However, around the age of 21, Yancey changed, after simultaneously resigning from the *Mountaineer* and marrying a planter’s daughter, bringing a “dowry of thirty-five slaves that instantly elevated him to the planter class” (32). He set out for cotton country in Alabama to build his fortune (38). The talented young man then switched sides and became a partisan of the theories, and protégé of the man he had once attacked, Calhoun (87, 123-124). By at least 1861, Yancey’s reversal from oppressed upcountry republican, clamoring for liberty, to low country oppressor-oligarch was complete. In the Alabama secession convention, some delegates urged that the convention submit the question of secession to the people since the convention delegates represented a minority in the state (Anonymous 1867, 10; Dubose 1892, 556). Nicholas Davis of Huntsville, in north Alabama, the low slaveholding, unionist section of the state, maintained that the people of north Alabama would never submit to secession if the convention denied them the right to vote on it. Yancey rose and denounced them, calling them “tories, traitors and rebels,” and threatened force on north Alabama. Davis replied, “We will meet him at the foot of our

mountains, and there with his own selected weapons, hand to hand, face to face, settle the question of the *sovereignty of the people*” (McMillan 1955, 80n18, emphasis added). The position of Davis, in Davis versus Yancey, was Yancey’s position in Yancey versus Calhoun, 25 years prior.

The conduct of the earlier and later Yancey was consistent with the oligarchic principle of his political society. Wealth, including the possession of persons, and not natural right but natural right’s overthrow, conferred one’s measure of liberty. The early Yancey resentfully attacked the interests of the wealthy and clamored for liberty so long as he was without wealth and power, and under the dominion of others. After he became a member of the planter class and acquired dominion over others, he opposed the liberty of others. In slave society, since liberty was not a fixed quantum of personal dominion, but extensible, like a portfolio of personal possessions, the economic classes were simultaneously political classes. Liberty was not guaranteed by law, but could be lost and won. Inasmuch as liberty was dear, the zeal for liberty inflamed resentment and envy of classes above one’s class, and domination and contempt of classes below one’s class.

The concentration of wealth and power in the nucleus of slave state political society, the black belt, provided the primary inducement to the nonslaveholder to leave, or if relocated already, to stay away. Robert Russel claimed that the nonslaveholders were not injuriously pushed out of the most desirable or fertile regions, but voluntarily vacated for economic reasons. This may be true, although Sarson discovered a case that makes one pause (Russel 1941; Sarson 2009, 96-98). However, Russel’s explanation for the dispersal of nonslaveholders from the black belt does not include the most important point: that political reasons and economic reasons overlapped. Nonslaveholders who

could not become slaveholding land-owning planters self-segregated themselves to minimize injury to their rights.

The “plain folk” literature is full of references to the determination of nonslaveholders outside the black belt to secure their republican independence and economic self-sufficiency, and to avoid dependence (Owsley 1949; Ford 1988; Hahn 1983). The proper way to understand this relationship between relative economic prosperity and political independence is to examine how it was called to life by the political regime. In the slave South, nonslaveholders preserved their endangered liberty by achieving economic self-sufficiency. It was safer for their liberty to settle where they stood a better chance of achieving economic and political independence, beyond the grasping arms and covetous appetites of the planters. The plain folk scholars sometimes misinterpret economic “self-sufficiency” to mean a commitment to a “pre-bourgeois” or “pre-capitalist” way of life, as if they rejected modernity and loved homespun for its own sake. Therefore, these scholars seem surprised to discover that some plain folk did engage in “market-oriented” economic activity (Bolton 84-85). What the plain folk strove for, and what the character of their political society pressured them to strive after, was not necessarily a pre-capitalist way of life in order to realize some pastoral ideal, but rather to provide themselves with enough wealth so that they could avoid becoming economic dependents and acquire the political character of slaves. The means of achieving that goal did not matter, whether by successfully cultivating and selling staple crops, by raising livestock for large markets, or by engaging in subsistence agriculture, household manufacture of goods and bartering. Either subsistence agriculture or inter-dependent exchange of agricultural surplus for cash, if successful, provided for economic

independence of the kind they needed. Whichever method worked, the goal was to avoid becoming lowly landless poor whites, tenant farmers or common laborers – in a word, slaves – with no material way to protect their “property in rights.” In that case, they would become dependent upon the condescending paternalism of the planters.

To the nonslaveholders who had congregated in communities outside the black belt, market-oriented economic activity was difficult because state government policy usually favored the planters’ interests. If nonslaveholders could find fertile land for a good price outside the black belt, and could successfully cultivate staple crops for market, they would have difficulty transporting those crops to market (Wiggins 1991, 5; see also Bolton 1994, 19). In antebellum Alabama, for example, the railroad lines from the port city of Mobile extended northward to the black belt and stopped there, leaving the low slave density northern section of the state without means of efficiently freighting commercial crops to market. Politicians talked of remedying this, but nothing was done. In July 1865, a northern Alabama newspaper editorial called for the state to connect north Alabama with south Alabama by railroad, citing south Alabama’s historical domination of the state. There had “never been a community of interest nor an identity of feeling and sentiment in Alabama, owing to the geographical division of the state,” but rather “an antagonism of interests, of feeling and sentiment.” In antebellum times, south Alabama “grasped the lion share of state honors, offices, benefits, etc., and rather imposed an undue portion of the public burthens upon the weaker and less wealthy section, north Alabama,” even though north Alabama’s white population exceeded south Alabama’s. Because land- and slave-wealthy south Alabama controlled the state, they were able to “accomplish secession” by their own instigation (Huntsville *Advocate*, July 12, 1865).

In antebellum Georgia, the story was the same. The railroad lines connecting the black belt were privately funded. Then, led by black belt politicians, the state legislature used the public revenues to fund new railroad lines connecting the private railroad lines to market ports. The western and southern parts of the state, away from the planter regions, opposed the measure (Carey 1997, 135). And why not? Their taxes were being used to fund improvements favoring the rich. The laws did not impartially protect property in rights and possessions, but actively promoted the wealth of the few at the expense of the poorer section of society. And why shouldn't the wealthy use taxes drawn from the poorer section of political society for their own benefit? The wealthy owned their political society, and in exchange for that title and its benefits, they convinced themselves that their paternal care for all in that society was sufficient recompense.

The Slaveholders' Dilemma

In *The Slaveholders' Dilemma* (1992), Eugene Genovese portrays southern proslavery intellectuals, especially Thomas Dew, reluctantly settling upon their defense of slavery (18). The last notable event when slaveholders in council agonized over the defensibility of slavery was the Virginia slave debates of 1829-1832 (Root 2008). Many principled antislavery men did agonize over the practical reasons that stirred them to preserve slavery, but not Dew. In 1832, Virginia's popular branch of the legislature passed a gradual emancipation law, placing the decision in the hands of Virginia's senate. Dew testified to the Senate committee against the bill, and according to William Dodd, decisively influenced its defeat. Thereafter, Dew published his *Review of the Debate in the Virginia Legislature, 1831-32*, and became a missionary of the gospel of slavery's

positive good (Dodd 1909, 569-570). So opened the career of principled, intellectual proslavery advocacy, not in a reluctant acceptance of slavery but in a strong, decisive affirmation. In the *Slaveholders' Dilemma* and *The Mind of the Master Class*, Genovese does not produce any evidence that Dew or the proslavery apostles were reluctant apostles. The lack of such evidence accompanying their strong declamations for it is why they are regarded as apostles.

Genovese seems to want to make the case that their primary concern was to counter the excesses of modernity, capitalism and democracy, which necessitated a “heavy hearted” endorsement of slavery. He wants to save their reasoned criticism of capitalism from the stigma of slavery. But their criticism of those excesses does not legitimate nor require the excesses of modernized oligarchy. What Genovese seems to miss is the balanced criticism of both excesses in the writings of the American Founders, particularly Adams. Adams defended the natural rights of liberty and property, denounced artificial aristocracy while seeking to preserve aristocratic virtue, and foresaw and criticized the excesses of modernity in just the manner that Genovese finds attractive in the proslavery defenders (Adams 2000, 360-362). In the Founders, and particularly in Adams, Genovese may have what he wants: republicanism without a defense of slavery and without democratic excess. The point is that because Genovese approves of a good deal of the proslavery advocates’ criticism of the North, he allows himself to underestimate the extent to which they were genuinely committed to slavery in principle, overthrowing republicanism in substance and establishing an artificial aristocracy.

The real slaveholders’ dilemma was not what to do about slavery, but what to do about the whites in the intermediate economic condition between absolute poverty and

the planter class. It may be helpful to illustrate this problem by conceiving of antebellum social and political society in the South as a pyramid: planter-oligarchs at the top, small slaveholders (minor nobility) in the next row down, middling nonslaveholding whites in the next row down, and poor whites and domestic slaves at the bottom. The ruling oligarchy required subordination of all ruled classes and those ruled classes could have been white, black or a combination of both, which they were. From the rulers' point of view, the most important characteristic of the ruled is obedience, not color.

The moral defense of slavery and the development of the southern social system towards this pyramid pointed lower class whites in the direction of ultimate subjugation by the slaveholding oligarchy. Zealous for their liberty, these whites might not go gently into the night. The early Genovese observed, "The back country farmers seemed politically dangerous to the aristocracy of the Black Belt" (1989, 25). His later conclusions explain why the planters deemed them dangerous. The defense of natural inequality in their social system was, Genovese said, "The Logical Outcome of the Slaveholders' Philosophy" (1988). The more that the planter class developed towards becoming a ruling oligarchy, and the more they understood and defended who they were, the more necessary it was for them to maintain class separation between rulers and ruled. This put the planter class on a collision course with the whites in the intermediate economic condition. The much discussed sectionalism within the slave states between the planter class and these other whites are theaters of these collisions.

One scholar rightly, in my view, draws a parallel between Fitzhugh's apostleship of universal inequality as "The Logical Outcome of the Slaveholders' Philosophy," according to Genovese, with southerner Hinton Rowan Helper's attacks on the

slaveholders as “The Logical Outcome of the Nonslaveholders’ Philosophy,” according to himself (Brown 2003). On behalf of the oppressed multitudes of the South, Helper railed against the “villainous oligarchy,” the “treacherous, slave-driving legislators.” Slavery was the means of establishing an oligarchy of slaveholders that controlled the slave state governments and kept down the poor whites. He urged slavery’s complete abolition on that account. He contended, “[T]he free States are the only members of this confederacy that have established republican forms of government based upon the theories of Washington, Jefferson, Madison, Henry, and other eminent statesmen of Virginia” (Helper 1860, 33, 42, 95, 152-153). Fitzhugh and Helper were both southerners arguing for each of the white classes colliding with each other.

The antebellum dilemma faced by the slaveholders was a reprise of the dilemma Edmund Morgan identifies in colonial America under monarchic government. At that time, the aristocratic colonial government in America allowed land barons to bind both whites and blacks in an equal opportunity condition of servitude. This was Fitzhugh’s preferred colorblind slavery under the rule of the aristocratic few. Resistance by the black and white English servants clamoring for their liberty turned the government to the importation of Africans (Morgan 1972).

Morgan makes one major mistake in his argument. He attributes to the American Founders the conviction that slavery was necessary to support republican liberty. Morgan confuses the American Founders with Dew, McDuffie, Calhoun and all the later antebellum proslavery advocates, who did make that case. This historical conflation of the aristocratic colonial government under the monarchy, the republican founders, and the later oligarchic proslavery apologists, is a crucial mistake. Morgan misses the

relationship among aristocratic government, the determination to expand and protect slavery, and the resistance by whites outside the aristocratic class. Rather, the natural rights republicanism of the founders abhorred and undermined slavery, attacked aristocracy, and sought to diffuse wealth broadly among citizens.

The antebellum planters could solve their problem in one of two ways: proceed with subjugating the other whites, or import more slaves. The solution chosen by colonial government in America, and the solution Morgan highlights, was the importation of more Africans (24-25). In contrast, the very fact that the founding generation abolished the slave trade suggests on its face, that they did not think republicanism depended upon slavery, but the reverse. But southern government by the 1850s very much needed to expand the “mud-sill” class, since their whites in the intermediate economic condition were unwilling to become mud-sills, but were not economically strong enough to buy slaves and join the slave agriculture career track on their own.

Francis Lieber recognized that this was cause of the new interest in the renewal of the slave trade. He underlined the importance to free government of “a numerous and independent yeomanry... a large class of fairly schooled, intelligent, and respectable freeholders of moderate yet sufficient estate” (Lieber 1863, 3). In the South, the slave-heavy large estates were buying out the yeomen who could not afford the high price of slaves and compete with the planters. They were forced to sell out, reducing them to poverty. The new aristocracy was absorbing the yeomen’s land, not because a “feudal law promotes the land-devouring tendency with us, but *the institution of slavery takes its place*” (5, original emphasis). As a result of the displacement of the yeomanry, “a dangerous class of men without direct interest in slavery, was springing up.” Therefore,

in fear of possible class strife, South Carolina Governor James Adams recommended that the state legislature re-open the slave trade (6). The objective was to lower the price of slaves so that more whites would be upwardly mobile, or as I think proper to clarify, so that more whites could become minor nobility and then planter-nobles. Just before secession, the first shipment of Africans arrived.

For the same reason, Leonidas Spratt, editor of the *Charleston Mercury*, objected to the Confederate constitution's slave trade ban. He understood they did it to lure the upper South, with their slave marts, into the Confederacy. This was a tactical gain that sacrificed the integrity of the nation they were forming, a slave Republic. But his description of this republic would not fall within the limits of the American Founders or the Republican Party's common definition. In the slave republic, he said, equality was not the right of man but "the right of equals only." That is, there is no such thing as natural equality, but only members of equal classes can rightfully claim equality with another member of the same class. The form of the republic, he said, was an aristocracy; the power of the government, he said, was vested in the upper class. Then he affirmed why the republican founders abolished the slave trade. He said that if the foreign slave trade had not been suppressed in the United States, their aristocratic form of government and society would have triumphed in America long ago. At present, even within the South, there were deficiencies in slaves, and wherever there were deficiencies in slaves, an excess of democracy sprang up, hostile to the aristocracy. If this were not remedied, an irrepressible conflict would resume within the South between slaveholders and nonslaveholders. That is, separation from the United States and the unhindered, continuing entrenchment of aristocracy would aggravate the intra-state sectionalism

between the ruling planter-aristocrats and the nonslaveholder-democrats. Therefore, they needed to re-open the slave trade, and increase the ratio of slaves to free whites. Within the limits of the Confederate states, there was room for forty million slaves. The increase would guarantee that middling southern whites clamoring for their liberty could become aristocratic slaveholders, or would be more easily silenced (Spratt 1861).

If all southern whites already did benefit from the slave economy, and were politically equal, then why would southern leaders consider re-opening the slave trade, deflating the value of their wealth in slaves? The slave trade considerations belie George Frederickson's "Herrenvolk" democracy idea that all whites actually enjoyed democratic equality and liberty in the South, atop a class of racial inferiors in slavery (Frederickson 1987; Faust 1985, 17n39; Ellis 1991; Freehling 1994, 115-132). The appeal of the idea to whites outside the planter class is easy to understand within the framework of the oligarchic regime. Herrenvolk democracy held out the promise of incorporating ruled whites into an all-white ruling class, a white democracy. The idea may have been successfully used to rally the southern white majority, or to assuage the democratic tempers of the southern people directed against the planters. But the idea that whites were politically equal was a myth. The wealth of the slave economy, and more importantly, the political power of wealth, concentrated in the hands of the few. The power of wealth was wielded over the many, black and white, who filled out the rows of a social pyramid beneath the planter class. Late in that society's antebellum development, they considered increasing the numbers of black slaves in the bottom row to co-opt more whites into the capstone. This would have strengthened the oligarchical

regime on the eve of the twentieth century. They could have done so, and they might have done so, had they won the Civil War.

CHAPTER VII

GOVERNMENT IN THE ANTEBELLUM SOUTH

Empirical Evidence in Support of Reconstruction Republicans' Claims

Tables 1 and 2 show that, by 1860, the state legislators and some officers of slave state governments owned slaves in far greater proportion than the general population, or even the free white male population. These tables were compiled from the 1860 census and Ralph Wooster's *The People in Power: Courthouse and State-house in the Lower South, 1850-1860* (1969) and *Politicians, Planters, and Plain Folk: Courthouse and Statehouse in the Upper South, 1850-1860* (1975). The tables graphically demonstrate that slaveholders controlled slave state government, as the Republicans contended.

Table 1: Percentages of Persons Owning Ten or More Slaves, Per State, 1860.

State	All Free People	Free Adult Males	State Representatives	State Senators
AL	2.26%	12.63%	50.98%	60.61%
AR	0.97%	8.65%	20.00%	28.00%
FL	2.27%	14.10%	26.09%	36.84%
GA	2.33%	12.31%	46.99%	48.03%
KY	0.73%	3.84%	25.49%	20.00%
LA	1.90%	8.49%	36.63%	42.31%
MD	0.43%	2.08%	17.91%	47.62%
MO	0.28%	2.05%	12.98%	N/A
MS	3.20%	16.55%	50.63%	66.67%
NC	1.53%	8.04%	50.83%	68.25%
SC	3.49%	16.40%	59.84%	89.58%
TN	1.01%	5.27%	34.67%	32.00%
TX	1.32%	13.64%	31.68%	29.73%
VA	1.32%	6.62%	36.31%	44.44%

Table 2: Other State Officers Owning Ten or More Slaves, Per State, 1860.

State	Other State Officers	
FL	County Commissioners	32.81%
GA	Lower Court Judges	36.36%
MS	Police Board Members	34.75%
TX	County Commissioners	16.55%
TX	County Justices	6.06%

Sources: United State Bureau of the Census 1909, 132-141; United States Census Office 1864, 132-141; Wooster 1969, 125-153; Wooster 1975, 163-172.

State Government at the American Founding

The Massachusetts state constitution of 1780 belonged to the people of Massachusetts. Its delayed adoption, after a lapse of five years since the first efforts to frame one, is attributable to the directing influence of the popular will. Before national independence in 1776, the Massachusetts House of Representatives prepared itself to create a state constitution. But when the question was submitted to the townspeople, it was negated due to the absence of many men at war. The legislature obeyed the will of the people, until the next year. In 1777, the ordinary legislature resolved into a convention and drafted a constitution. In 1778, the convention submitted the proposed constitution to the townspeople, who rejected it by a vote of 4 or 5 to 1. Because the state had severed its ties to Britain, but had no state constitution, some counties of Massachusetts began to agitate for their own independence from the state. Not having surrendered any part of their natural rights to a social contract compacting them together, the people did not feel a strong tie of obligation to the state. In response to these popular pressures, their representatives altered their approach. They improved the form and process of developing a state constitution. A convention was called, separate from the

legislature, which met in four sessions over nine months. The convention determined to submit each drafted article of the constitution to the vote of the people, and in 1780, the people adopted the constitution (Peters 1978, 18-23).

John Adams attended the convention and drafted the constitution. This public service to his state was tightly wedged between diplomatic missions in Europe (Adams 1850-1856, IV:213-218). The constitution included a preamble and declaration of rights, similar to the *Declaration of Independence* in substance, if less eloquent. The preamble addressed the end of government:

The end of the institution, maintenance, and administration of government is to secure the existence of the body-politic, to protect it, and to furnish the individuals who compose it with the power of enjoying, in safety and tranquillity, their natural rights and the blessings of life; and whenever these great objects are not obtained the people have a right to alter the government, and to take measures necessary for their safety, prosperity, and happiness (IV:219).

Article I declared:

All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness (IV:220).

These passages declare that the end of government is the protection of equal, natural rights. Articles IV and V of the declaration of rights derive republican self-government from those rights. Article IV said, “The people of this Commonwealth have the sole and exclusive right of governing themselves”; and Article V said, “All power residing originally in the *people*, and being derived from them, the several magistrates, and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them” (223-

224, original emphasis). Together, the passages from the preamble and declaration of rights cover the principles of natural rights republicanism: popular self-government derived from and limited by equal, natural rights.

The convention and the people accepted these provisions with no evidence of controversy (Adams 1850-1856, IV:216; Peters 1978, 22-23). Not long after the state adopted the constitution, the Massachusetts Supreme Court decided that slaveholding could not withstand the language of Article I (Ward 1999, 187; Pickering 1840, 210). By 1790, the census reported no slaves in Massachusetts.

The constitution did not insert a racial qualification for suffrage, an act hardly noticed at the time but prominently noticed later. Addressing the Massachusetts House of Representatives in 1857, John Wells referred to color-blind citizenship in Massachusetts when arguing for what position the state should take on the recently decided *Dred Scott* case. Wells cited the declaration of rights in Article I of the Massachusetts Constitution, and reminded the House that the state “extends her protecting arm equally over human beings.” As for United States Chief Justice Taney’s dictum, that black Americans were not citizens, Wells said, “Massachusetts has never delegated to the Supreme Court of the United States, nor to any other power upon earth, the right to make color a test of citizenship within her borders.” Because “people of color equally with whites, have been heretofore admitted to all the privileges and franchise of citizenship in Massachusetts,” and did possess citizenship prior to the ratification of the federal Constitution, Wells saw no reason for Massachusetts to pass racial legislation confirming the citizenship of black Massachusettsians in response to the Supreme Court’s decision (Massachusetts General Court 1857, 373).

The constitution of 1780 did include a property qualification, but modern scholarship has found that most could acquire the necessary property holdings. Studies of voting rolls suggest that the property qualification restricted a negligible number from voting (Pole 1957, 561).

The results of Massachusetts's constitution-making in 1775-1780 pleased Adams, and he believed that their national system of government had copied their state system, which was his system. Writing in 1814 Adams professed that his

system of government, which is the system of Massachusetts, as well as the system of the United States, which are the same as much as an original and a copy are the same, was calculated and framed for the express purpose of securing to all men equal laws and equal rights (Adams 2000, 379).

Adams's system answered Massachusetts's explicit call, ultimately the people's call, for republican government. In 1779, the Massachusetts convention had unanimously resolved, first, "That the government to be framed by this convention shall be a Free Republic;" and second, "That it is of the essence of a free republic, that the people be governed by Fixed Laws Of Their Own Making" (Adams 1850-1856, IV:215).

Adams later expressed remarkable confidence in the republican character of the New England people. In 1793, he appealed to Noah Webster to write a "philosophical, historical and political view of the manners, customs and institutions of New England." He specifically asked Webster to write about "the nature and effect of the civil and religious corporations," because "they respect the order, information and social condition of the people; also as they afford a guaranty for republican systems, as they tend to restrain dangerous ambition." He abstained from developing his thoughts further, because, as he said to his fellow New Englander, "I believe you understand me." Clearly,

Adams believed that the origin of New England republicanism owed a great deal to New England religion, and he credited a people's republican character as a sure guaranty for republican systems. On the high importance of the work proposed, he said, the subject would be "more useful, important and honourable to our particular country, than any which can be the subject of human contemplation." A book like that "is of the utmost consequence to explain to the people their situation." Distance in the service to his country had made Adams appreciate the republican character of New England and its importance. Since leaving his home, Adams said, "I have become an enthusiast, if not a fanatic, with respect to the customs of the northern States." In them rested the hope of republic liberty in the nation, and in the world also. He said, "It is my sober opinion, that the hopes of mankind as they respect the eventual success of the republican system, depend chiefly on the conduct of the people of New England" (Gibbs 1846, 99).

Jefferson and his friends in Virginia produced a republican state constitution for their state without deference to the Virginia people. Their constitution was framed by the state legislature, which had resolved into a convention, and was not submitted to the people for ratification. However ardent some of the Virginia leaders were for republicanism, their establishment of a republican constitution in their state without appeals to the people suggest that the state did not share New England's republican foundation in the people. In side-stepping the popular will, the convention more quickly established a state constitution, almost simultaneously with the national independence, in 1776 (Dinan 2006, 1-3; Brenaman 1902, 33-38; Jefferson 1984, 246-247)

Like the Massachusetts declaration of rights, and in fact, precedent to it, the Virginia constitution of 1776 also contained a bill of rights, also covering the principles

of natural rights republicanism. The preamble affirmed that the rights of the people are “the basis and foundation of government” (Thorpe 1909, VII:3812). Section 1 declared:

That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety (3813).

Again, like the Massachusetts declaration of rights, these passages declare that the end of government is the protection of equal, natural rights. Section 2 and 6 derives republican self-government from those rights. Section 2 declared, “That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.” Section 6 affirmed that the deputation of the people’s natural sovereignty should be effectual, stating, “That elections of members to serve as representatives of the people, in assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage.”

Unlike the proposed Massachusetts declaration of rights, the proposed Virginia bill of rights provoked opposition, revealing a split within the Virginia leadership in the convention. Letters from Thomas Ludwell Lee and Edmund Randolph bear witness to the character of that cleavage, between those who wished to establish natural rights republicanism and those who wished to preserve a different sort of rule. Lee wrote,

In short, we find such difficulty in laying the foundation stone, that I very much fear for that Temple to Liberty which was proposed to be erected thereon. But laying aside figure, I will tell you plainly that a certain set of aristocrats, for we have such monsters here, finding that their execrable system cannot be reared on such foundations, have to this time kept us at bay on the first line, which declares all men to be born equally free and independent. A number of absurd or unmeaning alterations have been proposed. The words as they stand are approved

by a very great majority, yet by a thousand masterly fetches and stratagems the business has been so delayed that the first clause stands yet unassented to by the Convention (Rowland 1892, 240).

Apparently, the bill of rights was commonly understood to encompass slaves, and the opposition met them on that ground. Of particular notice, Lee observed that the aristocrats could not rear “their execrable system,” i.e., aristocracy, on “such a foundation,” i.e., a bill of rights declaring all members of humanity, including slaves, to be free and equal. Lee drew parallel connections between aristocratic government and slavery, on the one hand, and republican government and liberty to the slave, on the other. Subsequent events in Massachusetts, including the state Supreme Court’s refusal to enforce slaveholding on the basis of its declaration of rights, suggest that the Virginia aristocrats’ fears were warrantable, that their bill of rights might undermine slavery.

Edmund Randolph identified the leader of the aristocratic opposition, Robert Carter Nicholas, who warned that the bill of rights would “be a pretext for civil convulsions.”

It was answered perhaps with too great an indifference to futurity, and not without inconsistency, that with arms in our hands, asserting the general rights of man, we ought not to be too nice and too much restricted in the declaration of them; but that slaves, not being constituent members of our society, could never pretend to any benefit from such a maxim (Rowland 1892, 240).

The argument Nicholas used against the bill of rights was that it might inspire slave revolts. But Randolph acknowledges that the republican faction’s response was morally inconsistent with the natural equality claims in their bill of rights. On account of their reading the slaves out of the body politic, since, as slaves, they were not “constituent members” of political society, the bill of rights would not effectually apply to them any more than it would effectually apply to anyone else not part of the Virginia body politic.

Besides that, the acknowledged members of the body politic were armed, whereas the slaves were not. These points were a backhanded acknowledgement that the bill's natural equality claims compassed their rights in the abstract, but that the civil law would deny giving them force. But the republicans' interpretation of the bill of rights they defended was, perhaps, a sign that they had to incur a concession to the aristocrats in order to institute it. By their interpretation, however, a court could not use the bill as the basis to refuse to enforce slaveholding as the Massachusetts Supreme Court later did.

As a delegate to the 1776 convention, Lee sided with the republicans and probably assisted George Mason in drafting the bill of rights to head the state constitution (Rowland 1892, 239). In his autobiography, Jefferson numbered Lee among the members of the committee appointed by Virginia's "first republican legislature which met in '76" to adapt the state's laws to a "republican form of government." The committee also included Jefferson, George Wythe, George Mason ("earnest for the republican change on democratic principles"), and Edmund Pendleton (Jefferson 1984, 34, 36-37). He also numbered James Madison and Patrick Henry among the republican notables.

Jefferson corroborated Lee's account of a republican-aristocrat split within the Virginia leadership. Although Edmund Pendleton served on the committee charged with adapting the state laws to republican government, Jefferson recollected that he and Robert Carter Nicholas had unsuccessfully opposed the '76 legislature's religious liberty bill (34). By a clever insertion in Jefferson's bill to provide for trial by jury, Pendleton and his friends did successfully obstruct the operation of the bill's intentions (33).

Jefferson's bill to abolish further slave importations did pass, cutting off the aristocracy's basis of power at the taproot (34).

Pendleton had also unsuccessfully attempted to save the laws of entail, which, Jefferson said, had raised up an "aristocracy of wealth, of more harm and danger, than benefit, to society," and had prevented the rise of an "aristocracy of virtue and talent, which nature has wisely provided for the direction of the interests of society, & scattered with equal hand through all it's conditions." The change "was deemed essential to a well ordered republic" (32). This victory for republicanism was partial. The state did not further alter the inherited patterns of land distribution. In Jefferson's draft constitution for Virginia in 1776, he included a provision to grant public lands to the landless in lots of 50 acres (343). The constitution of 1776 did not implement this provision.

At the same time, the 1776 constitution restricted electors in legislative districts to "freeholders of the same, or duly qualified according to law" (Thorpe 1909, VII:3816). Jefferson and Mason unsuccessfully attempted to expand the basis for suffrage in the constitution, but the freehold requirement remained as it had since before the revolution (Chandler 1901, 17). The number of citizens who had acquired the fifty acres of landholding required by law during the early national period, is widely disputed among scholars, ranging between 25 and 90 percent, but the rough mean of scholarship is around half of white males.¹ However, in the Virginia constitutional convention of 1829-1830, Richard H. Henderson placed the number at 60 percent disenfranchised, and argued for expanding the basis of suffrage (Virginia Constitutional Convention 1830, 355). The

¹ Griffith (1970, 60) estimates between 55 and 60 percent of white males could vote; Brown and Brown (1964), between 80 and 90 percent; Pole, between 25 and 50 percent (1958, 28); Selby, 60 percent (2007, 38n23); Gutzman, 50 percent (2007, 7).

opposition argued against the principle of suffrage expansion, rather than disputing his calculations. They did not deny that the freehold requirement prevented a great many from the vote, and favored it. The 1776, Virginia constitution provided the institutional means by which a few held the sovereign power of Virginia in its hands.

To John Adams, the republicanism of Virginians, and southerners generally, was suspect. While serving in the Continental Congress in 1775 and 1776, Adams was appointed to a committee charged with the responsibility of superintending the formation of state governments. From that position, he was able to inform himself on the political sentiments of southern leadership, and he supported those with republican leanings (Green 1930, 53-54, 64-65). From there, he wrote his wife that, in the southern colonies, “gentlemen of free spirits and liberal minds... are very few” (Adams and Adams 1876, 135). In the same year, he wrote to General Gates:

All our misfortunes arise from a single source, the reluctance of the southern colonies to republican government.... Each colony should establish its own government, and then a league should be formed between them all. This can be done only on popular principles and axioms, which are so abhorrent to the inclinations of the barons of the south (Adams 1850-1856, I:207).

Adams named Thomas Nelson delegate to the Continental Congress and later Virginia Governor; Nelson succeeded Thomas Jefferson in 1781. Nelson voted for national independence, but he told the Congress “that he was against it in his own private judgment, because he knew the people would institute Republican governments, and for his part he acknowledged that he dreaded and abhorred Republican governments” (Adams 1878a, 352).

Adams's grandson, Charles Francis Adams, described the political organization of Virginia at the time of the Revolution, which strongly contrasted the condition and character of the New England states:

Virginia, especially, under the legislation which had hitherto prevailed, had been raising into permanency a strong landed aristocracy. Already there existed entails of enormous tracts in the hands of single families, the steady operation of which, in every case, could only be barred by some special interference of the legislature. And, superinduced upon this, a species of villenage... of natives of Africa as serfs to the soil. Thus, to use the words of one of her own historians, "an aristocracy neither of talent, nor learning, nor moral worth, but of landed and slave interest, was fostered." From the special class thus nursed into distinction were drawn the members of the executive council, the judicial officers down to those of the county courts, and even the representatives to the popular branch of the legislature (Adams 1850-1856, I:205-206).

A social aristocracy possessed of lands and slaves became a political oligarchy under the forms of republican government. These ruling few were split between those whom John Adams called "gentlemen of free spirits and liberal minds" and those who wished to preserve the form of political society to which they were accustomed under the monarchy. The Virginia republicans acted in concert with New England republicans to counter their southern opponents. This alliance was critical to forming the union into one great republic, and to encouraging the states to frame republican constitutions. Charles Francis Adams explained how this came about:

Under the natural tendency of habits of authority to confirm power, this system [of Virginia] became so strong, that portions of it resisted all the influence which Mr. Jefferson exercised in his lifetime.... The course of events at Philadelphia had roused many leading men of that colony to the observation of the obstacles interposed by it to the establishment of popular institutions. Among the number, the most earnest and anxious were Patrick Henry, the Lees, George Wythe, and others of the most decided advocates of independence. They felt the necessity of commencing a reform by going at once to the root of the government itself. Here they were naturally brought into consultation with the delegates from New England, already long familiarized with the working of the most republican system then known in the world. To John Adams, who united to much study of

the theory of government at large a thorough acquaintance with the particular forms of his own colony, they frequently recurred for advice. He was not unaware of the nature of the embarrassments in which they were involved, nor without anxiety as to their effect in delaying the general results which he had most at heart (Adams 1850-1856, I:206).

Subsequently:

The Lees, Patrick Henry, Wythe, George Mason, and Jefferson... rallied all the citizens of other colonies south of Maryland who sympathized with them. In the three southernmost States of New England only, was the whole community so inoculated with republican principles as to make the transition from the colonial to an independent state simple and easy (I:441).

A strong faction of leading Virginians was devoted to republicanism, although not all Virginia leaders, and not all southern leaders, were devoted thusly. The established oligarchic system of Virginia resisted change. But the people and leaders of New England possessed the spirit of republicanism, which strengthened the durable form of republican government in their states. The liberal-minded Virginians sought to emulate their example.

Jefferson himself confirmed this assessment of Virginia in Query XIII of his *Notes on the State of Virginia*.² His first criticism was that the suffrage was limited to freeholders. That qualification might have met the proportionality test of sovereignty had property ownership not been so concentrated in few hands as it was. But since Virginia was not Massachusetts, the property qualification for suffrage in the Virginia constitution did not sift for the natural aristocracy as the Massachusetts constitution so aimed under Adams's pen, but rather gave disproportional weight in government to an artificial aristocracy – those who possessed slave-cultivated land. Jefferson's second criticism

² I am indebted to the interpretation of Jefferson's Query XIII by Professor Michael Zuckert (1996), with whom I mostly agree.

concerned malapportionment of the state legislative districts. Jefferson noted that some legislative districts of the state were vastly more overrepresented than others. His third criticism was that neither legislative house was popular, but that “wealth and wisdom” could enter, i.e., control, both houses. Jefferson’s fourth criticism was that “all the powers of government, legislative, executive, and judiciary, result to the legislative body.” But the land and slave-owning electors controlled the legislative body due to the freeholding requirement and malapportionment of the legislature. Since that legislative body controlled the government, the land and slave-owners of Virginia controlled the Virginia government. Fifth, the ordinary legislature, controlled by the wealthy few, could alter the state constitution at will, and without a convention drawn directly from the people. Since the authority of government was not effectually drawn from the people at large, the rich few and not the people were effectively sovereign. This contradicted Section 2 and 6 of the Virginia bill of rights, which declared that the powers and administration of the government were drawn from and accountable to the people. Sixth, the constitution gave the power to the legislature to determine its own quorum. With this power, the legislature could depute its powers to a smaller and smaller body. The rich few controlled the legislature, and all offices, but they could depute power to even fewer (Jefferson 1984, 243-253).

To John Adams, republican government should strive to be a perfect likeness of the whole sovereign people in miniature, adorned by the addition of natural aristocrats culled from every portion of the whole people. Jefferson’s portrait of Virginia government is not a miniature of the whole people, but a distended portrait. Due to the different conditions in the slave state, its constitution excluded the many – no matter how

talented and industrious – from participation in government. Virginia failed Adams’s test for popular sovereignty. Its government was not proportional to the whole sovereign people. Virginia was an oligarchy, not a republic.

In Jefferson’s 1,500-word recapitulation of the constitution’s defects, he mentioned the words republican and republic six times. He anticipated his reader’s objection that the framers of the state constitution created these defects by accident. These defects were attributable to a defective republican character in Virginia leadership, and to prove it, he cited the example that many legislators had favored the appointment of a dictator during the revolution, a measure that failed by only a few votes. Jefferson pointed out that the constitution had organized the powers of Virginia government in republican fashion; the exercise of those powers was the “prerogative,” not a right, of the officers of government. The principle of necessity did not confer the right to bestow the powers of government on an “oligarchy or monarchy.” Rather, consistent with their bill of rights acknowledging the equal, natural rights of mankind, necessities “throw back, into the hands of the people, the powers they had delegated.” Jefferson approvingly observed the contrary practice in the northern states, first in Massachusetts. They all had republican governments, and all met the challenge of invasion without altering their republican forms. The very thought of appointing a dictator was “treason against the people; was treason against mankind in general,” and gave “their oppressors a proof, which they would have trumpeted through the universe, of the imbecility of republican government” (253-254).

Many Virginia leaders did not embrace the principles of natural rights republicanism as deeply as those northern states had. Jefferson illustrated the difference

between their putative republicanism and northern republicanism by alluding to Rome, but he denied that America's natural rights republicanism followed the Roman example.

The Roman "constitution and circumstances were fundamentally different." Rome was

a republic, rent by the most bitter factions and tumults, where the government was of a heavy-handed unfeeling aristocracy, over a people ferocious, and rendered desperate by poverty and wretchedness; tumults which could not be allayed under the most trying circumstances, but by the omnipotent hand of a single despot. Their constitution therefore allowed a temporary tyrant to be erected, under the name of a Dictator; and that temporary tyrant, after a few examples, became perpetual (254).

In seeking to appoint a Roman-style dictator, the Virginia aristocracy revealed its tendency to address difficulties within the state in Roman fashion – by using force over the people, rather than by drawing them closer into partnership over their political society. They adopted the part of the patricians in Machiavelli's account of Rome, stirring mutual hostility and distrust between themselves and the plebeians, and eschewed the Aristotelian prescription, legislating to produce mutual affection and affection for their political regime. The Virginia oligarchy preserved its power artificially, not by ability and by the sufferance of the people, but by laws preventing the people from rising to prosperity and to participation in government, as their ability and industry made them eligible. These laws would drive the people to constant discontent and desperation, and undercut their affection for the political regime, which in fact, could not command their affections because it did not belong to them. The regime presented a republican face, but was oligarchic in substance, and not the ultimate possession of the people. By the principles of natural rights republicanism, not Rome's false republicanism, Jefferson acknowledged the people's moral right to claim the government as their possession. He

hoped a new state convention would remedy these defects and “render unnecessary an appeal to the people, or in other words a rebellion” (255).

Jefferson prefaced his criticism of Virginia government with the explanation that “The constitution was formed when we were new and unexperienced in the science of government.” It is, however, unclear whom he meant by “we” (243). Was he speaking of the republican Virginia leaders like Mason, Madison, Lee and himself, who were insufficiently experienced to check the oligarchic machinations of their colleagues? Or did he mean that all of the Virginia leaders would have created a more republican constitution had they been more experienced?

The Virginia people themselves did not seem to evince a republican character comparable to that of the New England people. By Jefferson’s description, the Virginia people were “mild in their dispositions, patient under their trial, united for the public liberty” (Jefferson 1984, 254). Why were they not also outraged at their leaders who took away their sovereignty won by the revolution? Why didn’t they reject the constitution of 1776 as the New England people rejected the constitution of 1778? In Eckenrode’s account of Virginia during the revolution, the common people were often indifferent or halting in their resistance to British force, despite the illustrious assistance made by Virginia’s republican leaders (1916). It is questionable whether the Virginia people fought the war for independence with the same revolutionary goal of establishing republicanism, as the people of New England did. That may be accountable to the New Englanders’ more developed republican character, whereas, the Virginian people did not feel or act like a sovereign republican people, determined to protect their political society from the British and to wrest control of their constitution from their leaders.

In sum, Virginia boasted outstanding republican leaders and contained noteworthy oligarchic opposition. Its people manifested a comparatively weaker republican character during the Revolutionary Era. In that condition and under the control of a new generation of statesmen unlike Jefferson, Mason, Wythe and Madison, Virginia was vulnerable to being reshaped into a political society that rejected natural rights republicanism.

Republican Prospects in the Slave South from the Early National Period

James Madison recognized that the ultimate source of the anti-republican tendencies of the southern states, including his own state, was the prevalence of slavery. Leading up to the constitutional convention of 1787, Madison privately listed the defects of the Articles of Confederation. Among them was “want of guaranty to the States of their Constitutions,” and the context connoted a certain kind of guarantee, a republican guarantee. He wrote, “According to Republican Theory, Right and power [are] both vested in the majority, are held to be synonymous [sic].” But after listing how social conditions might lodge power in a minority, all republican declamations to the contrary, he wrote, “Where slavery exists the republican Theory becomes still more fallacious” (Madison 1900-1910, II:363). The existence of slavery disrupts the actual operation of republican theory. The inevitable political result of slavery is the fallaciousness of formally established republicanism. Certainly, in Jefferson’s view, as well, Virginia’s republicanism was fallacious. The state government Virginia formed in 1776 was not faithful to its constitution’s declamations for natural rights republicanism in its bill of rights.

Madison guarded these thoughts in private, and contradicted them in public. Defending the proposed Constitution's Article IV, Section 4, guaranteeing a republican form of government to every state, Madison publicly acknowledged in Federalist No. 43 that all of the states were republican in character:

In a confederacy founded on republican principles, and composed of republican members, the superintending government ought clearly to possess authority to defend the system against aristocratic or monarchial innovations.... But the [national government's] authority extends no further than to a GUARANTY of a republican form of government, which supposes a pre-existing government of the form which is to be guaranteed. As long, therefore, as the existing republican forms are continued by the States, they are guaranteed by the federal Constitution. Whenever the States may choose to substitute other republican forms, they have a right to do so, and to claim the federal guaranty for the latter. The only restriction imposed on them is, that they shall not exchange republican for antirepublican Constitutions; a restriction which, it is presumed, will hardly be considered as a grievance (Hamilton, Madison and Jay 2003, 271-272).

The guarantee presupposed republican government in all the states united by the federal compact, including the southern states where slavery was concentrated, and where, as he had previously written to himself, republican theory was fallacious. Not long thereafter in the early 1790s, Madison wrote another private note entitled, "The Influence of Domestic Slavery on Government," which was discovered after his death. Madison was even more direct in his indictment of slavery's political effect, the overturning of republican government:

In proportion as slavery prevails in a State, the Government, however democratic in name, must be aristocratic in fact. The power lies in the hands of property, not of numbers. All the ancient popular governments, were for this reason aristocracies. The majorities were slaves.... The Southern States of America, are on the same principle aristocracies. In Virginia the aristocratic character is increased by the rule of suffrage, which requiring a freehold in land excludes nearly half the free inhabitants, and must exclude a greater proportion, as the population increases. At present the slaves and nonfreeholders amount to nearly $\frac{3}{4}$ of the State. The Power is therefore in about $\frac{1}{4}$. The slavery of the Southern

States, throws the power much more into the hands of property than in the northern States (Hunt 1902, 75).

Madison's biographer comments, "How clearly he understood the incompatibility of slavery with democracy." Madison recognized how republican government in form became aristocratic government in fact as an inevitable result of slavery, and he held this view before publishing Federalist No. 43.

Why did Madison acknowledge the republican character of all the states *in public*, but acknowledge the necessary aristocratic character of the slave states *in private*? The answer may be prudence. The retention of the southern slave states in a republican-dedicated national union with other, more republican states could result in the gradual reconstruction of the slave states' political character.³ Continuing in Federalist No. 43, he cautiously divulged this intention by referring to Montesquieu:

Among the advantages of a confederate republic enumerated by Montesquieu, an important one is, "that should a popular insurrection happen in one of the States, the others are able to quell it. Should abuses creep into one part, they are reformed by those that remain sound"⁴ (Hamilton, Madison and Jay 2003, 274).

It is plausible that Madison was looking northward and counting upon the "sound" New England republics to help stamp out anti-republican abuses. Compacted together in union, those states would lead the other parts of the nation in development

³ If the Constitution took a stronger antislavery position than it did, Madison feared "dreadful" consequences. Madison in the Virginia ratifying convention: "I should conceive this clause to be impolitic, if it were one of those things which could be excluded without encountering greater evils. The Southern States would not have entered into the Union of America without the temporary permission of that trade; and if they were excluded from the Union, the consequences might be dreadful to them and to us.... If those states [Georgia and South Carolina] should disunite from the other states for not indulging them in the temporary continuance of this traffic [the slave trade], they might solicit and obtain aid from foreign powers" (Elliot 1861, III:453-454).

⁴ Reconstruction Republican Representative M. Russell Thayer's quoted this passage in his preface to a public letter to Charles Ingersoll (1862, 2).

towards a more republican future. Madison's view that one part might lead or reform another part accords with Adams's view, sent to Noah Webster in 1794, in which he said that the hopes of republican liberty in the nation and the world depended upon the northern people's conduct and republican character, which afforded the best "guaranty for republican systems." And in fact, the Virginia republicans did seek out the example and counsel of New England in 1775-1776 when they were engaged in framing their own state constitutions.

Obviously, if slavery was republicanism's chief threat, as Madison indicated, the path of the southern states' political development towards republicanism would have to chiefly include eventual emancipation. If peaceful political reform failed and the anti-republican abuses enlarged, endangering republicanism in the nation, the guarantee clause in Article IV, Section 4 gave the national government the authority to draw power from the more republican states and apply force. In Federalist No. 28, Hamilton anticipated the possibility that the national government might need to apply force in the states, and the guarantee clause was one provision of the Constitution that granted this authority for the specific case of anti-republican revolution (Hamilton, Madison and Jay 2003, 173-178).

Therefore, the guarantee clause of Article IV, Section 4 was a pro-natural rights republican provision in the Constitution, and indirectly, an antislavery provision.⁵ The

⁵ Some abolitionists and Republicans believed that the guarantee clause prohibited slavery. Cf. Wiecek (1972, 133-243); Spooner (1845, 123). In public, Madison denied the Constitution prohibited slavery to quell Virginian leaders' fears that the Constitution did not secure their hold on the slaves they had, even though they simultaneously professed to deplore slavery. Madison in the Virginia ratifying convention: "There is no power to warrant it [abolition], in that paper [the Constitution]" (Elliot 1861, III:622). Madison is either contradicting his private thoughts, or in his view the guarantee clause was hostile to slavery and hostile to its political effect, though not abolishing slavery.

authority and meaning of the guarantee, with respect to slavery in particular, is entirely defensible. However, it is reasonably doubtful that republican American statesmen in the early national period could have called on the authority of Article IV, Section 4 to remedy the anti-republican tendencies and to limit slavery in the southern states with success. They chose to rely on the peaceful influence of the other republican states within the union to accomplish the object contemplated by the supporters of the guarantee. As long as the union continued to develop on a republican, antislavery trajectory, American statesmen would not need to reach for it as a last resort. National legislation could assist in the process of checking slavery's increase and strengthening the republican character of the states in the union. The Northwest Ordinance and the abolition of slave importations could be expected to contribute to that end.

The policy of relying upon peaceful agencies to "republicanize" all the states of the union ran a dangerous risk. If the peaceful agencies failed to steadily diminish slavery and pockets of proslavery statesmen replaced republican statesmen in sufficient numbers, the power of the clause could diminish. Proslavery statesmen could point to the pre-existence and toleration of slavery in the early national period; they could also point to early statesmen's abstention from employing the authority of clause to end slavery as proof that the framers of the clause did not view slavery and republicanism as essentially incompatible. They could reinterpret the meaning of republicanism consonant with slavery, and claim that their new interpretation agreed with the founders' interpretation of republicanism. Subsequent history after the founding generation faded bore out this risk.

Republicanism and slavery had to co-exist in the early national period because national attacks on slavery ran up against limits, defended primarily by South Carolina

and Georgia. Those clashes in national councils revealed the strength of Virginia's republican faction at this time. They also revealed how little South Carolina and Georgia's national representatives regarded natural rights republican principles, which implicated the strongly anti-republican character of their states. Unlike Virginia's republicans, their leaders did not betray any internal agony over the continuance of slavery.

Jefferson's reported draft of the *Declaration* blamed slavery on the British monarchy, and applied the natural rights claims of American republicanism to his condemnation of the royal slave trade policy. The British king had

waged cruel war against human nature itself, violating it's [sic] most sacred rights of life & liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery (Jefferson 1984, 22).

Had Jefferson's language stood, the *Declaration* might have warranted a more aggressive antislavery policy. But South Carolina and its neighbor Georgia demanded its deletion, which was the longest passage deleted from the reported draft. In his autobiography, Jefferson introduced his original draft of the *Declaration* with the changes marked, because "the sentiments of men are known not only by what they receive, but what they reject, also" (22). South Carolina and Georgia's demurrals made their anti-republican sentiments known by this rejection, and other rejections of early antislavery measures.

According to George Bancroft, colonial assemblies had often passed legislation banning the foreign importation of slaves, but always collided with the royal veto. The monarchy knew that freemen could prosperously cultivate American plantations, and it feared that they would tend to become independent of Britain in their policy and in

consequence of the political character they would acquire without the strong presence of slavery. For that reason, the monarchy preferred to fasten African slavery upon the colonies, since imported slaves would not (or could not) “profess republicanism.” Slavery’s firmer establishment would assist the organic manufacture of governments bearing stronger natural affinity for, and stronger dependence upon, the British crown. The collision between Virginia legislators and the British king over the slave trade was an early collision between anti-republican slavery and developing American republicanism. Both slavery’s political effect and immoral character contributed to the revulsion that American republicans bore to it. The slave trade proscription in the *Declaration* was therefore a pro-republican, anti-monarchic position (Bancroft 1846, 415-416).

But unique among the thirteen colonies, South Carolina began its existence with plantations almost solely employing slaves, and did develop unusually close ties with Britain and the crown, as royal slave trade policy so aimed. Almost half of all slaves arriving in North America from 1700 until independence arrived in Charleston, South Carolina. Though the royal governing board had banned slavery in colonial Georgia, with the immigration of slaveholders from South Carolina, Georgians pressured the royal board to allow the importation of slaves, which was granted. Jefferson noted that, up to the moment of independence, South Carolina and Georgia “had never attempted to restrain the importation of slaves..., and on the contrary still wished to continue it” (Jefferson 1984, 18). The South Carolina-Georgia objection to Jefferson’s slave trade proscription checked a possible reversal of those states’ tendency to develop their political societies closer to monarchism (Friend’s *Intelligencer* 1854, 140; Reese 1963,

47-51; Wood 1974; Wood 2007; Rogers and Taylor 1994, 38; Weir 1997, 173; 1999, 396; Edelson 2006, 4).

Prior to the Northwest Ordinance that prohibited slavery in specific territories the nation then held, Jefferson reported to the Articles of Confederation Congress a land ordinance prohibiting slavery in all western territories ceded or *to be* ceded. This ordinance required that “their respective governments shall be in republican forms and shall admit no person to be a citizen, who holds any hereditary title.” Furthermore, it stated that, after 1800, “there shall be neither slavery nor involuntary servitude” in any of states formed out of those territories. The text of this ordinance separates republican forms of government from hereditary titles and slavery, suggesting that the separation designates the incompatibility of republicanism and slavery, on the one hand, and the compatibility between hereditary titles and slavery, on the other. In banning slavery from every state that entered the union formed from all western territories after 1784, the ordinance appeared to ban the anti-republican institution. North Carolina objected to the antislavery language, South Carolina seconding the objection. Due to the peculiar requirements of the Articles of Confederation, the antislavery provision fell, even though six versus three states, and sixteen versus seven representatives voted for the antislavery provision. By this momentous event, in which South Carolina played an obstructing part, the republic nearly missed forever constraining slavery to only those states where it already existed. Instead, the Congress enacted the Northwest Ordinance that prohibited slavery in then-held United States territories but not in territories acquired in the future (Greeley 1867, 39; United States Senate 56 Cong 1, 334-335; Jefferson 1904-1905, IV:329-330).

Although it was generally acknowledged that due to the objections of South Carolina and Georgia, the Constitution of 1787 delayed congressional authority to abolish the slave trade until 1808, delegates to the Massachusetts ratifying conventions yet believed that the Constitution had weakened it unto death. Delegate Thomas Dawes said, “Slavery is not smitten by an apoplexy, yet it has received a mortal wound, and will die of a consumption” (Elliot 1861, II:41). General William Heath believed that the Constitution permitted the importation of slaves to existing states only, since Congress had declared that “the new states shall be republican, and that there shall be no slavery in them” (115). At that time, the Northwest Ordinance governed all territory held by the United States. He assumed his colleagues in the convention understood, as he did, that republican government and slavery were irreconcilable, and probably that all states carved out of territory acquired in the future would prohibit slavery as the Northwest Ordinance did. But Heath’s comment also meant that in their view, South Carolina and Georgia inveighed against republican reform by insisting on the slave trade’s continuation.

As president of the Pennsylvania Society for the Abolition of Slavery, Benjamin Franklin petitioned the House of Representatives in 1790 to “loosen the bands of slavery” and to “devise means for removing this inconsistency from the character of the American people.” The petition held that natural equality was the basis of “the American creed” and of the Constitution, which vests powers in the Congress for “promoting the welfare and securing the blessings of liberty’ ... without distinctions of color.” On that basis, the petition avowed that slaves “were unlawfully held in bondage.” The resulting debate proved that, with regard to the representatives from Georgia and South Carolina, slavery

was not inconsistent with their character, which was of another, anti-republican kind. While violently urging against further consideration of the memorial, James Jackson from Georgia mentioned that nothing but “civil war” could make them part with their slaves, and that slavery was “the basis for the feudal system,” as if that redounded to slavery’s credit. Siding with Jackson, William Smith from South Carolina said that the slaves “were acquired under a former Government” (the monarchy) and that his state would never have agreed to join the union had the Constitution prohibited slavery. He explained that his state had joined the union “from political, not from moral motives,” suggesting that they had joined for political advantage, and not due to concurrence in the moral principles upon which the new union had been founded. Without taking sides in the debate, James Madison intervened to quell hot tempers and end the conflict societies (*Debates of Congress*, 1 Cong 2, 1239, 1242-1244, 1246-1247).

Notably absent from their arguments are any “positive good” defenses of slavery, which suggests that if they believed in slavery’s “positive good,” they knew the overwhelming repugnance of those notions, even to Virginia, as the roll call proved. Tellingly, only the delegations from Georgia and South Carolina voted unanimously against committing the memorial to committee for further consideration. Yet those states had only 29,000 and 107,000 slaves, respectively, out of a national slave population of 692,000, according to the 1790 census. But the delegation from Virginia, which had a 1790 slave population of 292,000 (almost half the slaves in the nation), voted 8-2 in favor of considering the national abolition of slavery. This difference in positions of the more slave-laden Virginia and the less slave-laden South Carolina and Georgia suggests that some other motive besides economic interest in numbers of slaves impelled them to

defend the institution. Based on their representatives' remarks, the motive appeared to be grounded in the character of their respective political societies. By the testimony of Jackson and Smith, the political character of South Carolina and Georgia appeared to be closer to the monarchy from which their states had broken, and less republican, according to the standards of leading founders.

A relatively recent study quantified just how politically different South Carolina and Georgia were from the rest of the United States from the moment of the Constitution's ratification. Charles Roll studied the apportionment of delegates to each state ratifying convention and discovered that those state conventions were unusually unrepresentative of the general population. A majority of the South Carolina and Georgia delegates were drawn from 13.1 and 12.8 percent of their respective populations (Roll 1969, 22). William Smith's explanation, that South Carolina joined the union for political, not moral, motives is believable, since the organization of his state's ratifying convention flouted the moral principles of natural rights republicanism underwriting the creation of the union.

Constitutional Development in the Antebellum South

The contrast between Massachusetts and Virginia raises a methodological point. A written constitution – a blueprint for government – does not alone determine the actual system of government of the political society.⁶ Conditions or circumstances combined

⁶ Scholars still tend to judge political regimes by constitutional texts exclusive of their provisions in combination with conditions and circumstances. For example, James A. Gardner argues that the South was not distinctive in comparison with the North, and points to the similarity of the state constitutions (and the similarity of the constitutions of the United States and the Confederacy) for his evidence (1998).

with that blueprint determined the character of the actual system of government or political regime. Throughout the antebellum period, the republican spirit radiated from the written state constitutions of slave states and free states alike. All used similar language, concepts and institutional designs. But similar written constitutions, combined with slave society and free society, produced different results. Adams's property qualification in the Massachusetts constitution aimed at improving the republican administration of government. Whether or not it achieved the desired result, it did not induce a change in the government away from its republican form. The people there were still effectively sovereign. But in the Virginia constitution, the property qualification lodged the sovereignty in a minority of landholders and produced (or preserved) oligarchy.

Unfortunately, this methodological point is largely moot in considering secondary scholarship, since few scholars have attempted to write comprehensive accounts of antebellum slave state government. As late as 1989, Donald Fehrenbacher observed, "There is no satisfactory general history of state constitutional development from the Revolution to the Civil War. In fact, multi-state treatments of any kind are exceedingly rare" (1989, 3). He does cite Fletcher Green's *Constitutional Development in the South Atlantic States, 1776-1860: A Study in the Evolution of Democracy*, with the comment that Green's work "still stands by itself."

Green remains the most influential scholar on constitutional development in the antebellum slave South. He sometimes does tend to draw his conclusions regarding the character of slave state governments from the texts of their constitutions, legislative journals, and speeches. He too often refrains from taking into account conditions,

especially variations in wealth, and the effect of rising slave populations and population distributions. For example, in his article, "Democracy in the Old South," he compares antebellum Massachusetts and Louisiana on the scale of democracy because both states' constitutions retained tax paying requirements for suffrage on the eve of the Civil War (1946, 15n16).

His account of slave state constitutional development begins from the premise that northern and southern states all tended to restrict democracy, due to the novelty of democracy in America and the equal prevalence of anti-democratic state constitutions, North and South. In his account, the Jacksonian movement originated in the South, picked up Jefferson's democratic ideas, and led the nation in democratization, revising southern constitutions and therefore southern governments in the 1830s. This reformed the planter aristocracy's disproportionate control of political power. He contends that they were a social aristocracy, not a political aristocracy, after these reforms, and were probably not much more aristocratic, politically speaking, than northern states (1930, 201-253; 1946).

Green acknowledges that animosity between the upcountry common people and the low country or black belt planter class pitted the two classes against each other in the contest for reform. But he characterizes this conflict as "sectional," that is, as disagreements patterned by geography, and he characterizes the defenders of the status quo ante as "conservatives," rather than as rulers (1930, 142, 180). In their dissatisfied language quoted by Green, the upcountry people express extreme vituperation at having been subjugated by the planter class. He quotes the *Western Carolinian*, calling the "whole people... to join forces and 'by an unanimity and promptness of action, break to

pieces the trammels of aristocracy, and show to the enemies of republican equality that the sons of freemen will still be free” (1930, 208). After accumulating many quotations of this kind from upcountry sections, Green might have seriously considered that these were genuine calls by a ruled class for revolution in the form of southern government, not sectional calls to reform government. He might have considered sectional lines within the states as regime lines generally separating the ruling class, determined to preserve their rule, and the white ruled class, determined to assert their sovereignty. To be sure, the states during the Jacksonian Era did implement reforms: the removal of property qualifications for voting, provisions for the direct election for sheriffs, judges, governors, etc. The question is if these reforms fit Green’s account that they produced greater “democracy” from lesser “democracy.” Or did they attempt to change oligarchy into democracy? And did they succeed?

More likely, as the republican southern statesmen of the founding generation passed from the stage, they were replaced by a principled proslavery oligarchy more determined to rule over the people in the slave South, dedicated to the new ruling principle of natural inequality, and ready to ignore or repudiate natural rights republicanism. The Jacksonian movement was probably a southern people’s movement against, and in reaction to, the ruling class. In the free states, the Jacksonian reforms made less material difference. Almost all free males in Massachusetts could already vote before the removal of a property-holding requirement.

In fact, Massachusetts writer and statesman Fisher Ames predicted the advent of Jacksonian reforms in 1805 before he had ever heard of General Jackson. He located the cause of the democratic movement in southern aristocratic government. Some of the

aristocracy, Jefferson's Democratic-Republicans, touted democratic principles and reforms and allied themselves with the disenfranchised people: "This is the republicanism of the aristocracy of the southern nabobs" (Ames 1854, I:62). Ames called this faction of aristocrats "Jacobins." He believed they would turn the people against their fellow members of the ruling class, just as French aristocrats, sympathetic with the revolutionaries, allied themselves with the people against their own class. Because the southern people were discontented under the aristocracy and were not accustomed to genuine republican government as the New England people were, they would pursue a more radical democracy. Ames did not wish for the success of either oligarchy or radical democracy, and did not believe either side would perfectly prevail, unless the people found their Caesar (Ames 1854, II:353-354, 362-363, 371-373).

In a more charitable light, these perceptive remarks explain the origin of the Jeffersonian-Jacksonian movement. The reason why the aristocratic Jefferson favored a more democratic republicanism in governmental structure than plain John Adams ever admitted into his reflections may be because genuine popular sovereignty could not be established in the slave South without engrafting more democratic institutions into its governments in order to revolutionize them. Massachusetts government did not need this radical prescription. In other words, both Adams and Jefferson reasoned from the same starting point in natural rights republican principles. But in considering the structure of government that would render government genuinely accountable to the people, the slave South needed more democratic institutions to overcome anti-republican conditions there. The rage for Jacksonian reforms in the antebellum slave South gives the impression of greater southern democracy, but it may actually reflect ongoing regime conflict between

the ruling class and the ruled people. In any event, these reforms did not take away the slaveholding class's hold on power by 1860.

Of the state constitutions of eleven secession states, five constitutions in force at the time of secession enumerated slaves when apportioning legislative representation. This enumeration of slaves placed power over these state in the hands of the slaveholders.

Florida illustrates the case of enumerating slaves by the "federal ratio," or counting slaves as three-fifths of a person. In the Florida constitution of 1838, Article IX, Sections 1 and 2 enumerated free persons plus three-fifths of slaves in apportioning representation to both the lower and upper house of the state legislature (Thorpe 1909, II:676). According to the 1860 census, Florida's slave population was 61,745, and free population stood at 78,679. Of Florida's 36 counties, seven (Leon, Jefferson, Marion, Gadsden, Madison, Alachua, and Jackson) counted 39,795 slaves and 26,518 free persons for a total population of 66,313. Seventeen counties (Lafayette, Franklin, Clay, Volusia, Levy, Santa Rosa, Washington, Bradford, Hillsborough, Hernando/Benton, Orange/Mosquito, Monroe, Walton, Taylor, Brevard/St Lucie, Holmes, and Dade) counted 7,031 slaves and 27,199 free persons. Thus, although the first group of counties contained 26,518 free persons, they possessed 62 percent more representation and more control over legislation than the second group of counties with 27,199 free persons and few slaves. Of course, the slaveholders would be concentrated where the slaves were concentrated, and in consequence of enumerating slaves in the apportionment, they exercised superior political power.

The Georgia constitution amended in 1843 (Article I, Sections 3 and 7) also enumerated free persons plus three-fifths of slaves for apportioning representation to the

lower house, but assigned one senator to two contiguous counties (Thorpe 1909, II:808). However, the counties greatly varied in slave population. According to the 1860 census, the 20 counties with the lowest slave population (9,347 slaves) contained 93,167 free persons. But the 20 counties with the highest slave population (134,978 slaves) contained 60,371 free persons. The free population in the latter counties would receive equal senatorial representation and 70 percent more representation in the lower house of the legislature, despite one-third less free population. Again, where slaves were concentrated, slaveholders were concentrated, and so this augmentation of their power gave them political superiority over the legislature.

By the 1835 amendment to the North Carolina constitution (Article 1, Section 1), that state employed the federal ratio when apportioning representation in the lower house of the legislature, which again gave slaveholders power over the lower house. However, the state apportioned representation to the upper house according to taxes paid, or in other words, directly to wealth. The dominant source of wealth would be expected to be in land and slaves, directly placing the senate in the control of the slaveholders (Thorpe 1909, V:2794-2795).

Louisiana illustrates the case of enumerating total population, including slaves. In the Louisiana constitution of 1852, Articles 8 and 15 enumerated total population for apportioning representation in the lower and upper houses of the state legislature (Thorpe 1909, III:1412, 1414). According to the 1860 census, Louisiana's slave population was 331,726, and free population was 376,276. But the slave population, enumerated for the purposes of apportioning representation, was unevenly distributed across the state's surface, as it was in every other state. Of Louisiana's 47 parish counties, eleven

(Concordia, Tensas, Madison, West Feliciana, St Charles, St Mary, Carroll, West Baton Rouge, Iberville, Pointe Coupee, and East Feliciana) contained 28,794 free persons and 119,845 slaves, for a total population of 148,639. Those 28,794 free persons would have more than three times the representation, and control over state legislation than 14 parishes (Claiborne, Lafourche, Bienville, Jackson, Caldwell, Union, Washington, St Tammany, Jefferson, Vermillion, Livingston, Sabine, Calcasieu, and Winn) with 73,575 free persons and 44,547 slaves, amounting to a total population of 118,122.

The Virginia constitution of 1850 illustrates the case of the fixed formula accounting for both slaves and free persons; it struck a balance, apportioning representation to heavy and low slaveholding sections by no mathematical formula (Green 1930, 292, 294; Thorpe 1909, VII:3833-3835). Although western Virginia exceeded slave-heavy eastern Virginia in free population, the east received 30 state senators to the west's 20, while the west received 82 state representatives to the east's 68 state representatives. This was deemed a major change to eastern Virginia's domination of the state, even though the slaveholding section retained control of the state senate. But it is unclear how much domination the planter class in the east lost. How the state representatives were apportioned, for example, is also unclear. Some heavy slaveholding pockets in central Virginia could have taken some of western Virginia's state representatives. Comprehensive studies ought to take these finer points into account, since it is clear that the slaveholders resisted any loss to their power (Green 1930, 180ff, 293).

It is possible that nonslaveholders or low-slaveholders living in slave-heavy, overrepresented districts might have run for office. If this regularly occurred, it could not

be said that these apportionments based on slave enumerations gave power to the slaveholders. Having less comparative wealth and education than the slaveholders in those districts, nonslaveholding candidates would not seem to have much chance.

Fehrenbacher writes that the question of whether to enumerate slaves “remained a provocative issue in southern constitutional politics throughout the antebellum period” (1989, 12). That makes sense since this was the easiest and most direct method the slaveholders could use to regularly obtain power. If states apportioned legislative representation on the “white basis,” that is, by enumerating only free persons (whites), the slaveholders would have to preserve their power over the states by using other methods. Fehrenbacher adds that slaveholders preferred enumeration by total population and nonslaveholders preferred the “white basis”; that this division mirrored the North-South division in the constitutional convention of 1787. However, he does not extend the parallel to the different systems of government each rule of apportionment produced, which explained why each party favored opposite rules of apportionment. In his brief review of antebellum southern constitutional development, he too, follows Green in subscribing to the democratic thesis.

In the contest over the “white” basis or “black” basis, the oligarchy sometimes acknowledged that ruled whites knew the source of the oligarchy’s power and might do something about it if they acquired more influence in government. In 1851, George Blevins, a state representative from the heart of Alabama’s black belt, Dallas County, argued for enumerating slaves, and quoted John C. Calhoun that the white basis was ““the entering wedge of abolitionism”” (Dorman 1935, 97). To modern Americans, the “white basis” sounds racist, and enumerating “total population” sounds race-neutral. But

Calhoun, by way of Blevins, indicated that the employment of the white basis might lead to the emancipation of black slaves. This makes sense from a political perspective. The white basis would reduce the slaveholders' political power, and the nonslaveholding whites, then better represented in government, might try to abolish slavery, the source of the slaveholders' power over them. What Calhoun understood and feared, American Founder Benjamin Rush understood and welcomed. Rush preferred legislative apportionment by free population because it would "have one excellent effect, that of inducing the colonies to discourage slavery & to encourage the increase of their free inhabitants" (Kromkowski 2002, 171). Rush assumed, like Calhoun did, that nonslaveholders resented slavery. In fact, antebellum southerners John Jacobus Flournoy (1835) and Hinton Helper did speak out for abolition on behalf of nonslaveholders, because slavery had brought about their political subjugation.

The difference between slave states that enumerated slaves and free states was that the free state constitutions did not grant additional political power to the employers of disenfranchised laborers. To be comparable, the free state constitutions would have apportioned representation to the state legislatures on the basis of total population. But enumerated seamen and loom spinners employed by the owners of whaling vessels and textile factories would not be allowed to vote, leaving the owners politically dominant. Yeomen farmers in middling agricultural districts away from ports and factories would have become a ruled class.

South Carolina did not enumerate slaves in its state constitution but used other methods by which the slaveholders dominated the state. The constitution in force at secession was framed in 1790 and amended in 1808. By that constitution, the state

apportioned half of the legislative districts in the lower house by an equal division of taxation paid to the state, and half by an equal division of white population (Thorpe 1909, VI:3266). Through this provision, weighting wealth, the slaveholders maintained control of the lower house (Sinha 2000, 13). The constitution apportioned districts in the upper house to the parishes, which were fixed, and most numerous where slavery was the most dense. Manisha Sinha contends that the senate “remained a stronghold of the rotten borough lowcountry parishes.” In addition, the property qualifications for representative (Article I, Section 6), for senator (Article I, Section 8) and for governor (Article II, Section 2) were quite high, insuring that citizens of modest means could not stand for those offices (13; Thorpe 1909, VI: 3259, 3262). And finally, the legislature appointed almost all state and local offices, including the governor, and appointed electors to vote for candidates for President of the United States (Fehrenbacher 1989, 11). Yet, Article IX, Section 1 of the 1790 constitution declared, “All power is originally vested in the people; and all free governments are founded on their authority” (Thorpe 1909, VI:3264). It is not clear how the government registered the authoritative will of the people.

Another method by which the slaveholders could retain power was by requiring the people to vote *viva voce*, or by open ballot voting with live voice. Five secession states’ constitutions in force in 1860 prescribed voting in this manner: Article IV, Section 8 of the 1836 Arkansas constitution; Article VI, Section 17 of the 1838 Florida constitution; Article IV, Section 2 of the 1798 Georgia constitution; Article I, Section 4 of the 1835 amendments to the 1776 North Carolina constitution; and Article III, Section 4 of the 1850 Virginia constitution (Thorpe 1909, I:271, II:675, 800, V:2797, VII:3833).

In his memoir *The End of an Era*, John Sergeant Wise, son of Virginia Governor and Confederate General Henry Wise, recalled witnessing *viva voce* voting when he was a boy and his father, candidate for governor:

Father being absent, the young cousin above referred to represented him at the polling-place, and took me with him. In those days, voting was done openly, or *viva voce*, as it was called, and not by ballot. The election judges, who were magistrates, sat upon a bench with their clerks before them. Where practicable, it was customary for the candidate to be present in person, and to occupy a seat at the side of the judges. As the voter appeared, his name was called out in a loud voice. The judges inquired, "John Jones (or Bill Smith), for whom do you vote?" — for governor, or for whatever was the office to be filled. He replied by proclaiming the name of his favorite. Then the clerks enrolled the vote, and the judges announced it as enrolled. The representative of the candidate for whom he voted arose, bowed, and thanked him aloud; and his partisans often applauded (Wise 1899, 55; Evans 1917, 5).

Obviously, this method of voting exposed the elector to the candidate's control by means of bribery, pressure or intimidation. In addition, it could nullify the effect of one central reform of the Jacksonian democracy movement – the elimination of property qualifications for voting. If the elector were landless or a tenant, but had to express his choice by voice vote at the polls, the individual's dependency on the landlord or employer could more easily induce him to vote as the landlord directed. Madison expressed this concern in the federal convention of 1787, when he predicted that if the propertyless obtained suffrage, they would become the "tools of opulence and ambition" (Madison 1987, 404). His intention was not to limit the republican liberty of the people; rather, he intended the opposite. In the same context, he said, "The right of suffrage is certainly one of the fundamental articles of republican government," and that a "gradual abridgment of this right has been the mode in which aristocracies have been built on the ruins of popular forms" (403). The apparently democratic reform of giving suffrage to

the propertyless would actually augment the political power of the oligarchy, not restrict it, and Madison wished to check that result. *Viva voce* voting assisted the oligarchy, under democratic guise, in seizing the fruits of the democratic reform.

New York is a good parallel case to illustrate the impact of the closed ballot. The ballot mitigated Madison's worry concerning propertyless voting, aggravated by *viva voce* voting. Like the southern slave states, New York had many slaves but early substituted the closed ballot for *viva voce* voting. Article VI of its 1777 constitution ordered an experiment of the secret ballot at popular elections, due to the opinion of "the good people of this State that voting at elections by ballot would tend more to preserve the liberty and equal freedom of the people than voting *viva voce*" (Thorpe 1909, V:2630). The experiment was done and deemed successful in two elections, and by 1799 the state instituted a canvassing systems to protect the integrity of the ballots and their accounting (Hough 1872, II:64). By Article II, Section 4 of its next constitution, framed in 1821, voting by ballot in "all elections by the citizens" became a constitutional fixture in New York government (Thorpe 1909, V:2643).

According to the 1790 census, New York had the sixth highest number of slaves in the nation, behind Virginia, South Carolina, North Carolina, Maryland, and Georgia. New York had 21,193 slaves and Georgia, 29,264. However, well after the gradual emancipation law's enactment in 1799, its landholding patterns still resembled the great plantations of the South. The landlords lived like nobility in large manor homes presiding over massive estates. In 1785, Stephen Van Rensselaer owned 750,000 acres in Albany and Rensselaer counties, upon which around 1,000 tenants lived. Annually they visited the manor home to pay their respects and their rent (Huston 2000, 11). The royal

government had granted title to these lands before the revolution, and between independence and the 1820s, large estates encompassed millions of acres and thousands of tenants (13). Thousands of tenants lived on each of the largest estates (14). Relations between the tenants and land barons were semi-feudal, obeisance on the one side, paternalism on the other.

In *Land and Freedom* (2000), Reeve Huston shows that this system was permanently altered through electoral politics. For their part, the tenants sought their natural right to the soil in civil title. The landlords could and did employ lawyers and political favors to check the political agitations. They also attempted to sway the tenants' votes (32). In Huston's account, the collection of the tenants' votes was their power, and eventually they won sufficient influence to bring about relief. The New York parties had to respect the votes of the anti-rent movement in the 1840s or suffer the electoral consequences.

Had the New York state government not adopted the closed ballot in 1777, and re-adopted it in their 1821 constitution, these many thousands of tenants would have had to risk their subsistence by voting their conscience. Undoubtedly, the closed ballot assisted them in expressing their voice through the political system, and then through legislative enactments. The history of New York's closed ballot complements the history Huston tells, and provides a striking contrast to Georgia, which had a number of slaves nearly equivalent to New York in 1790 and *viva voce* voting, whereas New York did not. By 1860, Georgia had 902 farms exceeding 999 acres, and New York had only 21 (cf. Appendix C).

“Wealth,” the *Pennsylvania Gazette of the United States* editorialized in 1790, “where elections are free, if not attended with some degree of ability, is no recommendation to a candidate; but where the *viva voce* method is adopted, it is the great, sometimes the only requisite” (November 27, 1790). The editorialist named closed ballot elections “free,” and contrasted them with *viva voce* elections, in which wealth could dominate and elections were not free. By 1860, only one free state constitution prescribed *viva voce* voting in elections by the people; many specifically prescribed the ballot in elections, while at the same time prescribing *viva voce* voting by legislators. The one free state was the new state of Oregon, but that prescription was supplemented by an escape clause. Article II, Section 15 of Oregon’s 1857 constitution required *viva voce* voting “in all elections by the people, until the legislative assembly shall otherwise direct” (Thorpe 1909, V:3002).

In 1797 the *Pennsylvania Aurora General Advertiser* printed a letter by a militia battalion from Lexington, in Rockbridge County, Virginia, to its state legislature, demanding a state constitutional convention and insisting on closed ballot elections. The letter declared that “unequal representation is a grievance... for as slaves and citizens are so distant characters..., it is utterly repugnant to democratical or republican principles, that *any number of citizens* in a commonwealth, should have *more voices* in the legislative body, than another equal number.” The militiamen were complaining about Virginia’s malapportioned legislature, granting slaveholders additional power in the government on account of owning slaves. In the militiamen’s demand for a convention, they anticipated the oligarchy’s mode of stacking the deck against them: “And, considering the evils which arise from the present mode of election, *viva voce*, especially

when men offer to serve, we with you to insist [sic] that the election of the members of the convention shall be by ballot” (September 11, 1797). Virginia preserved *viva voce* voting until after the Civil War, but when western Virginia seceded from Virginia during the war, it framed a constitution for the new state of West Virginia that instituted the ballot and abolished *viva voce* voting (Scott 1987, 290).

The constitutions of the southwestern slave states, especially Alabama’s constitution, appear to lay a foundation for a democratic republic. In his study of Alabama constitutional development, Malcolm McMillan concludes that the Alabama constitution of 1819 was more democratic than other states on account of the frontier influence (1955, 44-6). Its distinguishing democratic features included: the rejection of the federal ratio for representation in favor of enumerating whites only; “no property, tax-paying or militia qualifications for voting or for office holding” (45); the authority of the legislature to override governor’s veto with simple majority (44-5); and the governor’s election by popular vote, rather than by both legislative houses (45). These features of the constitution do look democratic. But was the government democratic?

In the 1866 hearings of the Reconstruction Committee published in the committee’s report, testimony by an Alabama lawyer, Mailton J. Safford, indicated that the slaveholders had controlled the Alabama government. Safford was born in Dallas County and resided in the capital, Montgomery; both of these places were in the black belt. He professed to be well acquainted with prominent men in the state. He explained that the northern population of the state had “for a long time felt that the free institutions of the north were more calculated to advance their interests than the slave institutions of the south. A great many of them showed their adhesion to the United States government

during the war.” The people there “might have been called a non-slaveholding population, a poor white population.” He also noted that “there has always been a certain degree of antagonism between them and the planters occupying the rich interior counties of the State.” The planters, the disloyal men, had “heretofore controlled the reins of the government” (*Report of the Joint Committee on Reconstruction* 1866, 59, 61).

It is difficult to ascertain within the scope of this study how Alabama planters became rulers under a democratic constitution, but it is clear that slaveholders ruled. Table 1 shows that in 1860, 51 percent of state representatives and 61 percent of state senators owned ten slaves or more, though only 13 percent of free Alabama males owned more than ten slaves. That table is based on the 1860 census and Ralph Wooster’s headcount of antebellum southern legislators, and it clearly shows that by whatever means the slaveholders used to acquire power in the slaveholding South, their class certainly did hold it (Wooster 1969, 125-153; Wooster 1975, 163-172). Remarkably, and despite his painstaking research, Wooster adheres to the democratic thesis of the South throughout his books. Some of the southern state governments are “progressive” and some are “conservative,” but all are democratic in his judgment. Even South Carolina he describes as “the least democratic state in the lower South” (Wooster 1969, 109). If that state – in which its leading men hissed at “King Numbers” more than any other – was democratic at all, then, to paraphrase John Adams, every government is democratic, and the word democracy is meaningless.

CHAPTER VIII

CONCLUSION

The Two-Regime Hypothesis

As the Civil War drew to a close in the spring of 1865, a *New York Times* editorialist connected his reflections on the news about the Confederate Congress to the cause of the war. The recent conduct of the Congress “exhibits more clearly the rapid progress which that body has made toward pure oligarchy.” Southern leaders had masked their oligarchy in republican forms and claims, but since the establishment of the Confederacy, they had dropped the mask:

Of their dislike to a broad Democracy like ours, we have been long aware. But the recent proceedings of their Congress prove that even a Government of freeholders was not what they aimed at, but a Government of wealthy men, large landed proprietors – what in short, Aristotle calls an oligarchy, without any responsibility, or any show of responsibility, to the rest of the community.... Much of the practical interest of this matter is of course destroyed by the probability that the present Confederate Congress is the last that will ever meet. But it will, nevertheless, always possess considerable importance for the philosopher and historian, as a very suggestive indication of the course that the Confederacy would have run, had it succeeded – of the secret aims of its leading managers, and in fact as a key to many of the most singular problems of “this strange eventful history” (March 12, 1865).

But American “philosophers and historians” – and political scientists – lost this key to our understanding of that “strange eventful history.” The time is long overdue to recover it.

If domestic slavery did produce political oligarchy, as the Republicans maintained and as this dissertation project maintains, then, for a large part of the period from the

American Founding to at least the Civil War, the United States was divided between two fundamentally different, regional political regimes, struggling for preeminence on the American continent. Early American political development can be coherently reinterpreted according to this two-regime hypothesis. Each political regime followed increasingly independent developmental paths; each regime interpenetrated the other and developed in reaction to the other's development; and each was tenuously yoked to the other, together within the union, by loosening social and political ties, increasingly strained by developing regime difference. Sectional strife and the conflict over the territories from the Missouri Compromise forward can be reconceived as inter-regime conflict and competition between oligarchy and republicanism. State rights constitutionalism increasingly became a defensive doctrine, as in the case of nullification on the one hand and liberty laws on the other, protecting the locales of each regime against national laws hostile to each regime.¹ State rights doctrine's corollary, state sovereignty doctrine, can also be reinterpreted in regime terms. State sovereignty was a means by which states within one regime could exert disproportionate influence over the national government of the union, and by extension, over the other regime. In addition, state sovereignty asserted the legitimacy of the regime's pursuit of separation and independence, if the national government and the other regime did not bow to its will.

¹ Bensel compares the state activism of the Union and the Confederacy, and finds that the Confederate central government was more energetic than the Union. Yet, before and after the Civil War, southern statesmen invoked the states' rights doctrine obstructing the operations of the United States government, appealing to the principle of local self-government in opposition to "centralization." He regards this anomaly as proof that states' rights doctrine was pragmatic and tactical, not principled. So what was their tactical, pragmatic goal? Bensel says it was to oppose "hegemonic influence of the northern industrial economy" (1990, 13). A two-regime explanation is that southern statesmen used states' rights doctrine in the national councils of the United States to protect their oligarchic regime from republicanism, and generally dropped the states' defense in the national councils of the Confederacy because the oligarchy formed that national government.

Party moderates like Stephen Douglas can be understood in inter-regime terms. Their efforts to preserve union strained to keep inherently hostile regimes yoked together. Their compromises and appeasements to each side, and the new principles they invented to find rapprochement, increasingly could not bridge the regime divide.² The dealignment, realignment and reconstitution of the political parties in the 1850s can be reconceived as a regime realignment of political parties: each major party finally aligned to a contrary, sectional political regime. The sectional competition to capture or retain control of the national government was determined by each side's attempt to nationalize its regime form, republican or oligarchic. The Civil War can be reconceived as an inter-regime war between the oligarchic and republican political societies, "divided by contrary principles," the principle of natural equality versus the principle of natural inequality. Finally, Reconstruction can be reconceived as a moment as important as the American Founding itself, an attempt to reunite the nation on the restored principles of American republicanism, requiring regime change in the South, and the re-founding the Republic.

A two-regime theory of American Political Development challenges most current theories accepted by political science and history. In exceptionalism literature, scholars have debated which political tradition has determined the development of American political history. In periodization literature, scholars have debated where in time to properly assign realignments or "constitutional moments."³ Contributors to both debates,

² Douglas reinterpreted the founders' idea of popular sovereignty, eliminating the natural rights basis of majority rule as Lincoln frequently argued. By Douglas's popular sovereignty concept, if a majority of whites agreed, slavery could expand. One could say that Douglas's reinterpreted popular sovereignty was the term by which the two regimes might agree to preserve union.

³ Skowronek (1982) determines that there were two state eras: the state of "courts and parties" and the Americanized European state; Ackerman (1991) determines that there were, three constitutional moments:

whether propounding single,⁴ multiple⁵ or amorphous⁶ traditions, or propounding differing periodization schemes, have all assumed the singularity of the political whole. That is, they assume that, however much America has changed over time, in every point in time since Independence, the “A” of American Political Development has always been “one thing,” in the sense of one political whole.

These theories cannot account for the establishment of the Confederate States of America, which certainly did divide the “A” of American Political Development. By itself, the Confederacy’s founding partially passes the test of political development offered by political scientists Karen Orren and Stephen Skowronek: “a durable shift in governing authority” (Orren and Skowronek 2004, 123). The founding of the Confederacy represents a supreme shift in governing authority, but it did not endure. However, northerners and southerners inter-subjectively agreed that less sweeping shifts preceded – and explained – that great shift. Republican Senator Charles Drake of Missouri recounted,

You know, and all candid observers know, that the people of the United States present two distinct, and in some respects, uncongenial developments.... Of the two developments one is in its nature and principles essentially democratic...; the other, in those points, essentially aristocratic; the former belonging to the Northern States, the latter to the Southern. Each obeyed the law of its own condition. The absence of Slavery and the universality of free labor in the North stimulated a democratic outgrowth; while the opposite order in the South fostered

The ratification of the 1787 Constitution, Congressional Reconstruction and the post-*Carolene Products* New Deal; Sandel (1996) categorizes two eras: civic republican and procedural liberalism; and Aldrich (1999) marks seven critical eras, each marked by a transformation of political parties.

⁴ Postulating liberalism’s hegemony, for better and worse, are Hartz (1991), Katznelson (1981), Rogin (1987), Norton (1993), Lipset (1996), and Abbott (2005). Some who posit the republican tradition include Bailyn (1967), Wood (1969), and Pocock (2003).

⁵ See, for example, Rogers Smith (1993).

⁶ See, for example, Greenstone (1993), Gerstle (1994), Ericson (1999), and Horton (2005).

a social aristocracy, which, by a resistless tendency, became also political. The whole history of the country since it achieved Independence has proved this (Drake 1864, 104).

An editor of the Charleston *Mercury*, South Carolinian Leonidas Spratt characterized North-South development in the same way:

The contest is not between the North and South as geographical sections, for between such sections merely there can be no contest; nor between the people of the North and the people of the South. . . . But the real contest is between the two forms of society which have become established, the one at the North and the other at the South. Society is essentially different from government. . . ; and within this government two societies had become developed as variant in structure and distinct in form as any two beings in animated nature. The one. . . expands upon the horizontal plane of pure democracy; the other. . . has taken to itself the rounded form of a social aristocracy. In the one there is hireling labor, in the other slave labor; in the one, therefore, in theory at least, labor is voluntary; in the other involuntary; in the labor of the one there is the elective franchise, in the other there is not (Spratt 1861).

Orren and Skowronek's theory of political change predicts cumulative, smaller political changes, as claimed by Drake and Spratt, before major events. Major political change and events do not occur *de novo*, but depend upon prior changes, continuous "reconstructions" of prior, inherited political order (Orren and Skowronek 2004, ch. I). Such is what led to national separation according to Spratt and Drake. The antebellum free states and slave states had been "reconstructing" their political orders in fundamentally different directions. The Confederacy's founding represents not one shift in governing authority, but the culmination of many prior, durable shifts, which made the Confederacy's founding possible.

Orren and Skowronek do support the perspective that scholars have still not resolved the central political question in Reconstruction scholarship. They write that, after the passage of the Thirteenth Amendment,

those who had been subjugated were declared to be free citizens.... [W]hen the dust settled, those freed were isolated, impoverished, denied equal rights, and left without means for collective or personal advancement..... Exactly what happened has vexed the most searching of scholars (Orren and Skowronek 2004, 134).

Their endnote names the “most searching of scholars,” the deservedly pre-eminent Reconstruction historian Eric Foner. They quote him, listing three contradictory sentences, each the first of three successive paragraphs that differently characterize how Reconstruction affected black American citizenship (Orren and Skowronek 2004, 219n7). Orren and Skowronek recognize that the framing of the Fifteenth Amendment - removing voting disabilities on the basis of race - “stuck” in the North and was flouted in the South (141-143). Why the difference? A two-regime theory of American Political Development presents a different approach to answer questions such as this one raised by Orren and Skowronek. The answer to the question of what happened to black Americans’ civil and political rights is set within the question: what happened to the oligarchic and republican regimes after the Civil War? The answer to that question depends on whether the difference between oligarchy and republicanism is understood in the first place.

My own view is that the southern political regime and the long arm of its oligarchic rulers did impact American political development not only in the 19th, but well through the 20th century to our present times. I do not believe we can learn all that we can about southern “distinctiveness,” race in America, national economic policy, state-federal relations and constitutionalism in general, without recourse to the two-regime theory of American Political Development. It seems to me that for far too long, since the rise of the oligarchy itself, American scholars, statesmen and the public have too often

unwittingly accepted the oligarchs' false conflation of themselves with the American Founders, and their oligarchic regime with the American Founders' regime, with disastrous result.

On the one hand, due to popular reverence for the founders, Americans received and preserved parts of the oligarchy's institutions, principles and interpretations. This is because we have mistaken them for the American Founders' institutions, principles and interpretations, with the result that we compromised our American republicanism. Americans' long and stubborn adherence to institutions that violated the republican liberty and equality of black Americans, and our adherence to Calhoun's constitutionalism which served to protect those institutions in the states, are good examples of this. Those who have persisted in upholding the antebellum South as an idyllic place in Lost Cause romance seem to not know that slave state leaders overturned American republicanism established by the founders. A majority of southerners, white and black, suffered the loss of republic liberty and its way of life.

On the other hand, because many good citizens are justifiably repelled by the character of the oligarchy's institutions, principles and interpretations, but mistake the American Founders' institutions, principles and interpretations for them, they have understandably but unjustly diminished the reputation of the American Founders. For example, the founders understood that their revolutionary principle of natural equality proscribed slavery. In a speech to the Maryland Assembly in 1788, American Founder William Pinckney declared slavery to be "oppressive and unjust... inconsistent with the great groundwork of the late revolution." What did the great groundwork teach? That, "by the eternal principles of natural justice, no master in the State has a right to hold a

slave in bondage for a single hour” (Goodloe 1846, 60). Antebellum southerner and future Confederate Albert Taylor Bledsoe turned the founders’ natural equality claim into a justification of natural inequality and slavery. He allowed that we can “deduce an inequality from the very principle of equality itself” (Elliott 1860, 336). Yet, contemporary scholar Michael Rogin conflates the views of Bledsoe and the Founders. He argues that “all men are created equal” in the Founder’s *Declaration*, “spawned Indian dispossession and chattel slavery... conjoining slavery to natural right” (Rogin 1996, 14). That was Bledsoe’s view; Pinckney emphatically denied it.

For another example, in 1773, Patrick Henry explicitly declared that slavery was “inconsistent with the Bible and destructive to liberty” (Bancroft 1890, 412). Antebellum southerner and early proslavery defender William Gilmore Simms declared the opposite, that the “most perfect form of liberty” required slavery, the “subjection on the part of the inferior class that compels them to knowledge of what is possessed by the superior” (Simms 1852, 268). Maverick proslavery defender Thomas Dew also expressed his wish that slavery would not only be the sheet anchor of liberty in the slave states but also the “sheet anchor of our country’s liberty” (Dew 1836, 279). Yet, contemporary scholars Edmund Morgan and Barbara Fields conflate the views of Dew and Simms and the founders. They claim that the founders depended upon slavery to sustain American liberty (Morgan 1972; Fields 1990). That was Dew and Simms’s view, not Henry’s.

For yet one final example, in 1788, expectations were high in Massachusetts that the nation would imminently abolish slavery. In the Massachusetts convention to ratify the Constitution, some expressed the inclination to vote against ratification because it lacked a provision guaranteeing “that the negroes ever shall be free.” They believed,

however, that the Constitution tended in the antislavery direction (Elliot 1861, II:41, 107). So did enough Virginians in their convention that they debated at length whether the national government under the Constitution could impose emancipation on them, rather than leave them to end it in a manner and time as their own prudence directed (III:452, 589-591, 598-599, 648). Later, the proslavery oligarchic statesmen needed to reinterpret the Constitution as a proslavery constitution to strengthen their regime, and to superimpose their regime onto the forms of the national government. Their reinterpretation convinced abolitionist William Lloyd Garrison, who therefore indicted the American Founders rather than the oligarchic reinterpreters. To this day, the proslavery oligarchs have persuaded our modern-day Garrisonians that the founders' Constitution was a proslavery in character (Kolchin 1993; Oakes 1996; Finkleman 1996, 1999; Graber 2006; Waldstreicher 2009).

Thomas West refutes contemporary scholars' charges against the founders on the slavery issue in his book, *Vindicating the Founders* (1997). But the course of events after the founding period calls into question the completeness of West's vindication. If the founders loathed slavery and struck blows at it, why did it expand? A two-regime theory of American Political Development completes West's answer to the founders' critics. The slave states eventually bucked the founders' natural rights republicanism, transforming into an oligarchic regime that ruled and re-arranged its institutions by the principle of natural inequality. Slavery ill-fit the founders' republicanism but was an integral part of the later southern statesmen's oligarchy. If this is not so, then the critics must answer for why the founders denounced slavery and enacted laws attacking it.

The transformation of the South is no better illustrated than by the contrast between Virginia republican George Mason in 1773 and his grandson, Virginia oligarch and future Confederate James Mason in 1860. In the Virginia legislature on the eve of the Revolution, the elder Mason denounced slavery in the most unqualified terms and made a prophecy:

Mean and sordid, but extremely short-sighted and foolish, is that self-interest which, in political questions, opposeth itself to the public good: a wise man can no other way so effectually consult the permanent welfare of his own family and posterity as by securing the just rights and privileges of that society to which they belong.

Perhaps the constitution may by degrees work itself clear by its own innate strength, the virtue and resolution of the community; as hath often been the case in our mother country. This last is the natural remedy, if not counteracted by that slow poison which is daily contaminating the minds and morals of our people. Every gentleman here is born a petty tyrant. Practiced in arts of despotism and cruelty, we become callous to the dictates of humanity, and all the finer feelings of the soul. Taught to regard a part of our own species in the most abject and contemptible degree below us, we lose that idea of the dignity of a man which the hand of nature hath planted in us for great and useful purposes. Habituated from our infancy to trample upon the rights of human nature, every generous, every liberal sentiment, if not extinguished, is enfeebled in our minds; and in such an infernal school are to be educated our future legislators and rulers. The laws of impartial Providence may, even by such means as these, avenge upon our posterity the injury done to a set of wretches whom our injustice hath debased to a level with the brute creation. These remarks were extorted by a kind of irresistible, perhaps an enthusiastic impulse; and the author of them, conscious of his own good intentions, cares not whom they please or offend (Bancroft 1890, 413-414).

If Virginia did not abolish slavery, the laws of impartial Providence would punish them by means of the very slavery they allowed to continue. Slavery would extinguish the devotion to republican equality in their progeny, who would become the future legislators, and those legislators would use their power against liberty. On the floor of the United States Senate, James Mason unwittingly fulfilled his grandfather's prophecy:

Certainly, I believe that because of the aggressions committed by the servile States, commonly called the free States, upon the condition of African bondage in the South, the mind of the South has been more turned toward it, and by reason of that further consideration, more deliberation, pondering more deeply upon the relations subsisting between the African race in this country and the white race, the opinion once entertained, certainly in my own State, by able and distinguished men and patriots, that the condition of African slavery was one more to be deplored than to be fostered, has undergone a change; and that the uniform – I might almost say universal – sentiment in my own State upon the subject of African bondage is, that it is a blessing to both races – one to be encouraged, cherished, and fostered; and to that extent the opinion of Virginia in different from the opinion entertained by those distinguished men who have now gone, but who, we believe, best knowing their sentiments, if they lived in this day would concur with us (36 Cong 1, Appendix, 99).

It is hard to fathom that Mason's grandfather would have concurred with him, that slavery ought to be cherished, or that self-governing, free people deserved the name "servile."

Southern Oligarchy's Escape from the Verdict of Scholarship

Republican statesmen involved in the American conflict wrote prodigiously about their experiences. In virtually any of these works, the author thoughtfully placed slavery-supported southern oligarchy or aristocracy at the center of all the troubles they inherited. Some place the theme prominently in their titles, viz., Henry Wilson's *History of the Rise and Fall of the Slave Power in America* and Green Berry Raum's *The Existing Conflict Between Republican Government And Southern Oligarchy*. Their explicit, frequent identification of that political regime should have attracted the attention of the one scholarly discipline most responsible for knowing the differences among forms of government: political science. But American political science has barely noticed these claims, let alone seriously tested or debated them. This has deprived other scholarly

disciplines of insights into the political character of the slave South that political science is uniquely positioned to provide.

The first reason for this may have something to do with the southern oligarchy itself. As America has again learned in recent times, regime change is hard and sometimes backfires, often due to the successful resistance of the old political regime to change. This redounds to the discredit of occupiers despite the best intentions to plant free government where it did not exist before. For decades, apologists for the Old South who wished to preserve remnants of its old regime could exploit Reconstruction's difficulties in order to win the sympathy of a nation yearning for national harmony. These circumstances might have aided the apologists in burying the oligarchy under Lost Cause romance and the democratic thesis of the antebellum South.

The second reason has to do with political science. At the time of the civil rights-friendly revisionist period in the mid-20th century, political science was mired in theoretical preconceptions that clouded scholars' recognition of the southern oligarchy for what it was. Political science still cannot see the oligarchic regime because the discipline does not readily recognize the phenomenon of political regimes. In the last twenty years, however, the discipline has moved closer to thinking about political regimes again. The rest of this chapter will address these circumstances.

First published in 1955, Louis Hartz's *The Liberal Tradition in America* (1991) epitomizes a philosophy of history, that a norm drives political events towards an inevitable outcome, predetermined by that norm (March and Olsen 1984, 735, 737). Applied to the American case, Hartz posited Lockean-liberal propertied individualism as the norm that drove American political events towards its inevitable (and lamented)

realization. In his analysis, the liberal consensus operates on American ideas similarly to how a black hole operates on objects in astro-physics: it inexorably pulls all ideas within its field of contact into it, crushes them and makes them one with itself. At any point in time, all ideas unlike liberalism will be found already in motion toward the central point, en route to a crushing, re-formulated union with Lockean-liberal propertied individualism. Political crises are foreordained to resolve in favor of that norm, and therefore are not contingent moments. They are, rather, “aberrant deviations” from the inexorable norm. The nation cannot truly be “a house divided against itself” that could resolve in either way.

Hartz himself readily admitted that the hard case he had to prove to substantiate his liberal consensus theory was that the southern aristocratic revolution was not a genuine revolution at all (1991, 145-202, “Part IV: The Feudal Dream of the South”). He conceded “lush evidence” that southerners were feudal revolutionaries, but nevertheless argued that their feudal conservatism was a veneer, a fraud, concealing deeply rooted liberalism (147).

Calhoun’s *Disquisition on Government* is “Lockean,” he argued (157). And, Calhoun paradoxically attacked the Founding Fathers “only to carry their work forward” (166). Refutations of Hartz’s description of Calhoun as “Lockean” could be drawn from one able political philosopher (Jaffa 2000, 403-72), as well as from Reconstruction Republicans, who denounced both Calhoun’s repudiation of the “Lockean” *Declaration of Independence* and the oligarchy-serving *Disquisition*.⁷ Most damaging to Hartz’s

⁷ For example, the report from the select committee on emancipation in 1862 said that Calhoun did not attempt to disguise his antipathy for majoritarian government in his *Disquisition*, which served “pampered

claim is that James Madison lived barely long enough to oppose Calhoun's nullification doctrine. Writing on nullification, Madison said that the "forbidding aspect of a naked creed" designed to institute "the ascendancy a minority of 7, over a majority of 17, has led its partizans to disguise its deformity under the position that a single State may rightfully resist an unconstitutional and tyrannical law of the U. S., keeping out of view the essential distinction between a constitutional right and the natural and universal right of resisting intolerable oppression" (Madison 1900-1910, IX:574). In other words, Madison knew that Calhoun used deception, cloaking his "naked creed" of minority rule in plausible but false constitutional arguments that depended upon a rejection of natural right.

Hartz mainly rested his claim that Calhoun is "Lockean" on the fact that he became "the philosophic darling of students of American political thought" (Hartz 1991, 158). This proof is tautological: America has accepted Calhoun and America is irrationally Lockean; therefore Calhoun is Lockean. Hartz did not consider the possibility that America mistakenly embraced Calhoun, gulled by Calhoun's republican disguise unmasked by Madison. America's acceptance of Calhoun might merely prove

lordlings" and the preservation of the master-slave relationship (37 Cong 2, H.Rpt. 148, 9). The report continues that men like Calhoun prepared the "well-organized power of the superior classes [in the slave states]" for rebellion against the national government because they would "no longer tolerate that the power of the [national] government shall be lodged in the masses of the people" (9-10). The question of whether Calhoun's *Disquisition* served to protect the power of his South Carolina ruling class in the national government, or was a "Lockean" theory of just government, turns on whether Calhoun worked as hard to apply the *Disquisition's* principles to his home state government as he did to national government. But Calhoun was not known to be sanguine about granting a minority veto to non-slaveholding counties outside the black belt in South Carolina. By my reading of his private correspondence on South Carolina politics, he consciously protected the concentration of state political power in the hands of the minority ruling class (e.g., Calhoun 1900, 419-22). In sum, Calhoun advocated for his minority's veto rights on national government, and for his minority's rule in his state's government.

that the oligarchy managed to survive and engraft parts of itself onto the American regime, an aim that Alexander Stephens urged upon his coadjutors after the war.⁸

Although Hartz discussed or mentioned Tocqueville on 17 pages, and has won the eponym, “Tocquevillian,” by friends and critics alike, Hartz and Tocqueville substantially differ on their views of southern aristocracy. Tocqueville did recognize a strong “*consensus universalis*” undergirding the democracy, but also recognized exceptions and threats to democratic development in America, which Hartz passed over (Tocqueville 2000, I.2.10, 382). Hartz never mentioned Tocqueville’s analysis of southern aristocracy, which undermines his argument that the southern aristocratic revolution was false.⁹ Most astonishingly, Hartz argued that the existence of slavery proved the *fraud* of southern aristocracy, rather than serving as the *basis* of its political aristocracy.¹⁰ These southerners were not aristocrats but “plantation capitalists,” no

⁸ The *New York Times*, on April 5, 1873, summarized an article written by former Confederate Vice-President Alexander Stephens for the *Atlanta Press*, in which Stephens exhorted ex-Confederates returning to their places in the federal government “to be true to themselves” and reap “higher honors.” The day would come, he predicted, when the leaders of the so-called rebellion would not be remembered as traitors but as self-sacrificing patriots. The Amnesty Act would soon thereafter allow Stephens to run for Congress where he successfully led the opposition to the most liberal civil rights bill of Reconstruction: the civil rights bill of 1874. The latter-day embrace of Calhoun, the posthumous father of the Confederacy, fulfilled Stephens’s prediction, but we see by Stephens’s example in the 1874 Congress, “true to themselves” ex-Confederates were far from Lockean liberals.

⁹ Cf. Tocqueville 2000, I.2.10, 326-79, esp. 328-35, 361. Hartz’s sharpest critic, Rogers Smith, does not call attention to this gaping difference between Hartz and Tocqueville. Smith says the two “differed mildly” and agrees with Hartz that southern whites kept democracy for themselves, while excluding black Americans (1993, 551). On account of that exclusion, he takes issue with Hartz for generalizing the South as democratic, when he should have taken issue with Hartz for claiming that that the slave South was democratic among whites (554).

¹⁰ I read Fitzhugh in *Cannibals All!* to argue that northern industrialists were aristocrats in denial and industrial laborers and slaves by contract, which are the classes corresponding to southern aristocrats and slaves, respectively. Hartz argued from the opposite direction: that planters were industrialists in denial, and by implication, plantation slaves were industrial laborers. Fitzhugh seems to have caught and encouraged the political drift of the South towards increasingly pronounced aristocracy, which was stopped by war, not by internal intellectual contradictions as Hartz argued.

different than factory owners in the North (Hartz 1991, 147, 196-7). This calls into question his understanding of the principle that drove American history.

Hartz's book covered up rather than opened to the re-discovery of great regime difference between North and South at a time when circumstances were most propitious for this re-discovery. Scholars have debated Hartz's liberal consensus explanation for American exceptionalism (to socialism) for decades, but many inter-subjectively agreed with his philosophy of history, that a norm drives political events towards an inevitable outcome. The debated question was which norm? And how should we define that norm? This fired an academic debate of "dueling norms."¹¹ The assumption of many of these disputants has been the running monolithism of the American nation through time. The question of how to politically define America collapsed into something like a competition over which norm defined America's past and destiny. The debate further prevented the re-discovery of fundamental regime cleavage between the North and South in the 19th century.

Scholars of American Political Development usually mark the decline of these dueling historicist accounts by Rogers Smith's essay, "Beyond Tocqueville, Myrdal and Hartz" (1993). Smith broke up the conception that America uniformly manifested one norm or tradition. He represents the American nation as a chaotic *mélange* of traditions

¹¹ Those who accept the liberal consensus theory and who, unlike Hartz, praise American exceptionalism are probably more numerous outside the academy. The idea of the inevitability of liberty in America allows these Americans to minimize the embarrassing, painful and illiberal aspects of American history as insignificant aberrations. In the academy, most of those who have defended the dominance of the liberal tradition deplore that tradition, and are often harshly critical of Hartz for not deploring the liberal tradition enough. Some political scientists offered explanations for oppression discoverable in American history by theoretically tracing the fact of oppression to oppressive domination inherent to liberal principles (e.g., Rogin 1987; Mehta 1991; and Norton 1993). Others accepted Hartz's thesis with modification. Political scientist David Greenstone (1986; 1993) discerned many "liberalisms" within American liberalism. Following Greenstone, David Ericson (1999) assimilated leading antebellum political thought in the North and the South, as two variations of the same liberal theme, further concealing the inter-regime difference.

in, and across time. The liberal tradition has co-existed with other traditions. Those interacting traditions “have collectively comprised American political culture, without any constituting it as a whole” (Smith 1993, 550). He readily produces examples of inegalitarian political ideas and ascriptive hierarchies in American institutions, but rejects the position that liberal principles themselves produce oppressive or ascriptive politics (Stevens and Smith 1995, 991). Without distinguishing liberal from other traditions, scholars encountering evidence of oppressive politics might well tend to link oppression to assumedly hegemonic liberal principles, but that would be a mistake. The dominance of the liberal consensus paradigm probably explains the heretofore conflation of liberal and illiberal traditions. In his essay, Smith agrees with Hartzians that American society became liberal, but against the Hartzians, he says America’s “national course has been more serpentine” than linear (Smith 1993, 559). A liberal coalition, not a liberal consensus, accounts for present American society’s general liberal character. Smith’s lysis of the liberal consensus paradigm, continued in his book, *Civic Ideals* (1997), left behind a chaos of disordered parts. This was an invitation for further work to rebuild our understanding of American political order.

The Search for American Political Development outlines a methodological approach to deal with the chaos left by Smith (Orren and Skowronek 2004). Orren and Skowronek work on how to conceptualize political order so that our understanding of American political development can be rebuilt on firmer foundations. Their project is to preserve the historical approach to studying politics, while avoiding its prior defects. The chief defects the authors discard are assumptions of “teleology, organic growth, linearity, progress” that guided prior analyses of politics (78).

In the American Political Development (APD) approach, institutions are the Rosetta Stone to political order. Without seeing through institutions, we cannot empirically verify the order that institutions establish. A political order “is a constellation of rules, institutions, practices, and ideas” and the “political universe” is composed of multiple orders (14-5). All political orders are historical reconstructions of contiguous prior orders (21). Those multiple, co-temporaneous orders exist in agonistic, causal relations through time; their relationship is termed, “intercurrence” (113). “Intercurrence” describes what the political universe does and is central to explanations for changes in that universe (116). It is the “foundational concept” of the authors’ methodological approach. When changing political order results in “a durable shift in governing authority,” political development has occurred (123).

Orren and Skowronek substantially solve the problem of how to rebuild our understanding of political order, especially by turning scholars’ attention to concrete empirical evidence in institutions. Their approach encounters problems when they address what they call the whole polity. Along with political orders, the whole polity also appears to undergo constant reconstruction in their model. They describe the whole polity as “a collection of parts – multiple orders and loose ends – riddled by tension and conflict. What defines these as a whole is, again, the centrality of political authority” (186).

This is not a definition of the whole, but first, a restatement of its contents (a collection of multiple political orders), and second, a reference to its boundary (the reach of its central political authority). In an earlier article, “Regimes and Regime Building in American Government,” Orren and Skowronek (1999) define a regime as a surface and

instrumental device for holding the conflicting parts of the polity in balance. Because the parts always change, the nature of the conflict changes, and so the functional needs for balance always change. Therefore, the regime is “in a more or less constant state of transformation” (702). The specific functional needs for balance in a given moment of time shape the specific coherence of a particular regime. Causality runs one-way from the parts to the whole. By their analysis, a regime has the quality of an alliance or treaty struck between multiple orders. When the “contentious interaction” of the multiple orders upset the balance, a new treaty or regime is needed.

It is likely they have misapplied the term “regime” to a different phenomenon, to a political coalition, and miss seeing the phenomenon of the political regime. In 1830, Tocqueville observed constant political change in America, as do Orren and Skowronek today, but he separated “two kinds of instability that must not be confused.” One kind is change to secondary laws; the other is change of the highest political order: revolution. He continues, “The first is encountered in the United States, but not the second. Americans frequently change the laws, but the foundation for the Constitution is respected” (Tocqueville 2000, I.2.10, 382). Tocqueville distinguished frequent change *within* the unchanging political regime and change *of* the political regime. And he identified the whole with “the generative principles of the laws” and the “foundation for the Constitution.” In other places, he hints that the stability of America’s democratic foundation accounted for the instability of America’s secondary laws: “Democratic centuries are times of attempts, innovations, and adventures”; and a democratic people’s “position, ideas, and desires vary every day” (II.4.3, 644 n1). Ultimately, democracy drove changes in the laws, but the regime remained the same. In metaphorical terms,

Proteus does not cease “being” Proteus as he changes shapes; he changes because he is Proteus.

What is missing from Orren and Skowronek’s model is the strong centripetal force that holds together the whole polity, better termed the political regime. Traditional political philosophy appreciated the political regime as a composite of parts, but a regime consisting of parts is different in kind from an aggregate sum of “parts.” Although classical analysis broke up the model of the whole into parts for study, in the classical model, government integrates the parts insofar as possible into a unity, in Plato’s case, or into a harmonious partnership (and specifically not an alliance, cf. *Politics*, II.2, 1261a25), in Aristotle’s case. The political regime’s first principle articulates those discordant parts together into a harmony.

What force counteracts against those tensions and keeps the parts within a whole? They say that authority holds the parts together (Orren and Skowronek 2004, 186). What produces authority? Orren and Skowronek do not answer that question, but Skowronek does in his book *The Politics Presidents Make* (1993). Authority is produced by the “warrants that can be drawn from the moment at hand to justify action and secure the legitimacy of the changes effected” (Skowronek 1993, 18). In other words, authority-accumulating political actors tacitly or explicitly appeal to the evaluative judgment of someone or some people empowered to endorse or cancel those warrants for authoritative action. But this implies a higher authority. Who possesses supreme authority over all intercurrent political orders, and what is the basis of that authority?

Under “The Historical Construction of Politics,” the heading of their book’s first chapter, Orren and Skowronek quote Tocqueville: “The circumstances which accompany

the birth of nations and contribute to their development affect the whole term of their being” (2004, 1).

The chapter outlines their view of political change: the constant reconstruction of inherited multiple orders and intercurrency. Their chapter resonates with Tocqueville’s “circumstances” and constant “development” over “the whole term of [the nation’s] being,” but says nothing about “birth.” Every moment through time is a “reconstruction” or new birth in their conception of politics. In fuller context Tocqueville says (by my different translation),

Something analogous takes place in nations. *Peoples always feel* [the effects of] *their origins*. The circumstances that accompanied their birth and served to develop them influence the entire course of the rest of their lives (Tocqueville 2000, I.1.2, 28, emphasis added).

A “birth” in one moment of time vested the ordinary “circumstances” prevalent at that moment in time with an extraordinary, superintending influence over all future development. In the first three chapters of Volume I, Tocqueville traced the pre-Revolutionary development of the “dogma of the sovereignty of the people.” What changed that dogma from an ordinary, in-time dogma, to a dogma of extraordinary significance through time, was an extraordinary political event, a birth, the founding of a political regime:

The American Revolution broke out. The dogma of the sovereignty of the people came out from the township and took hold of the government; all classes committed themselves to its cause; they did combat and they triumphed in its name; it became the *law of laws* (I.1.4, 54, emphasis added).

The political event of “birth” made the sovereignty of the people the “law of laws.” While Tocqueville did speak of the development of circumstances in a manner somewhat agreeable to Orren and Skowronek’s understanding of politics, he spoke of the

births of nations as extraordinary events in relation to the future politics of nations. In short, all circumstances are not created equal; the circumstances accompanying the birth of nations are, using Orren and Skowronek's conceptual framework, a historical reconstruction of prior political orders that stands out from among all other historical reconstructions of political orders through time. The "law of laws" created by the birth of the nation - its political founding - answers the question posed above. The authority created by the political founding of the political whole possesses the supreme authority to tame or master all intercurrent political orders subsumed into the whole. That seems to suggest itself as the supreme authority to which all appeals for authority must align, in order "to justify action and secure the legitimacy of the changes effected" with respect to all subsumed political orders.

In *Politics*, Aristotle often noted examples of actual cities and regimes that confound the kind of theoretical treatment of foundings explained above. Some regimes in the same city changed frequently. Others remained generally stable for a very long time, like the Spartan regime. Some changed gradually, as some notice in the case of England. But the concrete order of every actual regime, its distribution of offices and kinds of offices, is harmonized by a political principle unique to the regime type it approximates, a principle which is a conception of justice found implicit in the laws or on the lips of statesmen. Aristotle distinguished the regime's standard of justice from Capital J Justice as expressing the difference between variable human opinion found in political regimes, and true opinion. Nevertheless, variable human opinion runs deep. Regardless of what philosophers might reason natural justice to be, within the regime its unique principle is the highest law to which appeals seeking political authority receive

sanction. In other words, the highest law exists co-temporaneously with the actual regime, backgrounding the regime, regardless of whether or not that highest law originates from a single point in time, the historic moment of a new regime's founding.

Diverse theorists similarly argue that behind ordinary written laws, political opinion and political institutions lies a foundational terrain from where the deepest community meanings about political things arise. Aristotle referred to "laws based on [unwritten] customs" as "more authoritative, and deal with more authoritative matters" than written laws (III.16, 1287b4-6). Max Weber ultimately grounded political legitimacy in charisma, which gives birth to political orders, and upends old political orders (Weber 1968). For Charles Taylor, an ontological background embeds the intersubjective and common meanings that fundamentally hold together a political community (1985; 1992). Legal philosopher Robert Cover places all law posterior to a "nomic universe," i.e., culture. He calls the nomic universe "jurisgenerative" because it ultimately creates law (1992). More recently, political scientist James Ceaser coined the term "foundational concepts." A foundational concept in politics "supplies the answer to the question 'Why,' beyond which any further response is thought unnecessary" (Ceaser et al 2006, 5).

For all of these diverse theorists, the most fundamental moral ground of a political regime exists apart from, but in relation to, the conventions of political establishment. That moral ground takes no concrete form but nevertheless anchors the concrete existence of the political regime. The terrain of the regime's moral ground is the realm of self-evident truths. Like the other theorists, Tocqueville recognized that beneath a type of political regime one finds an intangible moral anchor. Comparing the unquestioned

acceptance of the monarchical principle in France to America, he wrote, “Thus a republic exists in America without combat, without opposition, without proof, by a tacit accord, a sort of *consensus universalis*” (Tocqueville 2000, I.2.10, 382).

Since authority counteracts the tensions between competing, intercurrent parts, and since the supreme source of authority within the political whole is a first principle, then all political action sanctioned by authority must bear a strong relation to the first principle (or else such action would not be authoritative). Authoritative political action shapes and articulates the political whole’s parts (e.g., the purposes, norms, and rules of institutions) in conformity to a first principle. The logical end of uninterrupted, authoritative political action is total uniformity (complete order) in the way all subsumed parts are articulated into the whole. Articulation is the ordering force of a political whole, and an ordered political whole consists of articulated parts.¹² The mode by which the parts are shaped and articulated into a whole, and the character (the first principle) of that political whole, approach being one and the same thing.¹³ Authoritative action may be often disrupted and contested. Through accident, inheritance or insurgent intention, exceptional institutional arrangements discordant with a first principle exist. Inter-subjective agreement on what a first principle is could shift by small or great (revolutionary) degrees, and that shift could precipitate the re-articulation of the parts in a

¹² Professor Skowronek uses the concept of articulation in *The Politics Presidents Make*, but I mean articulation in a different sense of the word than I believe he does: “connecting” instead of his “working out.” And, my application of the concept obviously differs.

¹³ The political regime’s central authority could use bare coercion, the resort to power without tacit homage or explicit appeal to principle, to hold the intercurrent parts together. But bare coercion describes an articulating force of a certain type, a non-authoritative use of power. The power used by Louis XIV does not qualify as bare coercion, since he had the authority to use all the power of the nation to enact his will. Bare coercion cannot describe any authoritative principles of articulation, unless all principles mask the will to power. Orren and Skowronek say that postmodernism leads in an unproductive direction (Orren and Skowronek 2004, 30), so we can probably bracket that claim without their objection.

new mode. Amending Orren and Skowronek's position, we might say that intercurrency and articulation is what the political universe does.

Restated, the political regime is a correspondence of institutional parts and regime principle. Since APD scholars already habitually submerge themselves in studies of institutions, they are in an excellent position to identify a common principle, the regime principle, in the institutions they are adept at studying. They can discern, with a high level of refinement, what is happening to the political regime and to what direction it is tending by looking for the common goal of disparate political institutions.

Most of these suggestions offered to APD say nothing new to American political theorists who style themselves scholars of traditional political philosophy. They well know the traditional conception of political regimes, and can easily recognize that conception in the statesmanship of the Founding Fathers and the Republicans. For many decades, political philosophy has carried on its work in an insulated corner of contemporary political science. From that precinct and during the course of his career, Harry Jaffa taught many of us the principles of the American political regime, established by the Founding Fathers and vindicated by Abraham Lincoln. But American political philosophy scholars have generally abstained from applying their training to studying the actual American political regime in the way that APD scholars do, and in fact, in the way that political philosophy's intellectual forefather, Aristotle, did, by studying the concrete matter, the offices and institutions of regimes, in addition to principles.

A published exchange between Rogers Smith and James Ceaser illustrates how political philosophy scholars approach the study of American politics. Ceaser delivered a lecture on changing "foundational concepts" in American history. He proposed to

classify “foundational concepts” into “intelligible categories before a systematic study of them can begin.” (Ceaser et al 2006, 5). Explaining why “political scientists should study foundational concepts,” he says, they “are encountered as tangible political phenomena that are in play in the practical political world” (9-10). He then proceeds to categorize foundational concepts in American history. In response, Smith found “Ceaser’s proposal highly commendable in its aims and partly commendable in its methods” (144). With respect to which foundational concepts have mattered in past American politics, Smith’s chief methodological objection was that “we need to employ systematic methods to support any claims that particular patterns are dominant in the phenomena we examine” (146). He called for empirical evidence produced by sound methodology. Referring to his own research as an example, Smith said, “I still believe I simply arrived inductively at a categorization based on patterns evident in the primary phenomena” (162). Ceaser magnanimously concurred with Smith’s criticism and said, “His comments are on occasion the most critical of all, but they are also the most instructive” (190).

Methods have to empirically prove changes in first principles corresponding to changed politics for them to count. Orren and Skowronek, always pushing for scholars to anchor their claims empirically, set down this rule: “Changes that do not leave a mark on authority relations... are topics of interest, but they tell us more about impediments to political development and the boundaries of political development than about the significance of political development” (Orren and Skowronek 2004, 25). Prescriptions like these are healthy. Regardless of the worthiness, even the preeminent worthiness, of deeply studying principles, political philosophy becomes a philosophy of no public benefit if it does not at some point come back into the city and engage with it in this

fashion. In its current condition, the field of American Political Development has opened wide the gates to the city.

American political scientists seem to be poised to recover political regime analysis. Then, perhaps, we might be able to better appreciate the difficult path our country traveled in its early period to preserve government rooted in the rights of mankind. Though a great many Republicans expressed disappointment in the outcome of Reconstruction, they also expressed the belief that they had fought and destroyed a mortal threat to the regime established by the American Revolution. Lincoln said as much at Gettysburg, that the war tested whether any nation conceived in liberty could endure. A political regime conceived in slavery and dedicated to the proposition that mankind was not equal nearly prevailed. We may well lament, and should lament, the failure of complete regime change in the slave South after the war, but that loss accompanied a great victory for American republicanism, which survived to commence its second regime-changing effort in the modern civil rights era. The Republicans believed they had saved posterity from a dark reign of tyranny, adapted for modernity, that would have changed the course of world events. In that struggle, the Republicans were far from disinterested spectators and did not spare the blood of their own families. Their personal losses entered the speech of James Doolittle on the Senate floor in early 1864, as he exhorted his colleagues to pursue the destruction of the “Calhoun Revolution” to its end:

Our country at this hour is bleeding at every pore; every household wears the drapery of mourning; grief is an unwelcome visitor at every fireside; an unbidden guest fills the vacant chair at every family table, and, by the side of the mourning widow or mother, bends, in anguish, deep and unutterable, at every family altar. Sir, some of us have been made to drink of this bitter cup; there are some, like my honorable friend from Maine, [Mr. Fessenden] and myself, who have been compelled to look into the graves of our sons, fallen a sacrifice to put down this

unholy rebellion. And, sir, we have been made to feel, in our inmost souls, what our judgments clearly see, that the great issue of this people and specially of this present time, and before which all others should give place, is an issue of arms – whether we shall have success or whether we shall fail in crushing the military power of the rebellion.

Shall the Republic live or die? We not only know but we are made to feel that if we do not succeed in maintaining this Government and putting down this rebellion – and that can only be done by force of arms – our sons have been sacrificed in vain. But if we shall succeed, as, with the blessing of Providence, I hope and trust we may; if we shall be permitted to see that standard, under which they entered the service, float once more in triumph, with not one star obscured nor one stripe erased, over every inch of the soil of every State and Territory of the United States, we can then say to our struggling hearts, “Peace, be still, though our sons have fallen our country lives” (38 Cong 1, 1843).

APPENDIX A

COMPENDIUM OF THE FOUNDERS' REMARKS ON SLAVERY

Reconstruction Republicans quoted these founders' remarks on slavery, on the floor of the United States Congress. This compendium is not exhaustive.

Among all the founding era antislavery statements quoted by the Republicans, the *Declaration of Independence* stands out. The Republicans so often quoted and referred to the *Declaration* and its language, proclaiming "all men are created equal," that no effort has been made to collect any citations of its recurrence in the *Congressional Globe*.

George Washington, of Virginia

1783 letter to LaFayette:

The scheme, my dear Marquis, which you propose as a precedent; to encourage the emancipation of the black people in this country from the state of bondage in which they are held, is a striking evidence of the benevolence of your heart. I shall be happy to join you in so laudable a work; but will defer going into a detail of the business until I have the pleasure of seeing you (35 Cong 1, 343; 36 Cong 1, Appendix, 267).

1786 letter to LaFayette:

The benevolence of your heart my Dr. Marqs. is so conspicuous upon all occasions, that I never wonder at any fresh proofs of it; but your late purchase of an estate in the colony of Cayenne, with a view of emancipating the slaves on it, is a generous and noble proof of your humanity. Would to God a like spirit would diffuse itself generally into the minds of the people of this country. (36 Cong 1, Appendix, 267).

1786 letter to John Mercer:

I never mean, unless some particular circumstances should compel me to it, to possess another slave by purchase, it being among my first wishes to see some plan adopted by which slavery in this country may be abolished by law (35 Cong 1, 343; 36 Cong 1, 570; 36 Cong 1, 823; 36 Cong 1, 1028; 36 Cong 1, Appendix, 267; 37 Cong 2, Appendix, 102; 38 Cong 1, 1232).

1786 letter to Robert Morris:

I hope it will not be conceived from these observations that it is my wish to hold the unhappy people, whom are the subject of this letter, in slavery. I can only say, that there is not a man living, who wishes more sincerely than I do, to see a plan adopted for the abolition of it; but there is only one proper and effectual mode by which it can be accomplished, and that is by legislative authority; and this, as far as my suffrage will go, shall never be wanted (35 Cong 1, 343; 36 Cong 1, 570; 36 Cong 1, 1886; 36 Cong 1, Appendix, 104; 36 Cong 1, Appendix, 267; 36 Cong 2, Appendix, 119; 37 Cong 2, Appendix, 102; 38 Cong 1, 1232).

1792 letter to Governor Charles Pinckney of South Carolina:

I must say that I lament the decision of your Legislature upon the question of importing slaves after March, 1793. I was in hopes that motives of policy, as well as other good reasons, supported by the direful effects of slavery, which at this moment are presented, would have operated to produce a total prohibition of the importation of slaves, whenever the question came to be agitated in any State that might be interested in the measure (35 Cong 1, 343; 36 Cong 1, 570; 36 Cong 2, 1090).

1798 letter to LaFayette:

I agree with you cordially in your views in regard to negro slavery. I have long considered it a most serious evil, both socially and politically, and I should rejoice in any feasible scheme to rid our States of such a burden. The Congress of 1787 adopted an ordinance which prohibits the existence of involuntary servitude in our Northwestern Territory forever. I consider it a wise measure. It meets with the approval and assent of nearly every member from the States more immediately interested in slave labor. The prevailing opinion in Virginia is against the spread of slavery in our new Territories, and I trust we shall have a confederation of free States (36 Cong 1, Appendix, 104; 38 Cong 1, 1233).

George Mason, of Virginia

1787, in constitutional convention:

The present question concerns not the importing states alone, but the whole Union. Slavery discourages arts and manufactures. The poor despise labor when performed by slaves. They prevent the emigration of whites, who really enrich and strengthen a country. They produce the most pernicious effect on manners.... Every master of slaves is horn a petty tyrant.... They bring the judgment of Heaven on a country.... [T]he General Government should have power to prevent

the increase of slavery (35 Cong 1, 343; 36 Cong 1, 570; 36 Cong 1, 570; 36 Cong 1, Appendix, 268; 38 Cong 1, 1232).

Thomas Jefferson, of Virginia

1781, from the *Notes on the State of Virginia*:

There must doubtless be an unhappy influence on the manners of our people produced by the existence of slavery among us. The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading sub-missions on the other. Our children see this, and learn to imitate it; for man is an imitative animal. This quality is the germ of all education in him. From his cradle to his grave he is learning to do what he sees others do. If a parent could find no motive either in his philanthropy or his self-love, for restraining the intemperance of passion towards his slave, it should always be a sufficient one that his child is present. But generally it is not sufficient. The parent storms, the child looks on, catches the lineaments of wrath, puts on the same airs in the circle of smaller slaves, gives a loose to his worst of passions, and thus nursed, educated, and daily exercised in tyranny, cannot but be stamped by it with odious peculiarities. The man must be a prodigy who can retain his manners and morals undepraved by such circumstances. And with what execration should the statesman be loaded, who permitting one half the citizens thus to trample on the rights of the other, transforms those into despots, and these into enemies, destroys the morals of the one part, and the amor patriae of the other. For if a slave can have a country in this world, it must be any other in preference to that in which he is born to live and labour for another: in which he must lock up the faculties of his nature, contribute as far as depends on his individual endeavours to the evanishment of the human race, or entail his own miserable condition on the endless generations proceeding from him.

With the morals of the people, their industry also is destroyed. For in a warm climate, no man will labour for himself who can make another labour for him. This is so true, that of the proprietors of slaves a very small proportion indeed are ever seen to labour. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God? That they are not to be violated but with his wrath? Indeed I tremble for my country when I reflect that God is just: that his justice cannot sleep for ever: that considering numbers, nature and natural means only, a revolution of the wheel of fortune, an exchange of situation, is among possible events: that it may become probable by supernatural interference! The Almighty has no attribute which can take side with us in such a contest (35 Cong 1, 344; 35 Cong 2, Appendix, 197; 36 Cong 1, Appendix, 207; 36 Cong 1, 436; 36 Cong 1, 570; 36 Cong 1, 823; 36 Cong 1, 1028; 36 Cong 1, 1886; 36 Cong 1, Appendix, 267; 37 Cong 2, 1816; 38 Cong 1, 1232; 39 Cong 2, 163; 39 Cong 2, 567; 40 Cong 2, 1080).

1785 letter to Dr. Price:

Northward of the Chesapeake, you may find, here and there, an opponent to your doctrine, as you may find, here and there, a robber and murderer; but in no greater number. In that part of America, there being but few slaves, they can easily disencumber themselves of them; and emancipation is put into such a train, that in a few years there will be no slaves northward of Maryland. In Maryland, I do not find such a disposition to begin the redress of this enormity, as in Virginia. This is the next State to which we may turn our eyes for the interesting spectacle of justice, in conflict with avarice and oppression; a conflict wherein the sacred side is gaining daily recruits, from the influx into office of young men grown, and growing up. These have sucked in the principles of liberty, as it were, with their mother's milk; and it is to them I look with anxiety to turn the fate of this question (36 Cong 1, Appendix, 267).

1786 Letter to Mr. Demeunier:

What a stupendous, what an incomprehensible machine is man! who can endure toil, famine, stripes, imprisonment, & death itself in vindication of his own liberty, and the next moment be deaf to all those motives whose power supported him thro' his trial, and inflict on his fellow men a bondage, one hour of which is fraught with more misery than ages of that which he rose in rebellion to oppose. But we must await with patience the workings of an overruling providence, & hope that that is preparing the deliverance of these, our suffering brethren. When the measure of their tears shall be full, when their groans shall have involved heaven itself in darkness, doubtless a god of justice will awaken to their distress (36 Cong 1, Appendix, 267).

1814 Letter to Edward Coles:

Your favour of July 31, was duly received, and was read with peculiar pleasure. The sentiments breathed through the whole do honor to both the head and heart of the writer. Mine on the subject of slavery of negroes have long since been in possession of the public, and time has only served to give them stronger root. The love of justice and the love of country plead equally the cause of these people, and it is a moral reproach to us that they should have pleaded it so long in vain.... Yet the hour of emancipation is advancing, in the march of time.... It shall have all my prayers, & these are the only weapons of an old man.... It is an encouraging observation that no good measure was ever proposed, which, if duly pursued, failed to prevail in the end (36 Cong 1, Appendix, 267; 38 Cong 1, 1232).

1821, Jefferson urged a state measure, "Nothing is more certainly written in the book of fate, than that these people are to be free" (36 Cong 1, 823; 36 Cong 1, Appendix, 104; 36 Cong 1, Appendix, 267).

Patrick Henry, of Virginia

1773 letter to Robert Pleasants:

It is not a little surprising that Christianity, whose chief excellence consists in softning the human heart, in cherishing & improving its finer Feelings, should encourage a Practice so totally repugnant to the first Impression of right & wrong. What adds to the wonder is that this Abominable Practice has been introduced in ye. most enlightened Ages, Times that seem to have pretentions to boast of high Improvements in the Arts, Sciences, & refined Morality, h[ave] brought into general use, & guarded by many Laws, a Species of Violence & Tyranny, which our more rude & barbarous, but more honest Ancestors detested. Is it not amazing, that at a time, when ye. Rights of Humanity are defined & understood with precision, in a Country above all others fond of Liberty, that in such an Age, & such a Country we find Men, professing a Religion ye. most humane, mild, meek, gentle & generous; adopting a Principle as repugnant to humanity as it is inconsistent with the Bible and destructive to Liberty....

I shall honor the Quakers for their noble effort to abolish slavery....

I believe a time will come when an opportunity will be offered to abolish this lamentable evil. Everything we do is to improve it, if it happens in our day; if not, let us transmit to our descendants, together with our slaves, a pity for their unhappy lot and an abhorrence of slavery. If we cannot reduce this wished-for reformation to practice, let us treat the unhappy victims with lenity. It is the furthest advance we can make toward justice. It is a debt we owe to the purity of our religion, to show that it is at variance with that law which warrants slavery. I know not where to stop. I could say many things on the subject, a serious view of which gives a gloomy perspective to future times (35 Cong 1, 344; 36 Cong 1, 570; 36 Cong 1, 823; 36 Cong 1, 1886; 36 Cong 1, Appendix, 267; 36 Cong 2, 1090; 37 Cong 2, 1816; 37 Cong 2, Appendix, 102; 38 Cong 1, 1232).

1788, Virginia convention on the adoption of the Constitution:

[I]t would rejoice my very soul that every one of my fellow-beings was emancipated. As we ought with gratitude to admire that decree of Heaven which has numbered us among the free, we ought to lament and deplore the necessity of holding our fellowmen in bondage (36 Cong 1, 570; 36 Cong 1, Appendix, 267).

John Randolph, of Virginia

1788, in the VA convention that adopted the constitution:

I hope there is none here, who, considering the subject in the calm light of philosophy, will make an objection dishonorable to Virginia; that, at the moment they are securing the rights of their citizens, an objection is started, that there is a

spark of hope that those unfortunate men now held in bondage may, by the operation of the general government, be made free (38 Cong 1, 1232).

1819, final will:

I give to my slaves their freedom, to which my conscience tells me they are justly entitled. It has a long time been a matter of the deepest regret to me that the circumstances under which I inherited them, and the obstacles thrown in the way by the laws of the land, have prevented my emancipating them in my lifetime, which it is my full intention to do in case I can accomplish it (36 Cong 1, 823; 36 Cong 1, Appendix, 267).

1820, letter to William Gibbon:

With unfeigned respect and regard, and as sincere a deprecation on the extension of slavery and its horrors, as any other man, be him whom he may, I am your friend, in the literal sense of that much abused word. I say much abused, because it is applied to the leagues of vice and avarice and ambition, instead of good will toward man from love of him who is the Prince of Peace (36 Cong 1, Appendix, 267).

1820, in Congress:

Sir, I neither envy the head nor the heart of that man from the North, who rises here to defend slavery upon principle (36 Cong 1, Appendix, 268; 37 Cong 2, Appendix, 102).

James Monroe, of Virginia

1788, in the Virginia convention,

We have found that this evil has preyed upon the very vitals of the Union, and has been prejudicial to all the states in which it has existed (36 Cong 1, 1886; 36 Cong 1, Appendix, 267; 36 Cong 2, 1090; 37 Cong 2, Appendix, 102; 38 Cong 1, 1232).

James Madison of Virginia

1787, notes:

Where slavery exists, republican theory becomes more fallacious (36 Cong 1, Appendix, 267).

1787, in constitutional convention:

We have seen the mere distinction of color made, in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man (36 Cong 1, Appendix, 267).

1787, in constitutional convention:

Mr. Madison thought it wrong to admit in the Constitution the idea that there could be property in men (36 Cong 1, 570; 36 Cong 1, 823; 36 Cong 1, Appendix, 267; 37 Cong 2, 1295; 37 Cong 3, 353; 38 Cong 1, 1232; 38 Cong 2, 123; 38 Cong 2, 173; 38 Cong 2, 190; 39 Cong 1, Appendix, 57)

1788, 42nd Federalist:

It were doubtless to be wished, that the power of prohibiting the importation of slaves had not been postponed until the year 1808, or rather that it had been suffered to have immediate operation. But it is not difficult to account, either for this restriction on the general government, or for the manner in which the whole clause is expressed. It ought to be considered as a great point gained in favor of humanity, that a period of twenty years may terminate forever, within these States, a traffic which has so long and so loudly upbraided the barbarism of modern policy; that within that period, it will receive a considerable discouragement from the federal government, and may be totally abolished, by a concurrence of the few States which continue the unnatural traffic, in the prohibitory example which has been given by so great a majority of the Union (36 Cong 1, Appendix, 267).

1790, in Congress, on the question of taxing slave importation:

The dictates of humanity, the principles of the people, the national safety and happiness, and prudent policy requires it of us; the constitution has particularly called our attention to it (38 Cong 1, 1232).

1831, letter to the American Colonization Society:

[Slavery,] “the dreadful calamity” (36 Cong 1, 570; 36 Cong 2, 1090).

1835, interview with Harriet Martineau

The clergy perverted the Bible because it is altogether against slavery (38 Cong 1, 1233).

William Pinkney, of Maryland

1789 to the Maryland House of Delegates:

Never will our country be productive; never will its agriculture, its commerce, or its manufactures flourish, so long as they depend upon reluctant bondmen for their progress....

Sir, iniquitous and most dishonorable to Maryland is that dreary system of partial bondages which her laws have hitherto supported with a solicitude worthy of a better object, and her citizens by their practice countenanced.

Founded in a disgraceful traffic, to which the parent country lent her fostering aid, from motives of interest, but which even she would have disdained to encourage, had England been the destined mart of such inhuman merchandise, its continuance is as shameful as its origin....

Wherefore should we confine the edge of censure to our ancestors, or those from whom they purchased? Are not we equally guilty? They strewed around the seeds of slavery; we cherish and sustain the growth. They introduced the system; we enlarge, invigorate, and confirm it.

Nothing is more clear, than that the effect of slavery is to destroy the reverence for liberty, which is the vital principle of a republic...

[B]y the eternal principles of natural justice, no master has a right to hold his slave in bondage a single hour....

If slavery continues fifty years longer its effects will be seen in the decay of the spirit of liberty in the free States (35 Cong 1, 344; 36 Cong 1, 570; 36 Cong 2, 1090; 37 Cong 2, 198; 37 Cong 2, 1816; 38 Cong 1, 1233).

Luther Martin, of Maryland

1787, in the constitutional convention:

[He would] authorize the General Government to make such regulations as should be most advantageous for the gradual abolition of slavery and the emancipation of the slaves which were already in the States

Slavery is inconsistent with the genius of republicanism, has a tendency to destroy those principles on which it is supported, as it lessens the sense of equal rights of mankind, and habituates us to tyranny and oppression.

God was Lord of all, viewing with equal eye the poor African slave and his American master (36 Cong 1, 571; 36 Cong 1, 823; 36 Cong 2, 1090; 37 Cong 2, 1816; 38 Cong 1, 1233).

Gouverneur Morris, of Pennsylvania

1787, in constitutional convention:

[H]e never would concur in upholding domestic slavery. It was a nefarious institution. It was the curse of Heaven (36 Cong 1, 570; 36 Cong 1, 823).

Benjamin Franklin, of Pennsylvania

1790, as president of the abolition society of Pennsylvania, petition to Congress,

...that it would be pleased to countenance the restoration of liberty to those unhappy men who alone, in this land of freedom, are degraded into perpetual bondage (36 Cong 1, 823; 38 Cong 1, 1232).

1789, as president of the abolition society of Pennsylvania, public address:

Slavery is ...an atrocious debasement of human nature (36 Cong 1, 570).

Roger Sherman, of Connecticut

1787, in constitutional convention:

[He] would not tax slaves, because it would imply that they were property (36 Cong 1, 570).

John Jay, of New York

Unknown date – Jay is quoted, saying that slavery was an “iniquity,” “a sin of crimson dye” (36 Cong 1, 570; 36 Cong 1, 823).

1780, letter to Egbert Benson:

The State of New York is rarely out of my mind or heart, and I am often disposed to write much respecting its affairs; but I have so little information as to its present political objects and operations, that I am afraid to attempt it. An excellent law might be made out of the Pennsylvania one, for the gradual abolition of slavery. Till America comes into this measure, their prayers to Heaven will be impious. This is a strong expression, but it is just (35 Cong 1, 344).

1819, letter to Elias Boudinot:

Little can be added to what has been said and written on the subject of slavery. I concur in the opinion that it ought not be introduced nor permitted in any of the

new States, and that it ought to be gradually diminished and finally abolished in all of them (37 Cong 2, Appendix, 102).

Alexander Hamilton, of New York

1775, public letter:

The sacred rights of mankind are not to be rummaged for, among old parchments, or musty records. They are written, as with a sun beam, in the whole volume of human nature, by the hand of the divinity itself; and can never be erased or obscured by mortal power (37 Cong 2, Appendix, 102).

1785, member of the abolition society of New York, signatory of a petition for persons who, “free by the laws of God, are held in slavery by the laws of the State” (36 Cong 1, 570; 36 Cong 1, 823).

John Adams, of Massachusetts

1765, essay:

[C]onsenting to slavery is a sacrilegious breach of trust” (36 Cong 1, 570; 36 Cong 1, 823).

Rufus King, of Massachusetts

1819, in Congress, as Senator from New York:

[He wished the Constitution would specify,] slavery shall be forever prohibited [from the Territories] (36 Cong 1, 570).

Eldbridge Gerry, of Massachusetts

1787, in constitutional convention:

He thought we had nothing to do with the conduct of the States as to slaves, but ought to be careful not to give any sanction to it (35 Cong 1, 343; 36 Cong 1, 570).

APPENDIX B

LITERACY AND EDUCATION IN THE STATES IN 1850

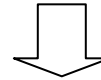
Table 1: States Ranked by Free Adult Illiteracy Rate (1850 Census)



State	Free/Slave State	Slave Density (Slaves as % of Total Population)	Free Adult Illiteracy Rate
NORTH CAROLINA	Slave	33.2%	31.04%
ARKANSAS	Slave	22.4%	26.06%
DELAWARE	Slave	2.5%	25.77%
TENNESSEE	Slave	23.9%	24.73%
KENTUCKY	Slave	21.5%	20.73%
VIRGINIA	Slave	33.2%	20.62%
FLORIDA	Slave	45.0%	19.10%
GEORGIA	Slave	42.1%	19.07%
ALABAMA	Slave	44.4%	18.99%
MARYLAND	Slave	15.5%	17.84%
LOUISIANA	Slave	47.3%	17.60%
INDIANA	Free	0.0%	17.54%
TEXAS	Slave	27.4%	15.54%
MISSOURI	Slave	12.8%	14.25%
SOUTH CAROLINA	Slave	57.6%	12.96%
ILLINOIS	Free	0.0%	11.16%
MISSISSIPPI	Slave	51.1%	10.96%
IOWA	Free	0.0%	10.03%
NEW JERSEY	Free	0.0%	7.70%
OHIO	Free	0.0%	7.36%
PENNSYLVANIA	Free	0.0%	6.86%
CALIFORNIA	Free	0.0%	6.54%
NEW YORK	Free	0.0%	6.06%
MASSACHUSETTS	Free	0.0%	4.97%
MICHIGAN	Free	0.0%	4.48%
WISCONSIN	Free	0.0%	4.34%
RHODE ISLAND	Free	0.0%	4.34%
VERMONT	Free	0.0%	3.72%
CONNECTICUT	Free	0.0%	2.50%
MAINE	Free	0.0%	2.14%
NEW HAMPSHIRE	Free	0.0%	1.67%

Source: Historical Census Browser 2004.

Table 2: States Ranked by Total Adult Illiteracy, Free and Slave (1850 Census)



State	Free/Slave	Slave Density (Slaves as % of Total Population)	Total Adult Illiteracy Rate (Adult Slaves + Illiterate Free Adults / Total Adults)
SOUTH CAROLINA	Slave	57.6%	63.04%
MISSISSIPPI	Slave	51.1%	57.52%
LOUISIANA	Slave	47.3%	57.40%
FLORIDA	Slave	45.0%	55.70%
ALABAMA	Slave	44.4%	55.63%
GEORGIA	Slave	42.1%	53.26%
NORTH CAROLINA	Slave	33.2%	52.56%
VIRGINIA	Slave	33.2%	46.66%
ARKANSAS	Slave	22.4%	43.32%
TENNESSEE	Slave	23.9%	42.07%
TEXAS	Slave	27.4%	37.71%
KENTUCKY	Slave	21.5%	36.72%
MARYLAND	Slave	15.5%	29.27%
DELAWARE	Slave	2.5%	27.17%
MISSOURI	Slave	12.8%	24.25%
INDIANA	Free	0.0%	17.54%
ILLINOIS	Free	0.0%	11.16%
IOWA	Free	0.0%	10.03%
NEW JERSEY	Free	0.0%	7.78%
OHIO	Free	0.0%	7.36%
PENNSYLVANIA	Free	0.0%	6.86%
CALIFORNIA ¹	Free	0.0%	6.54%
NEW YORK	Free	0.0%	6.06%
MASSACHUSETTS	Free	0.0%	4.97%
MICHIGAN	Free	0.0%	4.48%
WISCONSIN	Free	0.0%	4.34%
RHODE ISLAND	Free	0.0%	4.34%
VERMONT	Free	0.0%	3.72%
CONNECTICUT	Free	0.0%	2.50%
MAINE	Free	0.0%	2.14%
NEW HAMPSHIRE	Free	0.0%	1.67%

¹ California had just become a state in 1850.

Source: Historical Census Browser 2004.

Table 3: States Ranked by Public School Pupils, Pauper or Common Schools (1850 Census)



State	Free/Slave State	Slave Density (Slaves as % of Total Population)	Public School Pupils (% of Free Persons, Ages 5-19)
MAINE	Free	0.0%	90.43%
VERMONT	Free	0.0%	86.02%
MICHIGAN	Free	0.0%	72.66%
NEW HAMPSHIRE	Free	0.0%	72.48%
NEW YORK	Free	0.0%	64.09%
OHIO	Free	0.0%	63.10%
CONNECTICUT	Free	0.0%	61.08%
MASSACHUSETTS	Free	0.0%	57.57%
WISCONSIN	Free	0.0%	55.97%
RHODE ISLAND	Free	0.0%	50.29%
PENNSYLVANIA	Free	0.0%	49.09%
NORTH CAROLINA	Slave	33.2%	45.97%
NEW JERSEY	Free	0.0%	44.89%
INDIANA	Free	0.0%	39.98%
IOWA	Free	0.0%	38.72%
ILLINOIS	Free	0.0%	37.28%
TENNESSEE	Slave	23.9%	32.74%
LOUISIANA	Slave	47.3%	27.69%
DELAWARE	Slave	2.5%	26.58%
KENTUCKY	Slave	21.5%	23.33%
MISSOURI	Slave	12.8%	21.98%
VIRGINIA	Slave	33.2%	18.43%
SOUTH CAROLINA	Slave	57.6%	16.01%
ALABAMA	Slave	44.4%	15.99%
MISSISSIPPI	Slave	51.1%	15.49%
GEORGIA	Slave	42.1%	15.13%
TEXAS	Slave	27.4%	13.14%
MARYLAND	Slave	15.5%	12.54%
ARKANSAS	Slave	22.4%	12.54%
FLORIDA	Slave	45.0%	10.54%
CALIFORNIA ¹	Free	0.0%	0.51%

¹ California had just become a state in 1850.
Source: Historical Census Browser 2004.

APPENDIX C

LANDHOLDING DISTRIBUTION IN THE STATES IN 1860

Table 1. States Ranked by Number of Counties with a Modal Farm Sizes of 1000 acres or more.

State	Type	Number of Counties with a Modal Farm Size of...		
		3-19 acres	20-99 acres	100 or more acres
Virginia	Slave	1	77	70
Georgia	Slave	0	81	51
Mississippi	Slave	1	36	20
Louisiana	Slave	5	23	19
Kentucky	Slave /Border	0	92	17
South Carolina	Slave	0	14	17
North Carolina	Slave	1	69	16
Maryland	Slave /Border	1	8	13
Illinois	Free	0	91	11
Alabama	Slave	2	39	11
Texas	Slave	21	99	6
Pennsylvania	Free	0	59	6
Tennessee	Slave	0	80	4
New York	Free	1	56	3
Florida	Slave	8	24	3
Indiana	Free	0	90	2
Ohio	Free	0	86	2
Arkansas	Slave	0	53	2
Delaware	Slave /Border	0	1	2
Missouri	Slave /Border	0	113	0
Iowa	Free	4	92	0
Wisconsin	Free	7	50	0
Michigan	Free	6	50	0
New Jersey	Free	1	20	0
Maine	Free	0	16	0
Vermont	Free	0	14	0
Massachusetts	Free	1	13	0
New Hampshire	Free	0	10	0
Connecticut	Free	0	8	0
Rhode Island	Free	1	4	0

Table 2. Percentage of Counties with a Modal Farm Size of 3 to 19, 20 to 99, and 100 or more Acres.

	Total Counties	Percentage of Counties with a Modal Farm Size of...		
		3-19 acres	20-99 acres	100 or more acres
Slave /Border	247	0.40%	86.64%	12.96%
Free	704	2.98%	93.61%	3.41%
Slave	853	4.57%	69.75%	25.67%

Table 3. Number of Farms 500-999 Acres and 1000 Acres and Above.

States	Total Population	% Slaves	Type	# Farms 500-999 acres	# Farms > 999 acres	Total Farms
GEORGIA	1,057,286	44%	Slave	2,692	902	53,897
VIRGINIA	1,596,318	31%	Slave	2,882	641	86,468
ALABAMA	964,201	45%	Slave	2,016	696	50,064
MISSISSIPPI	791,305	55%	Slave	1,868	481	37,007
SOUTH CAROLINA	703,708	57%	Slave	1,359	482	28,456
LOUISIANA	708,002	47%	Slave	1,161	371	17,281
NORTH CAROLINA	992,622	33%	Slave	1,184	311	67,022
KENTUCKY	1,155,684	20%	Border/Slave	1,078	166	83,689
ILLINOIS	1,711,951	0%	Free	988	194	142,338
TENNESSEE	1,109,801	25%	Slave	921	158	77,741
OHIO	2,339,511	0%	Free	485	112	173,383
MISSOURI	1,182,012	10%	Border/Slave	466	95	88,552
TEXAS	604,215	30%	Slave	468	87	37,363
ARKANSAS	435,450	26%	Slave	307	69	33,190
INDIANA	1,350,428	0%	Free	287	74	126,898
MARYLAND	687,049	13%	Border/Slave	303	35	25,244
FLORIDA	140,424	44%	Slave	211	77	6,396
NEW YORK	3,880,735	0%	Free	225	21	195,459
VERMONT	315,098	0%	Free	92	11	30,976
WISCONSIN	775,881	0%	Free	76	11	68,782
IOWA	674,913	0%	Free	66	10	59,629
PENNSYLVANIA	2,906,215	0%	Free	61	15	156,021
NEW HAMPSHIRE	326,073	0%	Free	45	4	30,444
CONNECTICUT	460,147	0%	Free	39	4	25,101
MICHIGAN	749,113	0%	Free	40	3	62,389
MASSACHUSETTS	1,231,066	0%	Free	29	0	35,556
NEW JERSEY	672,035	0%	Free	17	6	27,460
DELAWARE	112,216	2%	Border/Slave	14	0	6,588
MAINE	628,279	0%	Free	9	2	55,675
RHODE ISLAND	174,620	0%	Free	11	0	5,364
			Slave States	15,069	4,275	494,885
			Free States	3,366	780	1,245,907

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