

Justice in Moderation:

The Evil Genius of Compromise During the Civil War

By Barbara J. Fields

Of all the things that happened to me in the immediate aftermath of the broadcast of the PBS documentary, *The Civil War*, the most disquieting was a remark by a colleague at Columbia (not a historian, I am relieved to say). Approaching me just outside the campus, she told me how much she had admired the broadcast. But it was what she most admired about it that disturbed me. The series made clear, she told me, the utter pointlessness of war, a lesson she found especially welcome as the United States prepared for war in the Persian Gulf.

That colleague was not alone in concluding that the Civil War was pointless. Shelby Foote said more or less the same thing during the series, when he explained that the war occurred because Americans' "genius for compromise" had failed them. You could smell the same judgment in the films' sequences about the Confederate surrender, in which Union soldiers saluted their defeated enemy, and officers magnanimously permitted the defeated rebels to return home with their weapons in hand and their dignity intact. You could smell it even more strongly in the sequences showing newsreels in which Union and Confederate veterans embraced each other as brothers, and the narrator suggested that only temporary insanity could have led those brothers to fight each other so murderously.

The truth is not so comforting. Many of those "noble" Confederate veterans returned home to beat, torture, and murder Afro-American veterans and rape their mothers, wives, daughters, and sisters, and to

plunder houses, steal or vandalize crops, and burn schools and churches belonging to freed men and women. Afro-American men who fought in the Union army, along with their families, became special targets for vengeful returning rebels. A soldier in Kent County, Maryland, complained that he and other veterans from his neighborhood in Queen Anne's County, "darcent walk out of an evening" for fear of being attacked by ex-Confederates. A "white-haired old colored man" in Kent County suffered insults and taunts until his tormentors learned that his son had been in the Union army. "That," according to an agent of the Freedmen's Bureau, "was sufficient cause to punish the old man and one of the rowdies struck him over the head and kicked him, meanwhile the white spectators laughed in chorus."¹ I have taken these examples from Maryland, but they could serve as well for any area of the ex-slave South to which Afro-American veterans returned. The defeated foe showed them no magnanimity, not in the United States of Lyncherdom, as Mark Twain called it. The newsreels of the emotional veterans' reunions showed no example of a Confederate veteran embracing a Union veteran of African descent. No wonder. Had Afro-American veterans intruded upon those comradely events, no one could have pretended not to remember what all the fuss had been about. The great abolitionist — and Maryland native — Frederick Douglass spent the last years of his life imploring Americans

not to forget what the Civil War had been about.

The view that the Civil War was pointless has a respectable historical pedigree — at least, if your standards of respectability are loose enough. It was the point of view of people who would probably be called *moderates* in the harebrained vocabulary of today's political journalism, although they would probably have identified themselves as conservative. In the eyes of the miscalled moderates of the Civil War era, only white citizens had a legitimate stake in the outcome of the war. One of their favorite rhetorical ploys was to accuse secessionists and abolitionists alike of attaching too much importance to the Afro-Americans. "Both have Cuffee on the brain," they would charge — cuffee being a disparaging generic term for a person of African descent. Characteristic of this position was a remark of Brigadier General Jeremiah T. Boyle, commander of the Union army's District of Western Kentucky, in which he denounced abolitionist soldiers as "scarcely above a class amongst us who care more for their negroes or poultry, than they do for their Government."²

The Unionist governor of Maryland, Thomas Holliday Hicks, offered a classic statement of the "moderate" position in November 1861: "I care nothing for the Devlish Nigger difficulty, I desire to save the union. . . . If we can but keep away outside Issues, and all things foreign from the one, true, great design of all Patriots, we shall save the union."³

Hicks's counterpart in Kentucky, Governor Thomas E. Bramlette, held similar views — although, being from Kentucky, he expressed them at a date when events had forced the racist unionists of Maryland and elsewhere to move on. Thus, in September 1864, when the Emancipation Proclamation had brought at least conjectural freedom to slaves in the Confederate states and when Maryland was two months away from emancipating its slaves under a new state constitution, the governor of Kentucky was writing to Abraham Lincoln to protest the intrusion into the war of the issue of freedom for the slaves:

In common with the loyal masses of Kentucky my Unionism is unconditional. We are for preserving the rights and liberties of our race. . . . We are not willing to sacrifice a single life, or imperil the smallest right of free white men for the sake of the negro. We repudiate the Counsels of those who say the Government must be restored with Slavery, or that it must be restored without Slavery, as a condition of their Unionism. We are for the restoration of our Government throughout our entire limits regardless of what may happen to the negro. We reject as spurious the Unionism of all who make the Status of the negro a sine qua non to peace and unity. We are not willing to imperil the life liberty and happiness of our own race and people for the freedom or enslavement of the negro. To permit the question of the freedom or slavery of the negro, to obstruct the restoration of National authority and unity is a blood stained sin. Those whose sons are involved in this strife

demand, as they have the right to do, that the negro be ignored in all questions of settlement, and not make his condition — whether it shall be free or slave, an obstacle to the restoration of national unity & peace.⁴

A slaveholding Kentuckian who was also a Union army officer, Colonel Marcellus Mundy, offered his own version of the Cuffee-on-the-brain argument. Complaining about soldiers from Michigan who requested passes to take the escaped slaves of rebel owners home with them to Michigan, Colonel Mundy wrote to headquarters that he was “ashamed to find so many officers disposed to debase the noble principle for which we are battling and degenerate it into a mere negro freeing machine.”⁵ Colonel Mundy intended no irony in thus contrasting the “noble principle” of union with the debased principle of freedom. Nor was he alone among Union officers in his twisted moral priorities. Major General John A. Dix used kindred language to make a similar point. Warning a subordinate against sheltering fugitive slaves and thereby mingling the issue of emancipation with that of union, he declared: “Our cause is a holy one, and should be kept free from all taint.”⁶

Just cast about in your mind for a moment the moral viewpoint that such language reveals. To Union, a set of man-made political arrangements, these compromising moderates apply the grand terms *noble and holy*. To human freedom, declared by their own country's Declaration of

Independence to be a gift of God, they apply the terms *degenerate, taint, and debase*. Thomas De Quincey once made the following ironic observation about murder: “If once a man indulges himself in murder, very soon he comes to think little of robbing; and from robbing he comes next to drinking and sabbath-breaking, and from that to incivility and procrastination.” De Quincey's warning that a person who once commits murder might eventually stoop to procrastination reminds me of the moderate compromisers' relative ranking of Union and freedom.

Observing the American Civil War from England, Thomas Carlyle expressed his contempt for both sides, observing that the rebels said to the Negro, in effect, “God bless you, and be a slave,” while the Yankee said “God damn you, and be free.” His contempt would have been complete had he gone on to characterize the compromising middle, whose message was neither “God bless you, and be a slave” nor “God damn you, and be free,” but the worst of both: “God damn you, and stay a slave.” (Not — mind you — that Thomas Carlyle, of all pots, had any business calling the kettle black.)

Abraham Lincoln's point of view belonged to the same family of so-called moderates. (After all, although we associate Lincoln with Illinois, he — like Jefferson Davis, the president of the Confederacy — was born in Kentucky.) To be fair, Lincoln was more enlightened than

Governor Hicks, Colonel Mundy, or General Dix as well: He, at least, privately considered slavery a moral wrong and hoped for its eradication. Moreover, he was capable of growth beyond most politicians of his time (let alone ours). But, when all is said and done, Lincoln was a lawyer and a conservative Whig. The lawyer in him considered the sanctity of property rights, including the right to slave property, more compelling than the slaves' right to freedom and took a narrow view — at first, anyway — of the federal government's power to interfere with slavery in the states where it was legal. The Whig in him held preservation of the Union higher than any other priority. The conservative in him held racist views that provided a comfortable home for such an ordering of moral priorities. In 1858 he made his racist views clear:

I am not nor ever have been in favor of bringing about in any way the social and political equality of the white and black races [applause] — that I am not nor ever have been in favor of making voters or jurors of negroes, nor of qualifying them to hold office, nor of intermarry with white people, and I will say in addition to this that there is a physical difference between the black and white races which I believe will for ever forbid the two races living together on terms of social and political equality. And inasmuch as they cannot so live, while they do remain together there must be the position of superior and inferior, and I as much as any other man am in favor of having the superior position assigned to the white race.⁷

Holding such views, Lincoln could sincerely respond in the following blunt language to those who urged him, during the summer of 1862, to proclaim universal emancipation a goal of the war: "If I could save the Union without freeing *any* slave, I would do it; and if I could save it by freeing *all* the slaves, I would do it; and if I could do it by freeing some and leaving others alone, I would also do that."

Lincoln's actions prove that he did not misstate his priorities. During the fall of 1863, a secessionist in southern Maryland murdered a Union officer who had been assigned to recruit Afro-American soldiers. Although, like all line officers of the Union army, he was white (the Louisiana Native Guards briefly included Afro-American line officers, but they were quickly cashiered by the federal government, lest they set an intolerable precedent), his recruiting squad included Afro-American soldiers, whose job was to encourage other Afro-American men, slave and free, to enlist and to offer armed protection to potential recruits. But the citizens (that is to say, the white people) of southern Maryland considered the spectacle of black men in uniform an unbearable affront. Negro soldiers! Heaven preserve us! So they applauded when one of their number murdered the Union officer.

And how did Lincoln react to the killing? Did he say, "Outrageous! Arrest that man! We can't have citizens murdering United States officers for doing their duty"? Nothing of the sort. Instead, he

passed along to the commander in the area the complaints of the slaveholders that Negro soldiers were "frightening quiet people" in the neighborhood. To the commander's reply that the only disorder had been the murder of the Union recruiter, Lincoln telegraphed the following reply: "It seems to me that we could send white men to recruit better than to send negroes, and thus inaugurate homicides on punctilio."⁸

A year and a half later, we find Lincoln pleading on behalf of the murderer's family, left destitute when he fled to the Confederacy and the government confiscated his plantation, as under the law it was amply justified in doing. Although Lincoln conceded minimally that the murderer "had no justification to kill the officer," he insisted that it was the officer's own fault, even though he had been obeying lawful orders when shot.⁹ Lincoln made no pleas, to my knowledge, on behalf of the murdered officer's family. Nor, needless to say, did he make any pleas on behalf of the Afro-American soldiers' families, terrorized by slaveholders in order to frighten their men out of enlisting or in order to retaliate against men who had already done so.

In Kentucky, recruitment of Afro-Americans proceeded according to Lincoln's preferences. Rather than remain to "frighten quiet people," Afro-American soldiers were dispatched from the state as soon as they enlisted and mobile recruiting squads — never mind mobile

Photo by Linda G. Rich. From the Council-sponsored project *Neighborhood: A State of Mind, 1978 East Baltimore Documentary Photography Project*.

recruiting squads including Afro-American soldiers — were strictly banned. As a result, slaves in Kentucky were arrested, maimed, and murdered on their way to distant recruiting stations and families made to pay in blood for their men's audacity.

A few years ago, I was surprised and disappointed to see the spirit of the Civil War moderates approvingly resurrected in a column in *The Washington Post* written by a journalist whose work I generally respect. One columnist wrote as follows:

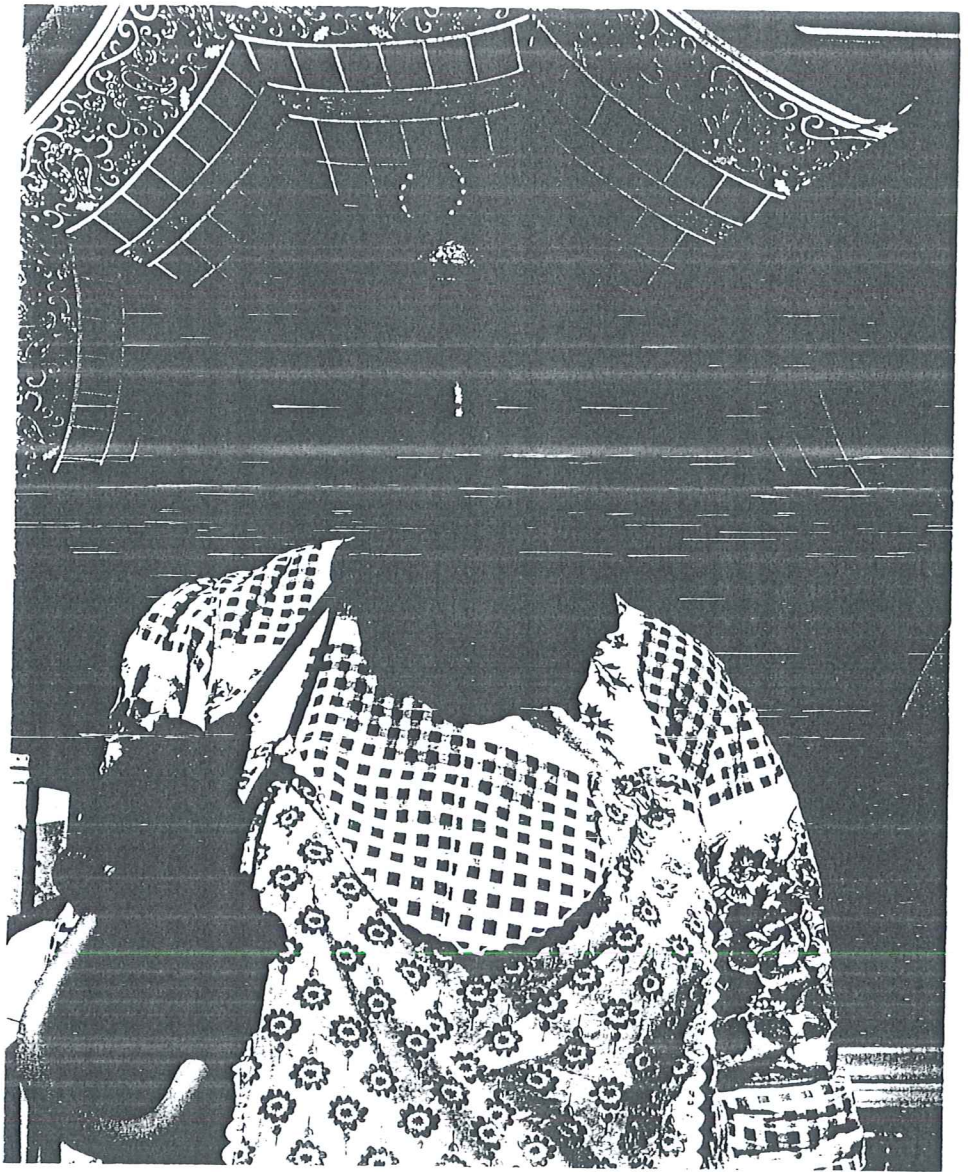
Lincoln — the shrewd, practical Whig politician — resisted the pressure of the anti-slavery evangelists to his dying day. He went as far into their program as was politically useful . . . but not a step farther. . . . There were many slaveholders in the loyal border states who were strong unionists, far more essential to the Union's survival than easing the conscience of William Lloyd Garrison.¹⁰

Spoken like a true border-state moderate. Reading that passage, you would suppose that the only parties to the dispute were loyal slaveholders and William Lloyd Garrison. What about the slaves and their claim to justice regardless of Garrison's conscience or the desire of loyal slaveholders to hold onto their property? What about "endowed by their Creator with certain unalienable Rights"? What about forming a more perfect union, establishing justice, insuring domestic tranquility, providing for the common

defense, promoting the general welfare, and securing the blessings of liberty?

No doubt most of this audience recognizes "endowed by their Creator with certain unalienable Rights" as one of the most famous lines from the Declaration of Independence, and "form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty" as part of the

preamble to the United States Constitution. In invoking those documents, I was not just a-whistling "Dixie" (or should I say a-whistling the "Battle Hymn of the Republic"). Nor was I making a purely rhetorical point, meanwhile overlooking the obvious fact that, at the time the words were written, not many people other than Afro-Americans themselves assumed that they applied to Afro-Americans. Indeed, it was during that period that race was invented. Seeking to



resolve the contradiction between a natural right to liberty and the enslavement of Afro-Americans, Euro-Americans defined Afro-Americans as a race. (Afro-Americans resolved the contradiction more directly, by calling for the abolition of slavery.)

But I was neither whistling "Dixie" nor playing with words nor overlooking the obvious. Rather, I meant to draw attention to a very down-to-earth reality: that from the time the constitutional convention pieced together the new nation's first compromise on the question of slavery, it became impossible to "form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty." Never mind the slaves; the founders and their successors did not mind the slaves. But what about the country as a whole? Look at what went on: a bloody slave uprising in Virginia; a gag rule in Congress (1835–1844), forbidding members of the House of Representatives to discuss petitions presented for their consideration by their own constituents; mobbings and murders of abolitionists; war with Mexico; repeated threats to break up the union from 1832 on, papered over by repeated compromises that kept coming unglued; pitched battles and ambushes in Kansas; John Brown's raid at Harpers Ferry, Virginia (now West Virginia).

Surely the record makes clear that, even for those who cared nothing for the "devilish Nigger difficulty," slavery was, as the great (but sadly neglected) abolitionist Wendell Phillips put it, a chronic insurrection that had been disturbing the nation's peace for seventy years by the time the Civil War broke out.

Suppose Americans vaunted genius for compromise had failed sooner. Perhaps if the genius for compromise had not worked so well in 1787 or

1820 or 1850, some of the 600,000 lives lost in the Civil War might have been spared. Compromise never ended the disruptive influence of slavery; it only built up pressure leading to ever more explosive disruptions. And by the time the lid blew off, the country had unfortunately made great progress in developing the industrial and technological capacity for mass slaughter.

Lincoln and many others cherished the illusion that the lid might once again be forced down by yet another compromise purchased at the slaves' expense. Three months after issuing his preliminary emancipation proclamation and a few weeks before he issued the final proclamation, Lincoln still hoped that he might avoid the need to tamper with slavery. In a message to Congress, he argued in favor of an unamendable amendment to the Constitution that would have postponed the final end of slavery until the year 1900. Just think of it. Had the compromise succeeded better than any of its predecessors, it would have preserved slavery into the lifetime of Franklin Roosevelt, Charles De Gaulle, Dwight Eisenhower, Jawaharlal Nehru, Nikita Khrushchev, A. Philip Randolph, and my own grandparents. Along the way, it might have resulted in the scattering of Afro-American families to Cuba, Brazil, and other outposts where slavery persisted, just as an attempt at gradual emancipation in Missouri inspired slaveholders there to send thousands of slaves to Kentucky, where slavery remained unthreatened. A compromise preserving American slaveholders, the most powerful slaveholding class of the hemisphere, might even have allowed the slaveholders of Cuba and Brazil to hang on longer than they did.

And had Lincoln's compromise then broken down, like every one of its predecessors, the eventual war might

have been enhanced by such technological "improvements" as modern high explosives, automatic weapons, the gasoline-powered internal combustion engine, and even aircraft. Imagine Antietam with tanks, Gettysburg with machine guns, Vicksburg with dynamite, or Petersburg with airplanes. When you think about it that way, the genius for compromise starts to look more like stupidity.

The truth is, Lincoln was pipe-dreaming to imagine a compromise that could preserve slavery once secession was a fact and the war was underway. When the federal union was breached, with its delicately worded and euphemistically phrased Constitutional safeguards for the rights of slaveholders, slavery was doomed, and so was a union living in perpetual compromise with slavery. "The Constitution of the United States is your only legal title to slavery." So General William T. Sherman, who certainly never cared about the freedom of Afro-Americans, advised a West Point classmate who had become a Confederate officer and who sought the return of runaway slaves within Sherman's lines. Wendell Phillips reminded secessionists that "the moment you tread outside of the Constitution, the black man is not three fifths of a man, he is a whole one." Brigadier General Daniel Ullmann, commander of a Union brigade of Afro-American soldiers, put the matter in a form guaranteed to irritate and provoke the South Carolina slaveholders who had launched the war by attacking Fort Sumter: "The first gun that was fired at Fort Sumter sounded the death-knell of slavery. They who fired it were the greatest practical abolitionists this nation has produced." Maybe General Ullmann was trying to get the goat of Edmund Ruffin, the veteran secessionist from Virginia who claimed for himself the symbolic honor of firing the first shot at Fort Sumter. (Ruffin killed himself

after the Confederates' surrender, pronouncing anathema against what he called the "Yankee race"). For their part, conservative slaveholders had foreseen the danger beforehand and warned their fellow slaveholders that secession would unleash a revolution that would end by destroying slavery.

However clear or inevitable a lesson may seem, however, human beings and human actions are usually required to teach it. And important lessons seldom come easy or cheap. Only gradually and at great cost did the nation at large learn that, under the circumstances of war, the slaves could not longer be regarded as property to be haggled over or offered as payment for the compromises of others. They were people: people whose will and intentions were as much a fact of the war as terrain, supplies, and the position of the enemy; people whose point of view must therefore be taken into account. The task of teaching that lesson fell to the slaves themselves. Their stubborn actions in pursuit of their faith gradually turned faith into reality. It was they who taught the nation that it must place the abolition of slavery at the head of its agenda.

Officers and men of the armed forces were the slaves' first pupils, because the slaves got hold of them first. The deceptively simple beginning of that process occurred when slaves ran away to seek sanctuary and freedom behind federal lines, something they began doing as soon as federal lines came within reach. And, unfortunately for Lincoln's plan to separate the question of Union from the question of slavery, federal lines first came within the slaves' reach in the border slave states that Lincoln was determined to keep in the Union at all costs. Slaves from loyal Maryland as well as rebellious Virginia fled to the federal army during the Battle of Bull Run, the first engagement of

the war. While unionists and secessionists fought openly for control in Missouri, slaves escaping from owners of both types made their way to federal positions. In Kentucky, whose attempted neutrality both armies promptly challenged, slaves escaping from soldiers of the invading Confederate army joined slaves escaping from local owners in seeking refuge with federal troops.

Once the slaves arrived, something had to be done about them. Deciding just what proved a ticklish matter, since every possible course — taking them in, sending them away, returning them to their owners, or looking the other way — threatened to offend some group whose good will the administration needed. Sheltering the fugitives would antagonize the loyal slaveholders whose support underpinned Lincoln's strategy for holding the border slave states in the Union and perhaps wooing back to the Union some slaveholders within the Confederacy itself. But handing fugitives over to their pursuers would infuriate abolitionists. Soldiers of abolitionist or free-soil leaning resisted on principle orders to return fugitives; and even soldiers who held no strong convictions one way or the other resented being ordered to perform a menial chore — slave-catching — on the say-so of arrogant masters and mistresses whom they suspected of feigning loyalty while in truth supporting the rebellion. Looking the other way and doing nothing could not resolve the problem either: each side would interpret any such attempt as a maneuver to help the other. Moreover, purely military considerations suggested that some slaves ought not to be returned to their owners: those assigned to work for the Confederate army and those who offered valuable intelligence or served as pilots and guides for federal forces.

Lincoln did his best to evade the whole question, ordering his commanders not to allow fugitives within the lines in the first place. But orders could not stop the slaves from seeking refuge with Union forces; nor could orders prevent Union forces from granting refuge — whether they did so out of altruistic sympathy with the fugitives' desire for freedom, pragmatic pursuit of military advantage, or a selfish desire to obtain willing servants. Whatever action military officials then took committed the government, visibly, to a definite policy concerning slaves and their owners. However politicians might strive to separate the war from the question of slavery, military men learned at first hand that the two were inseparably linked.

Those who can interfere with an army fighting for the life of a civilian government have the ear of the civilians manning that government, however hard of hearing they may be. Thus did the slaves set in motion a political process that politicians, whether they wished to or not, were required to deal with politically.

The slaves had no interest in another compromise at their expense. Without political rights or political standing, they nevertheless broadcast to Washington their will to be free. Eventually, the lesson soldiers learned in the field must impress itself as well upon politicians. Aggrieved slaveholders took their complaints to the press, to local officials, to their congressional delegations, to the War Department, or to Lincoln himself. Aggrieved soldiers and abolitionists did the same. Somewhere within the political system, someone would sooner or later have to act. Lincoln's first secretary of war, Simon Cameron, acted too forthrightly. His public proposal that the Union free the slaves of rebels and enlist slave men as soldiers ensured his ouster from



A parade was the focus of attention for these Clay Street residents on a sunny summer day in 1948. Photo by Marion Warren. From the Council-sponsored project, The Annapolis I Remember.

the cabinet. Cameron's successor, Edwin M. Stanton, knew better than to run his head into a hornet's nest. He carefully refrained from general pronouncements and, in answering inquiries from commanders in the field about how to deal with fugitives, perfected the art of the reply that contained no answer. Left without political guidance, some commanders fretted and floundered. Others took initiatives that enveloped the government in public controversy and turned the heat back onto the political officials who had hoped to escape it.

Twice Lincoln's commanders embarrassed him publicly by moving ahead of him on the question of emancipation. In August 1861

General John C. Fremont proclaimed martial law in Missouri and declared free all slaves of secessionist owners. Fremont refused Lincoln's order that he amend the proclamation. Accordingly, Lincoln amended it himself and, after a decent interval, relieved Fremont of command and appointed General David Hunter to replace him. Fremont's proclamation enraged unionist slaveholders but stirred the enthusiasm of abolitionists: audiences on the lecture circuit interrupted Wendell Phillips with wild applause and would not permit him to continue, once he mentioned the magic name of Fremont. In May 1862, General Hunter himself, by then transferred to command of the Department of the South (which

included South Carolina, Georgia, and Florida), put Lincoln on the spot once more — and for higher stakes — by declaring slavery abolished throughout his department. This time the slaves at issue belonged, not to loyal owners in loyal states, but to unquestionably rebellious owners in the Confederacy itself. Upon Lincoln fell the onus — the disgrace, many believed — of abolishing Hunter's abolition, as he had abolished Fremont's.

For reasons that make sense once you think about it, Congress was well ahead of the president in getting the message that the war could have no goal short of universal emancipation. In July 1861, responding to the many complaints it had received, the House of Representatives resolved that it was "no part of the duty of the soldiers of the United States to capture and return fugitive slaves." In August, Congress passed an act confiscating slaves whose owners had knowingly required or permitted them to labor on behalf of the rebellion. The language of the act left unsettled whether or not such slaves became free; the flamboyant Union general Benjamin F. Butler popularized the term "contraband" to cover the uncertainty, and eventually "contraband" came to apply to virtually any slave encountered by Union forces. But for all its equivocation, the first confiscation act opened a door through which slaves fleeing military labor with the Confederate army could take the first step toward freedom, and it established a precedent for less equivocal actions to follow.

Before long, Congress proceeded from cautious first steps to much bolder ones. In March 1862, it adopted a new article of war that forbade military personnel — upon pain of court martial — to return fugitive slaves to their owners. Shortly after adopting the new article of war, Congress abolished slavery in the District of Columbia. In July 1862, over Lincoln's objections, Congress passed a second confiscation act that did what Fremont had tried to do in Missouri: it declared free all slaves whose owners supported the rebellion and forbade military personnel to judge the validity of owners' claims to alleged fugitive slaves. In the same month, Congress authorized the enlistment of "persons of African descent" into military service. Above all else, it was military recruitment that doomed slavery in the loyal slave states. So far ahead of Lincoln had Congress traveled on the road to emancipation that, at the moment of its issuance, the final Emancipation Proclamation freed not a single slave who was not already entitled to freedom by act of Congress.

For some people, it goes without saying that war is the greatest of all evils. But that is a matter of faith, rather than argument or evidence. And it very soon leads to treacherous moral ground. To assert or imply, for example, that war is a greater evil than injustice requires attaching a higher importance to the suffering of those victimized by war than of those victimized by injustice, supposing the two to be different — as, in the case of slavery and the Civil War, they were. And even if one agrees with the dubious proposition that peace, however unjust, is always preferable to war, there remains the question of exactly what constitutes peace. It was enslavement, not war, that breached the peace for the slaves.

In the end, it is not the strife of brother against brother that makes the Civil War a tragedy. It is the fact that, regardless of destruction and loss, it had to be fought. Its consequences were terrible. But the consequences of compromise would have been unimaginably worse.

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