

The Popular Origins of the Thirteenth Amendment

The Thirteenth Amendment to the Constitution of the United States permanently ended slavery in the United States and its possessions. It was the first example of changing the Constitution to bring about a specific, nation-wide social reform. It was the result of a campaign by the foes of slavery, secession, and rebellion and the climax of popular reaction to the war. As ratified the Thirteenth Amendment contains two brief sections:

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Despite three decades of agitation, education, and demonstrations by the foes of slavery, the Thirteenth Amendment was a sudden achievement, and its birth can be traced directly to the War of the Rebellion, the popular anxiety wrought by four years of fratricide, and the collective determination to prevent a recurrence of such a national catastrophe. At the outset of the war, friends of the Union and proponents of conciliation had proposed a constitutional amendment to guarantee slavery in the states where it then existed. On March 2, 1861, shortly before Lincoln's inauguration, Congress had approved a conciliatory amendment and forwarded it to the states for ratification:

No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere within any States, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State.¹

The Illinois state constitutional convention promptly ratified the proposed amendment perpetuating slavery. Within a few weeks, the disposition of many national leaders to protect and guarantee slavery as a means of safeguarding the Union drastically changed.

¹ *Documentary History of the Constitution of the United States of America, 1786-1870, derived from the Records, Manuscripts, and Rolls deposited in the Bureau of Rolls and Library of the Department of State, Washington, D.C., 1894, II, 520.*

Americans who were willing at the outset of the crisis to pledge themselves to protect slavery underwent profound changes in sentiment and opinion. Within four years, four years that cut deep scars, a great majority were demanding an end to slavery, a withdrawal of real or implied pledges of protection, and a constitutional amendment forever outlawing the institution of human bondage within the republic.

During the winter of 1860-1861, the rapid disappearance of Union sentiment in portions of the South had shocked many Americans. Increasingly after the outbreak of the rebellion, sorrowful Americans blamed the existence of slavery for the national calamity and for the collapse of the democratic processes that had preserved the Union for three generations. Each day the rebellion lived, the public mind of the North blamed the existence of slavery for the national disaster. Men who weighed and re-weighed the importance of the Union concluded that slavery and the republic could not live side by side. From pulpit and press, makers of public opinion denounced slavery as the principal cause of the rebellion and demanded its end as a way of saving the republic. Quickly, many Americans came to the view that slavery and the Union were incompatible and that the preservation of the Union required a speedy end to slavery.

Thousands of petitions showered upon members of the Congress. Some demanded an end to slavery through an act of Congress. Many bore a few names, but one "monster" petition, a tightly wrapped roll bearing 100,000 names, found its way to the appropriate committee of Congress. Most petitioners blamed slavery for the rebellion, the deaths of thousands of Americans, and the suffering of families, and they demanded a prompt end to slavery through constitutional amendment. Others insisted upon piecemeal assaults on the institution through the abolition of slavery in the District of Columbia, the prohibition of slavery in the federal territories, the conferral of freedom upon slaves who fled their rebel masters, and the repeal of the fugitive slave law by which the federal government had returned runaway slaves to their masters.

Congressmen received numerous appeals from their constituents who confessed that until the rebellion they had not been abolitionists but were fast becoming so. Men who had been hostile to abolitionists now demanded an immediate end to slavery. "The rebels made the war to sustain slavery," a constituent complained to Representative Elihu B. Washburne of Illinois, "and we have poured out blood

and treasure without stint only to accomplish the same object."² Another confessed, "I am getting to be pretty much of an Abolitionist. We can never have permanent peace until slavery is crushed. Emancipation is the word, first, last and all the time."³

Thirty members of the Cedar Creek Congregation of Warren County, Illinois, declared that "It is our conviction that the war which is now raging in our Country is an evidence of the irrepressible conflict between freedom and slavery, which must continue until one or the other is destroyed. . . ."⁴ Friends, strangers, and well-wishers urged the early abolition of slavery in the District of Columbia as "the best mode of bringing this wicked rebellion to a close."⁵

Some men declared that they feared compromise would be made with the South "before the slave power is crushed and annihilated," and slavery, "the infernal master," would be permitted to "prey upon the vitals of our future peace and prosperity." Declaring slavery to be a cancer, one recent convert to abolitionism declared that "It is malpractice to cover a cancer with a plaster." As for the alleged rights of slaveholders, "when they raised the arm of rebellion they threw away their constitutional shield. The Constitution knows no rights of traitors, but to the halter."⁶ Complaining that President Lincoln appeared to "lean toward saveing [*sic*] slavery," a constituent of Representative Thaddeus Stevens of Pennsylvania begged Congress to "abolish slavery in toto." "The people are anxious to have slavery wiped out, believing it to be the cause of the war, and nothing short of that will be worth a straw, and no compromise whatever."⁷ A Massachusetts man warned his Representative, "We cannot have slavery and the good will of God! With

² William B. Dodge to Hon. E. B. Washburne, Millburn, [Illinois], June 18, 1862, Elihu B. Washburne Papers, Division of Manuscripts, Library of Congress.

³ F. F. Washburn [to Elihu B. Washburne], Eureka, [California], Apr. 5, 1862, Washburne Papers.

⁴ Petition of Cedar Creek Congregation of United Presbyterian Church and citizens of Warren County, Illinois, presented Feb. 10, 1862, by Senator Lyman Trumbull, United States Senate Papers, Petitions and Memorials, National Archives.

⁵ Sam[uel] L. Gaither to Hon. B. F. Wade, Somerset, Pennsylvania, Feb. 28, 1862, Benjamin F. Wade Papers, Division of Manuscripts, Library of Congress.

⁶ William B. Dodge to Hon. E. B. Washburne, Millburn, [Illinois], Feb. 28, 1862, Washburne Papers.

⁷ Frederick Miles to Hon. Thaddeus Stevens, Sugar Grove, Warren County, Pennsylvania, Mar. 21, 1862, Thaddeus Stevens Papers, Division of Manuscripts, Library of Congress.

the one or the other we must part."⁸ Charles Grandison Finney, President of Oberlin College, and eighty-two fellow Ohioans petitioned Congress "in the name of God, of Justice, of Humanity, of Liberty, and of sound policy take immediate measures to abolish slavery in the U. S. and render its future existence in the same forever impossible."⁹

Pressured by popular outcries against slavery, Congress took steps to circumscribe slavery. In the summer of 1861, Congress passed the first Confiscation Act which declared forfeit any slave used in the Confederate forces or in any rebel military construction.¹⁰ The following March, 1862, goaded by widespread complaints that some Union commanders were using soldiers to return runaway slaves to owners who sympathized with the Confederate cause, Congress forbade the use of military personnel to return fugitive slaves.¹¹ Shortly after, Congress declared free all slaves fleeing their Confederate masters.¹² In April, 1862, Congress abolished slavery in the District of Columbia and authorized the payment of nearly one million dollars as compensation to loyal owners thus deprived of their property.¹³

To secure new free states, Congress laid as a condition for admission to the Union the requirement that West Virginia adopt as part of her state constitution a program for gradual emancipation.¹⁴ Thus each Congressional act was part of a piecemeal attack on the fringes of slavery and a confirmation of the mounting public hostility that blamed slavery for the rebellion.

⁸ Aaron Foster to Henry L. Dawes, East Charlemont, Massachusetts, Jan. 23, 1862, Henry L. Dawes Papers, Division of Manuscripts, Library of Congress.

⁹ Petition of C. G. Finney, John Morgan, George N. Allen, *et al.*, Oberlin College, Jan. 6, 1862, Judiciary Committee, Petitions, House of Representatives Papers, National Archives.

¹⁰ "An Act to suppress Insurrection, to punish Treason and Rebellion, to seize and Confiscate the Property of Rebels, and for other purposes," Approved July 17, 1862, *Congressional Globe*, 37 Cong., 3 Sess., Appendix, 412.

¹¹ "An Act to make an additional Article of War," Approved Mar. 13, 1862, *Congressional Globe*, 37 Cong., 2 Sess., Appendix, 340.

¹² "An Act to suppress Insurrection, to punish Treason and Rebellion, to seize and confiscate Property of Rebels. . . ." Approved July 17, 1862, *Congressional Globe*, 37 Cong., 2 Sess., Appendix, 412-13.

¹³ "Records of the United States District Court for the District of Columbia Relating to Slaves, 1851-1863," The National Archives, Washington, D. C., microfilm.

¹⁴ "An Act for the Admission of the State of West Virginia into the Union. . . ." Approved Dec. 31, 1862, *Congressional Globe*, 37 Cong., 3 Sess., Appendix, 180; *The South in the Building of the Nation*, Richmond Virginia, 1909, I, 380-4.

As the war converted many Americans to abolition, so it converted Abraham Lincoln. At the outset of his term Lincoln had pledged not to interfere with slavery. A year later, he had warned that in the face of the war and continued resistance to the federal government, "It is impossible to foresee all the incidents which may attend and all the ruin which may follow it." He declared himself ready to take any step "as may seem indispensable, or may obviously promise great efficiency" toward ending the conflict.¹⁵ Spurred by Congressional assaults on slavery and by growing public hostility to the "peculiar institution" he proposed a plan of gradual emancipation to the representatives of the loyal slave states of Delaware, Maryland, and Kentucky. Under his plan, each state would adopt a gradual emancipation scheme of its own choosing, and Congress would remunerate the states for the loss of slave property thus sustained.¹⁶ Despite the President's personal urging, the border states refused to accept his proposal, and only the slaveowners of the District of Columbia received payment for their emancipated slaves.

In the President's annual message to Congress on December 1, 1862, Lincoln recommended the passage of three amendments to the Constitution that would resolve both the future of slavery and the Negro. One proposed amendment would permit the states to abolish slavery according to a plan selected and adopted by each state. Each state would achieve emancipation by January 1, 1900. He recommended a second amendment that would provide compensation from the federal treasury to states voluntarily abolishing slavery. He excepted those slaves "who shall have enjoyed actual freedom by the chances of war at any time before the end of the rebellion"—they would be "forever free." A third amendment proposed by the President would authorize the Congress to appropriate money to colonize "free colored persons with their own consent at any place or places without the United States."

Urging acceptance of the three proposed amendments, Lincoln echoed the now popularly held conviction that "Without slavery the rebellion could never have existed; without slavery it would not continue." He noted that friends of the Union had no agreement among themselves about the future of slavery and the Negro. "Some would perpetuate slavery; some would abolish it suddenly and without compensation; some would remove the freed people from us, and

¹⁵ Annual Message to Congress, Dec. 1, 1862, Roy P. Basler, ed., *The Collected Works of Abraham Lincoln*, New Brunswick, N. J., V, 529-36.
¹⁶ *Ibid.*, V, 144-6, Message to Congress, Mar. 6, 1862.

some would retain them with us." Lincoln's plan was a compromise proposal. "These articles," he pleaded, "are intended to embody a plan of mutual concessions." To underscore his argument, he warned that at the present rate of annual increase in population by 1925 the United States would have 217,186,000 inhabitants, or an excess population compared to the per acre population of Europe. Finally, the President pleaded, emancipation would "shorten the war, perpetuate peace, insure this increase of population, and proportionately the wealth of the country." He vigorously endorsed voluntary colonization by free Negroes outside the United States. "I can not make it better known than it already is that I strongly favor colonization."¹⁷

Despite Lincoln's proposal for gradual, compensated emancipation to be matched by colonizing the freedmen outside the United States, Senator Lyman Trumbull of Illinois reported a proposed constitutional amendment abolishing slavery outright with no compensation and no colonization. Trumbull noted, in reviewing the piecemeal legislation already passed by the wartime Congresses, that collectively the various acts had not destroyed slavery's legal basis. The effect of the President's Proclamation of Emancipation of January 1, 1863, was a matter of controversy, and it had specifically exempted several slave states and portions of slave states. Trumbull declared that a Constitutional amendment was the "only effectual way of ridding the country of slavery" for the rest of time, and only an amendment would prevent slavery's rebirth by future state act.¹⁸

Trumbull's bill contained the exact wording later added to the Constitution. Critics of the proposed amendment contended that slavery and the abolition of slavery lay outside the scope of the Constitution. In February, 1864, both houses of Congress voted on the amendment. It passed the Senate, but it failed to achieve the necessary two-thirds vote in the House of Representatives. In his next annual message, soon after the Presidential election of 1864, Lincoln placed special emphasis on the need for House approval of the pending amendment.¹⁹ Several weeks later, on January 30, 1865, amidst tension and excitement, the House managers brought the

¹⁷ *Ibid.*, V, 529-36, Annual Message to Congress, Dec. 1, 1862. Paul J. Scheips, "Lincoln and the Chiriqui Colonization Project," *Journal of Negro History*, XXXVII, (October, 1952), 418-53; Warren B. Beck, "Lincoln and Negro Colonization," *Abraham Lincoln Quarterly*, VI, Sept. 1950, 162-83.
¹⁸ *Congressional Globe*, 38 Cong., 1 Sess., Feb. 10, 1864, 533, and Mar. 28, 1864, 1313.

¹⁹ Annual Message to Congress, Dec. 6, 1864, Basler, *Collected Works of Abraham Lincoln*, VIII, 149.

amendment to a successful vote. The leadership persuaded or induced enough Democrats to change their votes to assure the necessary two-thirds majority.²⁰ By 119 ayes to 56 noes, the House approved the amendment, and, following a "pause of utter silence," there was a "burst, a storm of cheers, the like of which no Congress of the United States ever saw." Crowds in the House galleries cheered wildly. Men shook hands and embraced each other. Women joyfully waved handkerchiefs.²¹ Soon after the President signed the formal parchment in a symbolic but unnecessary gesture of approval.

Various state legislatures hastened to approve the amendment. On the basis of a telegraphic dispatch announcing Congress's action, the state of Illinois approved the amendment. The profound change in public opinion toward the institution of slavery wrought by the war is illustrated in Illinois' abrupt reversal. During the secession crisis Illinois was the first state to approve the proposed amendment assuring slavery in perpetuity. Now it was the first state to approve its abolition. Within a few days several more states had added their endorsement of the amendment.

Abraham Lincoln did not live to see the formal abolition of slavery, and his successor, Andrew Johnson, continued to work to secure the necessary number of state approvals. Some of the former rebel states at first demurred to accept the second clause granting Congress full power to enforce the amendment, but President Johnson and Secretary of State William Henry Seward archly reminded South Carolina's provisional governor that occupying federal troops would not be withdrawn from that state until it had approved the amendment. South Carolina thereupon reluctantly approved the amendment.²²

On December 18, 1865, Secretary Seward issued a proclamation announcing that twenty-seven states, including Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas,

²⁰ *Congressional Globe*, 38 Cong., 2 Sess., Jan. 30, 1865, 531. In later years Representative Samuel S. Cox of Ohio recalled that an acquaintance had hoped to "get ten thousand dollars from New York parties for influencing" Cox to vote for the amendment; Samuel S. Cox, *Three Decades of Federal Legislation, 1855 to 1885, Personal and Historical Memories...* Providence, R. I., 1885, 329.

²¹ P. J. Staudenraus, ed., *Mr. Lincoln's Washington, Selections from the Writings of Noah Brooks, Civil War Correspondent*, South Brunswick, N. J., 1967, 410.

²² *Documentary History of the Constitution*, II, 523-4; B. F. Perry to Hon. W. H. Seward, [Columbia] S. C., Nov. 4, 1865, and telegram, William Seward to B. F. Perry, Washington, Nov. 6, 1865, General Records of the U. S. Government, Amendments to the Constitution, Thirteenth Amendment, National Archives.

Massachusetts, Pennsylvania, Virginia, Ohio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hampshire, South Carolina, Alabama, North Carolina, and Georgia, in order of their approval, had amended the Constitution and abolished slavery in the United States. Later, two additional states submitted their ratifications of the amendment. On February 18, 1870, Texas approved the Thirteenth Amendment, and on February 12, 1901, Delaware belatedly followed.²³

The rebellion had made abolitionists of the great majority of Americans living in 1861-1865. Slavery was a casualty of the war, and the Thirteenth Amendment confirmed slavery's death.

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²³ *Documentary History of the Constitution*, II, 634-5; certificate signed by Walter Dent Smith, Secretary of State for Delaware, Apr. 1, 1935, declaring that the Delaware Senate passed the "Joint Resolution Ratifying Certain Amendments to the Constitution of the United States" on Feb. 12, 1901.