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Higher Law and Lincoln's Antislavery Constitutionalism: What It Means to Say the Civil War Was Fought Over Slavery

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HIGHER LAW AND LINCOLN'S ANTISLAVERY CONSTITUTIONALISM: WHAT IT MEANS TO SAY THE CIVIL WAR WAS FOUGHT OVER SLAVERY

by

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ABSTRACT

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The US Civil War was fought over slavery. But what do we really mean when we say that? This paper examines that question, first by exploring the idea of "higher law," which gained tremendous traction in American society starting around 1850. Proponents of the idea claimed that laws such as the Fugitive Slave Act are immoral; that the immorality of such laws is self-evident, and that such immoral laws should be resisted—sometimes even with violence. Meanwhile, opponents of the idea of higher law were not necessarily in favor of slavery, but they opposed the use of extra-Constitutional means to bring about its end. Newspaper articles, editorials, letters, poems, and more from the 1850s and through the war years prove that beyond the well-known figures who promoted or opposed higher law, people throughout the nation became very familiar with the idea; the ubiquity of references to higher law helped to drive a mass, antislavery movement among Northern whites and Blacks alike, and made possible the 1860 election of the anti-slavery candidate Abraham Lincoln.

Lincoln recognized, however, the risks inherent in the idea of higher law; after all, one could claim that the right to enslave Blacks and to create a new nation around the principle of white supremacy was also self-evident; in fact, many did. But Lincoln found an ingenious way to synthesize his own commitment to the Constitution with the idea of higher law, by positing that the nation had already been founded on a "higher law," one which promoted, above all else, human equality. Lincoln argued for an integrated reading of the Constitution and the Declaration of Independence, insisting that the lofty principles of the Declaration should be understood as a tacit feature of the Constitution. Lincoln held, therefore, to a strict antislavery constitutionalism, which led him to attempt to use non-violent, Constitutional means to eliminate slavery in the South. The war that followed was a war to save the Union, of course, but when viewed through the lens of his antislavery Constitutionalism, Lincoln's commitment to saving the Union becomes indistinguishable from his hostility to slavery. In other words, Lincoln fought the Civil War for four, long, horrific years—at the cost of 700,000 American lives—in order to bring an end to slavery.

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PROLOGUE

In the final days of 2019, when most university professors had dismissed their classes at the end of the Fall semester and were busy grading final papers, five prominent scholars of United States history got together in a state of significant agitation. Of course, many historians are at least a little troubled when misrepresentations of historical fact make their way into popular culture, like when, in 2021, Amazon Prime streamed a "historical" drama called *The Underground Railroad* which depicted Black slaves escaping from a Southern plantation by way of a subterranean train line, complete with trainmen, friendly conductors, and coal-powered locomotives. But the scholars' worry in this case was much more palpable, and they began drafting a letter.

Several months earlier, in the wake of the high-profile murder of George Floyd by Minneapolis police officers, *The New York Times Magazine*, in an effort led by staff writer Nikole Hannah-Jones, had published several materials—essays, fiction, poetry, and more, that were ultimately collected into one book—which explored the link between racism in the United States and the country's legacy of slavery. The collection was called *The 1619 Project*, and was issued 400 years to the month after the arrival of the first enslaved Africans in the British colonies that eventually became the United States. *The 1619 Project*, particularly in its introductory essay *Democracy* written by Hannah-Jones, had made some startling claims.

Although Americans are taught in school to regard 1776 as the moment of the founding of the United States, Hannah-Jones claimed, it makes more sense to recognize 1619 as the date of the real founding of America, because it was in this year that the nation's true character as a land of "racial exploitation and racial conflict" was originally forged. While we are taught that

America's founding fathers created a nation built upon the principle of liberty and the idea that "all men are created equal," a closer look reveals a grave hypocrisy among those who drafted the Declaration of Independence and the Constitution—the founding documents that most famously articulate those ideals; these men were, after all, she says, white enslavers who clearly did not believe for one moment that "all men are created equal." Furthermore, despite their rhetoric around liberty and equality, one of the primary reasons the Revolutionary generation went to war against the English King was "to protect the institution of slavery." Similarly, when we claim that Lincoln was the "Great Emancipator" who waged war in the following century to free the slaves, we are burying the real truth that Lincoln only waged war against the South in order to preserve the Union, that he blamed Black people for the war itself, that he issued the Emancipation Proclamation merely "as a tactic to deprive the Confederacy of its labor force," and that he ultimately desired to colonize the Blacks freed by the war back to Africa. [1]

It is a remarkable story—particularly when compared against the great, prevailing myths of both the founding generation and those who fought the Civil War—and it leads to Hannah-Jones' conclusion that while white Americans ostensibly built a democracy in 1776, in fact it was the "slavocracy" established in 1619 that accounts for the nation's fundamentally racist "DNA." To whatever extent the United States can call itself a democracy today, it is primarily because Black Americans have pursued the ideals hypocritically articulated at the time of the Revolution. "More than any other group in this country's history. . . it is we [i.e. Black Americans] who have been the perfecters of democracy," she says. "The truth is that as much democracy as this nation has today, it has been borne on the backs of Black resistance and

[1] Hannah-Jones, *The 1619 Project*, 29; 16.

visions for equality."[2] It is a remarkable story, indeed. It is also, in a great many important respects, false.

To be clear, it is obviously not false that slavery in the United States represents a tremendously shameful aspect of the nation's history or that, particularly in the long wake of the failures of Reconstruction and the rise of Jim Crow laws in the South, racism and racial injustice have in many ways continued to thrive. It is also not false that Black Americans have done a tremendous amount of work advocating for their own freedom and equality, so often fighting against deeply systemic injustices, many of which persist to this day. The days following the murder of George Floyd certainly represented a very reasonable moment to stop and examine the legacy of racism in the United States that clearly can be traced, in part, back to the arrival of that first slave ship in 1619. And, of course, historical narratives are open to interpretation; the very discipline of History is the art of connecting historical facts into a coherent narrative. However, many of the "historical facts" Hannah-Jones cites in support of her argument are either untrue or are misleading.

In their December 2019 letter to *The New York Times Magazine* vigorously criticizing *The 1619 Project*, the five dismayed scholars—Victoria Bynum, Texas State University; James M. McPherson, Princeton University; James Oakes, CUNY Graduate Center; Sean Wilentz, Princeton University; and Gordon S. Wood, Brown University—called on the *Times* to "issue prominent corrections of all the errors and distortions presented in *The 1619 Project*." Among their catalogue of objections were a complaint that Hannah-Jones used false statements to support the claim that protecting slavery was a primary driver of the Revolution. They also point

[2] Hannah-Jones, 33; 10.

out that while she criticized Lincoln's views on racial equality, she completely ignored his "conviction that the Declaration of Independence proclaimed universal equality, for blacks as well as whites, a view he held repeatedly against powerful white supremacists who opposed him"; and that her claim that "'for the most part,' Black Americans have fought their freedom struggles 'alone,'" was a distortion of the historical record. [3]

In fact, there is substantial evidence that during the 1850s there was a groundswell of fierce anti-slavery sentiment among Northern whites—a major factor leading to a war that was fought, by whites and Blacks alike, over the issue of slavery. It is also the case that when one paints a portrait of Lincoln's views on Black Americans and slavery with a broad brush, it is done at one's peril; as is true in the case of Hannah-Jones, such an understanding may well depend upon a tendentiously selective reading of the things Lincoln said and did. His actual views on these subjects were extremely nuanced, and argued before the public over many years with great political shrewdness, and with an extraordinary degree of both subtlety and precision. These are the subjects of this paper.

[3] Bynum, et al., letter to the editor, *The New York Times Magazine*.

INTRODUCTION

The Civil War was fought over slavery. This statement is true for a couple of key reasons. One has to do with the primacy of the position occupied by slavery at the very core of the Confederacy. The foundation of our government is laid, Confederate Vice President Alexander Stephens asserted in 1861, "its cornerstone rests, upon the great truth that the negro is not equal to the white man; that slavery, subordination to the superior race, is his natural and normal condition."[1] A second, perhaps more important, reason relates to the significant role of antislavery sentiment in the North which ultimately led to Southern secession. In her deeply researched first book, *What This Cruel War Was Over*, Georgetown University scholar Chandra Manning uses diary entries and letters from average Civil War soldiers—Union and Confederate alike—to illustrate that even the typical army private came to understand that this catastrophic conflict was, fundamentally, about slavery. Furthermore, they understood that it was not just about slavery as an economic or political issue but that, at the core of the conflict, there was a moral issue at stake.

But when we say that the Civil War was fought "over slavery," what do we really mean? Do we mean that abolitionist zeal reached a fever pitch in 1861 and led to a policy of military emancipation waged against the South, as some scholars have implied? Do we mean that the South waged war against the North in an attempt to preempt military or political emancipation? Or do we mean something else? This paper attempts to answer that question by linking Union prosecution of the war to two distinct—primarily Northern—ways of thinking that emerged among political figures, public intellectuals, and a large swath of both the white and Black

[1] *Alexander H. Stephens*, *In Public and Private*, 721.

Northern populations, during the middle of the nineteenth century as reactions against slavery. It then considers Abraham Lincoln's unique way of understanding these ideas, as well as the way in which that unique understanding informed the way his administration planned—and, in fact, largely implemented—a vigorous, but *non-violent*, antislavery policy, even as they waged war against the Confederacy. The promise of this policy and Southern reaction to it were, together, a primary cause of the war.

One of these schools of thought asserted that although slavery and the tools used to protect it—for example, the Fugitive Slave Law of 1850—may have been both legal and constitutional, their immorality was apparent as a matter of "higher law"; immoral human laws, its adherents claimed, should not be followed, and may even require violent resistance. Anti-slavery crusader John Brown was the most striking example of this way of thinking; his fame was ensured when the Transcendentalists Ralph Waldo Emerson and Henry David Thoreau wrote and spoke vigorously in Brown's defense. Emerson claimed that a Virginia speech delivered by Brown was as great as the Gettysburg Address, and Thoreau likened Brown to Christ. A second, more moderate, school of thought, which was associated with the Liberty and Free Soil parties, eschewed higher law and preferred attempting to eliminate slavery within the confines of the democratic system, as established by the founders in the Constitution. This approach was also more resonant with public intellectuals like Nathaniel Hawthorne and Herman Melville, who expressed significant concern about extra-Constitutional acts of violence in the service of abolition.

These two schools of thought stood in dialectical opposition to one another, until they were ingeniously synthesized by Lincoln. While some antislavery politicians and progressive

reformers had pointed out that there were clear proslavery passages in the Constitution, Lincoln grew committed to an integrated reading of the Constitution and the Declaration of Independence. Reading these two founding documents together, he argued that the lofty principles of the Declaration should be understood as a tacit feature of the Constitution, and that the core founding principle of the United States—central to the Constitution as an antislavery document—was the "higher law" of human equality. It was from this perspective that Lincoln and the antislavery Republicans attempted to use non-violent Constitutional means to eliminate slavery in the South, and it was in reaction to the perceived threat of this approach that eleven Southern states were motivated to secede in late 1860 and early 1861, shortly after Lincoln was elected president. The war that followed was a war to save the Union, of course. But, as historian James Oakes has argued, Lincoln's commitment to saving the Union, when viewed through the lens of his antislavery constitutionalism, becomes indistinguishable from his hostility to slavery. This, says Oakes, is the key to understanding the magnitude of what Lincoln really achieved: "the restoration of the Union *by means of* the revolutionary overthrow of the largest and wealthiest slave society on earth."[2]

[2] Oakes, *Crooked Path*, xxxi, emphasis added.

CHAPTER I

HIGHER LAW

Senator William H. Seward, later Lincoln's Secretary of State, did not invent the idea of a "higher law" when, in an 1850 speech entitled "Freedom in the Territories" he claimed that the western land beyond the states was protected by "a higher law than the Constitution."[1] Answering those who had argued that the "proslavery" Constitution sanctioned slavery in the territories as well as the states, Seward, who believed neither that the Constitution sanctioned slavery in the West nor that it, for that matter, was proslavery at all, was simply asserting that the laws of reason, justice, and morality—what had long been called "natural law"—should be used as the overarching framework for understanding slavery in the territories. Using the phrase "higher law" in this way may have been somewhat rhetorically clumsy; it raises confusing questions about the relationship between the idea of higher law and the Constitution that Seward may not have meant to raise. Although his remark was intended, as cultural historian David Reynolds has said, "to quash proslavery readings of the Constitution," it set off widespread discussion and debate about whether citizens were bound to abide by laws they thought were immoral, even when such laws had been created through constitutionally sound processes. This was particularly relevant in the question of whether the idea of higher law could be used to justify interference with the Fugitive Slave Law, which had been passed by Congress in September of 1850.[2]

[1] *Works of William H. Seward,* 74.
[2] D. Reynolds, *Abe,* 347.

In his eighteenth-century treatise *Commentaries on the Laws of England*, the influential jurist Sir William Blackstone had written about the origins of the common law—the basis of the legal systems of both England and the US—and specifically about the role of judges in discerning the customs and morality that dictate the content of that law. Blackstone understood the role of judges as that of making decisions "according to the known laws and customs of the land." In other words, unlike in the civil law tradition in which judges would look to written laws to understand how to pass judgment, under the common law judges would look to social and moral practices dating from time immemorial in order to *discern* what the law *had always been*. Of course, if earlier judges had already pronounced on an issue before the court, the case law would serve as the final word. However, he said, there is a clear exception "where the former [judicial] determination is most evidently contrary to reason; much more if it be clearly contrary to the divine law." In the common law tradition, when a previous judicial decision is found to be "manifestly absurd or unjust, it is declared, not that such a sentence was a *bad law*, but that it was *not law*; that is, that it is not the established custom of the realm, and has been erroneously determined."[3] The idea that laws are *found* and not *made* is central to the concept of "natural law," a popular construct that persisted in American law until about 1870, which asserted that the laws governing human behavior are just like natural laws governing physical objects, and are there to be discovered; when a human law is thought to be out of sync with natural law (i.e., when a human law is thought to be immoral), we can reasonably conclude that someone got it wrong.[4]

[3] Blackstone, *Commentaries*, 118.
[4] Banner, *Decline of Natural Law*, 1.

Although Blackstone's *Commentaries* provide what is arguably the most famous articulation of this idea, it has its origins a century earlier in the Puritan Algernon Sidney's tract *Discourses Concerning Government*. "The directive power of the law," Sidney had argued, "which is . . . grounded upon *the inherent good and rectitude that is in it*, is that alone which has a power over the conscience, whereas the coercive is merely contingent." In other words, when a law is good and right it is worth obeying. But when its command over behaviors comes merely from the accidents of power and politics—when the "consciences of men must be regulated by the success of a battle or conspiracy"—then obeying such laws would be "impious and absurd."[5] Sidney wrote his *Discourses* on the eve of his execution for treason in 1683 by the restored Stuart Monarchy, in vigorous opposition to the notion of the Divine Right of Kings. This treatise was a favorite among the American revolutionaries, and it helped firm up the link between the puritanical notions of liberty and the consent of the governed with the idea of higher law. Sidney's summary of this anti-monarchical position would be often quoted in the nineteenth century by anti-slavery activists like William Lloyd Garrison, and other public intellectuals, like Emerson. "That which is not just, is not law," Sidney had written, "and that which is not law, ought not to be obeyed."[6]

RALPH WALDO EMERSON

Seward was, therefore, tapping into a deep puritanical strain among opponents of slavery when he made his "higher law" speech before the US Senate and, just over a year later, Ralph

[5] Sidney, *Discourses Concerning Government*, 300, emphasis mine.
[6] Sidney, 300.

Waldo Emerson picked up the torch. In early May of 1851, Emerson accepted an invitation to speak from thirty-five citizens of Concord, and delivered his first address on the Fugitive Slave Law. Scholars have commented that his "Address to the Citizens of Concord" was the "most acerbic of his career," particularly in its vilification of Daniel Webster, the Massachusetts Senator responsible for the passage of the 1850 law.[7] It also served as an extraordinarily clear articulation of Emerson's understanding of higher law, which he outlined by way of offering five key reasons the Fugitive Slave Law could not be considered valid.

The first was that it was immoral to abide by a law that dictates immorality. It was one thing to dislike a law that requires nothing of you personally, but quite another thing to subject yourself to a statute like the Fugitive Slave Law, which compelled individual citizens in free states to cooperate with Federal officials attempting to capture those individuals who had escaped from slavery. "Here is a statute which enacts the crime of kidnapping," he said, "a crime on one footing with arson and murder. . . . If our resistance to this law is not right, there is no right."[8] Higher law cannot result in immoral acts.

Secondly, he said, a law that is so contravened by sentiments—like pity and charity—cannot possibly be a valid law. "The very defence which the God of Nature has provided for the innocent against cruelty, is the sentiment of indignation and pity in the bosom of the beholder."[9] The Fugitive Slave Act made it a crime even for ordinary citizens to give comfort to anyone who had escaped from his or her enslavers, in the hope of freedom. This meant that one could not so

[7] Gougeon & Myerson, *Emerson's Antislavery Writings*, xxxix.
[8] Emerson, "Citizens of Concord," 57.
[9] Emerson, 61.

much as provide food or a place to sleep to an escaped slave, without risking prosecution. Higher law does not run counter to one's natural moral sensibilities.

Thirdly, he said, because the laws are written to correspond with such sentiments, it is inevitable that an immoral law will be in conflict with other laws. "Laws are merely declarations of the natural sentiments of mankind and the language of all permanent laws will be in contradiction with any immoral enactment: And thus it happens here: statute fights against statute."[10] He gives an example. Under the federal laws designed to eliminate the importation of slaves from Africa, passed in 1807, it is a capital offense to enslave a person on the coast of Africa; such activity would constitute piracy and, possibly, murder. But under the Fugitive Slave Law, to resist the re-enslavement of a person on the coast of America is a crime. "What kind of legislation is this?" he asks. "What kind of Constitution which covers it?" Many apologists for slavery had made the (obviously spurious) argument that exporting Black men, women, and children from Africa was tantamount to freeing them from lives of savagery or—worse—lives as prisoners of war. But in what way would capturing them in the Northern US and returning them to their enslavers in the South possibly help them? Higher law cannot contain such contradictions.

His fourth point was that if the law were not immoral, it would not engender new social ills. If a law runs counter to higher law, he said, "it is contravened by the mischiefs it operates." Who can the federal government find to enforce the Fugitive Slave Act, he asks, by way of one example. "To serve it, low and mean people are found by the groping of the government." It will never be executed by good men; only "flagitious" men must be employed. And when criminals

[10] Emerson, 61.

are engaged in the act of enforcing laws, the social consequences are legion. "Great is the mischief of a legal crime," he says. Higher law never creates more evil than it resolves.[11]

Lastly, Emerson argues, if a law were not in contravention of higher law, it would not continue being so persistently controversial. Daniel Webster had many times proclaimed that the Fugitive Slave Act was settled law; that "there was to be no parleying more"; that it was "irrepealable." But Emerson points out that the law was, in reality, more controversial than ever. There is no one, he says—presumably talking about Northern citizens—who is not fixated on it. "There is not a clerk but recites its statistics; not a politician, but is watching its incalculable energy in the elections; not a jurist but is hunting up precedents; not an economist but is computing its profit and loss."[12] The Fugitive Slave Law is the farthest thing from settled law, he argues, and laws that are consistent with higher law do not remain perpetually unsettled.

Emerson used his 1851 speech not only to articulate his view of the moral status of the Fugitive Slave Law, but also to serve as a dire warning about the existential consequences of its passage for the Union, and as a clarion call for all listeners to resist it. Laws out of sync with higher law, he insisted, create great peril for the future of the nation. "As soon as the Constitution ordains an immoral law," he said, "it ordains disunion. The law is suicidal, and cannot be obeyed. The Union is at an end as soon as an immoral law is enacted. And he who writes a crime into the statute-book digs under the foundations of the capitol to plant there a powder magazine, and lays a train."[13]

[11] Emerson, 62.
[12] Emerson, 64.
[13] Emerson, 68.

Some of those paying close attention to Emerson during the 1840s and 1850s observed what they considered to be a significant shift in his public thought over these two decades. The idealist and Romantic abstractions as well as the Eastern-inspired spiritual contemplations of the author of such essays as "Self-Reliance" and "The Oversoul," both published in 1841, had given way to a much more muscular, practical, and clear abolitionism in his recent speeches. An article originally published in the *Christian Inquirer*, and reprinted in the *National Anti-Slavery Standard*, made this point. "Mr. Emerson has given a fine anti-slavery lecture, and another on American character," the author said. "Both lectures were full of pith and point, but neither contained anything of the old Transcendentalism."[14]

This observation was really not accurate. Of course, the recent speeches were more practically minded and far less abstract than the earlier writings had been, but Emerson's unique take on higher law was deeply tied up with his ideas about self-reliance and the nature of the soul, which he had published a decade and a half earlier. In his second speech on the Fugitive Slave Law, which he delivered in the spring of 1854 at an anti-slavery gathering in New York City, he maintained the claim that moral authority must come ultimately from the self, and that looking to external authorities—to the Church, for example—for firm ground on which to stand was misguided.

From Emerson's point of view, it was easy enough to see the obvious internal contradictions in much of the Christian response to slavery. "I fear there is no reliance to be had on any kind of form or covenant, no, not on sacred forms," he said, "none on churches, none on bibles. For one would have said that a Christian would not keep slaves, but the Christians keep

[14] Quoted in Gougeon & Myerson, *Emerson's Antislavery Writings*, xliii.

slaves. . . . They quote the bible and Christ and Paul to maintain slavery. If slavery is a good, then lying, theft, arson, incest, homicide, each and all goods to be maintained by union societies."[15] The same applies to any confidence that one may have in the moral authority of the State. No one has any right to expect the law to protect him from the evils of slavery, he argued; he must, rather, recognize that he cannot derive protection from the laws of the State, but only from his own "sense and spirit." "He only who is able to stand alone, is qualified for society. And that I understand to be the end for which a soul exists in this world, to be himself the counterbalance of all falsehood and all wrong."[16] The soul, in other words, contains truth in itself; truth that cannot be found anywhere else.

Emerson's understanding of higher law was completely inseparable from his firm belief in moral self-reliance, and that moral authority can only be discerned, ultimately, in one's heart, and certainly not from the law. He echoes Sidney and Blackstone: "Here was a question of an immoral law," he says of the Fugitive Slave Law, "a question agitated for the ages, and settled always in the same way by every great jurist, that an immoral law cannot be valid."[17] His speech reverberates with the deep strains of Puritanism that had been running through the Transcendentalist project for decades.

Recent scholarship from Princeton Historian Peter Wirzbicki helpfully reinforces this point. His 2021 study, *Fighting for the Higher Law*, challenges older notions of the incompatibility between what Herman Melville called the "opium-like listlessness of vacant, unconscious reverie" that many thought characterized Transcendentalist thought, and the moral

[15] Emerson, "Fugitive Slave Law," 83.
[16] Emerson, 83.
[17] Emerson, 79.

urgencies of abolitionism. For reasons already stated, and many others, Wirzbicki argues that Transcendentalism and abolitionism were really two sides of the same coin. While the moral reasoning that defined Transcendentalism was the philosophical expression of radical New England, abolitionism was its main political expression. The relationship between these two isms was like that of theory and application, or language and context. This latter point he makes explicit. "Transcendentalism provided a language while abolitionism provided a context for a set of ideas that stressed one's personal obligations to transcendent moral obligations over any man-made legal duties. The "Higher Law" became a symbol for both civil disobedience and all the best qualities of the soul, threatened by unjust slave laws…"[18]

None of this, however, is to suggest that Emerson did not undergo significant changes from his early career through the 1850s. Although he had been a pacifist in his younger years, now he was growing increasingly sympathetic to expressions of violent resistance against immoral public policy. In part, this shift in attitude was influenced by fellow Transcendentalist Margaret Fuller, who had spent critical years in the late 1840s living in Italy, witnessing the European revolutions of 1848, particularly the *Risorgimento*, the revolutionary movement to free Italy from Austrian control. In her dispatches to the US during the war, she was both bellicose and optimistic. "The seed for a vast harvest of hatreds and contempts are sown over every inch of Roman ground," she said in her final dispatch, "nor can that malignant growth be extirpated, till the wishes of Heaven shall waft a fire that will burn down all, root and branch, and prepare the earth for an entirely new culture. The next revolution, here and elsewhere, will be radical."[19] Emerson also had been greatly influenced by his own travels in England during the same years,

[18] Wirzbicki, *Fighting for the Higher Law,* 20; 4.
[19] Fuller, *These Sad But Glorious Days,* 321.

while revolutions were breaking out across Europe. Although the Chartists had largely tried to use constitutional methods to achieve their aims of bringing social reform to the United Kingdom, they had, in some parts of the British Isles, resorted to violent, insurrectionary activities. Emerson was inspired by their efforts.[20] But while the *Risorgimento* and the Chartist Revolution were chipping away at Emerson's pacifism from Europe, his greatest pro-violence influence domestically came from John Brown.

JOHN BROWN

John Brown, a sometime tanner and surveyor who had not been particularly successful in business, was a devout Calvinist who believed that he was predestined by God to bring an end to slavery. At a memorial service for Elijah Lovejoy, the abolitionist printer who had been murdered by a proslavery mob in Illinois in 1837, Brown made his intentions public in a dramatic fashion. As the meeting was ending, Brown rose to his feet. "Here, before God, in the presence of these witnesses " he said, with his right hand raised in solemn oath, "I consecrate my life to the destruction of slavery." Brown is also said to have, around this time, made explicit at home that his mission to end slavery would not be a peaceful one. "His sons John and Jason never forgot the day," David Reynolds reports, "when John Brown persuaded family members to pledge themselves to armed warfare against slavery."[21]

Brown's commitment to a life of violence for what he considered to be a righteous cause was consistent with his own identification with Oliver Cromwell and the severe values of

[20] Gougeon & Myerson, *Emerson's Antislavery Writings,* xxxiv.
[21] D. Reynolds, *John Brown: Abolitionist*, 65.

Puritanism, and represented a highly aggressive strain of higher law thinking. According to his daughter Ruth, who reminisced about her father to the antislavery journalist Franklin Sandborn many years after his death, Brown's favorite books, in addition to such texts as Josephus, Plutarch, and *Napoleon and his Marshalls*, were the Bible and the *Life of Oliver Cromwell*, the most famous of the anti-monarchist Puritans. Brown took his own Puritan heritage seriously; he was directly descended from Peter Brown, a Plymouth colonist who had been aboard the *Mayflower.* After his death, public intellectuals would interpret Brown's life in Cromwellian terms. Wendell Phillips would proclaim him to be the embodiment of the "Puritan Principle," while Henry David Thoreau would call him "such a man as it takes ages to make, and ages to understand," who "died lately in the time of Cromwell, but . . . reappeared here."[22]

Beyond his ideological identification with Puritanism, Brown had also had a series of personal experiences during his young life that helped to drive his moral development as an opponent of slavery. In an odd letter he wrote to a young man called Henry L. Stearns in July of 1857—odd because in it Brown offers key autobiographical details of his life which he narrates entirely in the third person—he described an incident occurring during the War of 1812 which dramatically opened his eyes to the evils of slavery. Brown was a young man during the war—he had been born in 1800—and during this time he had occasion to board with a man he called "a very gentlemanly landlord, since a United States Marshall." The landlord kept as a slave a young Black man, similar in age to Brown, whom Brown describes as "very active, intelligent, and good feeling." Brown recounts having become friendly with the boy, and feeling gratitude to him for an array of kindnesses that the young man had bestowed upon him. During his stay, he could

[22] Trodd & Stauffer, *Meteor of War*, 2, 13, 74.

not help but notice that while the landlord treated Brown the way a kind and even proud father would, the young slave never received adequate clothing and shelter against the cold, and never enough food to eat. Brown also watched many times as the young man was beaten, even with iron shovels and other objects. "This brought John to reflect on the wretched, hopeless condition, of *Fatherless & Motherless* slave *children*," he says of himself. "For such children have neither Fathers or Mothers to protect & provide for them. He sometimes would raise the question *is God their Father*?"[23]

The realization that slaves had no family in the world who could look out for them, or even provide comfort to them, horrified Brown. This that made him "a most *determined Abolitionist* : & led him to declare, *or Swear* : *Eternal war* with Slavery." In later years, during many long periods in which his work kept him physically distant from his family, this sense was reinforced. "After being so much away," he wrote to his wife in 1844, "it seems as if I pretty well knew how to appreciate the quiet of home. . . . Millions there are who have no such thing to lay claim to."[24]

The first writing of John Brown in which he talks about a strategy for helping Blacks appears as a letter to his brother Frederick in 1834, in which he claims that he has been thinking "for years" about the issue. However, it would be more than twenty additional years before Brown would commit his most notorious act of what we might call anti-slavery terrorism. On its face, the brutal massacre of five proslavery men who were sleeping in their cabins along Pottawatomie Creek in Kansas appears egregious and morally suspect. However, from Brown's

[23] Trodd & Stauffer, 39.
[24] Trodd & Stauffer, 50; 39.

point of view, the situation in Kansas in late May of 1856 was dire. Although Brown had believed that Kansas was on its way to being admitted to the Union as a free state, President Franklin Pierce had signed the Kansas-Nebraska Act into law earlier in the year, and had endorsed slavery for Kansas. Proslavery Border Ruffians from Missouri were regularly harassing and sometimes killing Free State settlers in Kansas, and extreme threats against the Brown family—and against all Free Soilers—were becoming common. In April, a proslavery judge in Kansas issued warrants for the arrest of Brown and his sons for their abolitionist activities. On top of these threats and indignities, Border Ruffians stormed into Lawrence Kansas on May 21st, burning buildings and destroying equipment belonging to two antislavery newspapers. Back in Washington the following day, South Carolina Congressman Preston Brooks brutally beat Massachusetts Senator Charles Sumner with a gold-handled cane over his comments in a speech about slavery in Kansas. For these reasons and more, Brown believed that the proslavery faction was waging war on Free Soilers in Kansas.

Beyond these specific acts of war against the citizens of Kansas, Brown believed that a much greater war had, in fact, been underway in the United States, since the establishment of slavery itself. This position he made clear in 1858, when he drafted his "Provisional Constitution and Ordinances for the People of the United States." The drafting of revolutionary constitutions was a common activity among radicals and reformers in the United States and Europe during these years, and this particular "constitution" was proposed as an alternative to the U.S. Constitution, which Brown and his followers believed was inadequate to protect the "persons, property, lives, and liberties," of all of the country's inhabitants. To Brown, this much was patently obvious in that not only did the U.S. Constitution fail to ordain citizenship for Black Americans, but the Supreme Court had recently declared that Blacks had "no rights which the

white man is bound to respect."[25] In the Preamble to his "Constitution," Brown is unambiguous in his view of slavery: "Slavery," he proclaims, "is none other than a most barbarous, unprovoked, and unjustifiable war of one portion of its citizens on another portion . . ."[26]

Brown, therefore, could quite easily justify his actions at Pottawatomie; to him, these actions had not been acts of terror, in other words, but were, rather, righteous acts taking place in the context of an ongoing war. For Brown, furthermore, this war was a holy one. Throughout, he continued to identify with Oliver Cromwell, the Puritan insurrectionist who also believed that he had been called by God when he led the rebellion against the forces of King Charles I in 1642.[27]

Brown was not brought to justice over the Pottawatomie Massacre, and he lived another three and a half years, dying at the end of a hangman's noose after his unsuccessful attempt to incite a slave uprising at Harper's Ferry in October of 1859. There, Brown and his band of eighteen soldiers had easily taken control of the federal armory, arsenal, and rifle works, and expected support from hundreds or even thousands of slaves whom they planned to emancipate and arm.

John Brown had long believed that Black slaves had every right to revolt against their enslavers; that they would have more than enough white allies to support them should they decide to revolt; and he certainly hoped that, given the right opportunity, they *would* revolt. He had been making this case publicly for several years leading up to the incident at Harpers Ferry. In an essay contributed to *The Ram's Horn*, a New York-based abolitionist newspaper, he posed as a Black writer in order to inspire other Blacks to take action against their white oppressors, as

[25] Taney, *U.S. Reports: Dred Scott.*
[26] Trodd & Stauffer, 110.
[27] D. Reynolds, *John Brown: Abolitionist,* 147-166.

well as to level criticisms against non-abolitionists in the North. In the essay, which he called "Sambo's Mistakes" (the publication of which is hardly thinkable by twenty-first century standards, for multiple reasons), he laments his failure to see how his own reluctance to push back against whites as a supposed Black man had been a contributing factor to his oppression. "[An] error of my life has been that I have always expected to secure the favor of whites by tamely submitting to every species of indignity contempt & wrong," he says, "insted of nobly resisting their brutal aggressions from principle & taking my place as a man & assuming the responsibilities of a man . . . but I find that I get for all my submission about the same reward that the Southern Slaveocrats render to the Dough faced Statesmen of the North for being bribed & browbeat, & fooled & cheated, as the Whigs & Democrats love to be. & think themselves highly honored if they may be allowed to lick up the spittle of a Southerner."[28]

Writing in 1851—this time as himself—offering "Words of Advice" to the United States League of Gileadites, an anti-slavery organization he founded in the wake of the passage of the Fugitive Slave Law, he attempted to remind Blacks of just how much support they would receive were they to rise up; though he also, once again, offered the criticism that some fair part of the plight of Blacks was being self-inflicted. "Colored people have more fast friends among the whites than they suppose, and would have ten times the number they have now were they but half as much in earnest to secure their dearest rights as they are to ape the follies and extravagances of their white neighbors." In addition to support from white allies, he argued, a carefully and quietly planned uprising would have the additional advantage of the element of

[28] Trodd & Stauffer, *Meteor of War,* 58.

surprise. “They will be wholly unprepared,” he said. “All with them will be confusion and terror.”[29]

But at Harpers Ferry, the support Brown had counted on from the slaves he had hoped to emancipate, did not materialize. David Reynolds has suggested, compellingly, that Brown’s failure to incite a slave revolt may well have to do with the fact that, although there were many slave revolts in the past, there had never been one led by a white instigator; for slaves, whites were oppressors, not liberators. In addition, those slaves who might have been inclined to participate almost certainly would have hesitated, anticipating reprisal from their enslavers had the revolt failed. Lincoln had made these points himself in his Address at Cooper Institute in February of 1860. “John Brown’s effort was peculiar,” he said. “It was not a slave insurrection. It was an attempt by white men to get up a revolt among slaves, in which the slave refused to participate. In fact, it was so absurd that the slaves, with all their ignorance, saw plainly enough it could not succeed.” [30] Whatever the reasons, Brown and those of his men who survived, spent two bloody days surrounded by a dozen militia companies and hundreds of local civilians, and was ultimately captured by a company of US marines commanded by Colonel Robert E. Lee.[31]

While the US government condemned Brown to hang for treason, the Transcendentalists almost immediately lionized him, transforming him in memory from an ordinary man with an extraordinary passion, into a powerful symbol of higher law. If John Brown understood his own actions to be modeled on the “godly violence” of Oliver Cromwell, Emerson and Thoreau also regarded him that way, and much more. Not only did they see him as a paragon of antislavery

[29] Trodd & Stauffer, 78.
[30] Lincoln, “Cooper Institute,” 541.
[31] D. Reynolds, *John Brown: Abolitionist*, 310-326.

virtue, but they understood him as a torch-bearer for the kind of spiritual individualism they had been advocating for years.[32] For Emerson, Brown became an ideal sort of person; he was possessed, Emerson claimed, of "a romantic character absolutely without any vulgar trait; living to ideal ends, without any mixture of self-indulgence or compromise."[33] Although it was almost certainly not true when he said it, Emerson also claimed that "all people, in proportion to their sensibility and self-respect, sympathize with [John Brown]. For it is impossible," he said, "to see courage, and disinterestedness, and the love that casts out fear, without sympathy."[34] For Thoreau, Brown was nothing less than a Christ figure: "The same indignation that is said to have cleared the temple once," he says, alluding to Jesus' final visit to Jerusalem, "will clear it again."[35] He makes his comparison unambiguous. "Some eighteen hundred years ago Christ was crucified; this morning, perchance, Captain Brown was hung. These are the two ends of a chain which is not without its links. He is not Old Brown any longer; he is an angel of light."[36]

Making a Christ-figure of Brown not only established him as the purest sort of symbol of higher law, but it also helped to transform the coming crisis from a sectional conflict into a kind of religious war. "War vindicated Brown and made him a prophet," say historians Zoe Trodd and John Stauffer. "Union soldiers replaced the unappealing war cry of 'preservation of the Union' with the marching song, "John Brown's Body," making Brown a symbol of abolition, progress, and sacrifice; and their war aims were more inspiring than simply the protection of the status quo. If Brown was a Christ-figure, then the death and destruction of war could be a holy

[32] D. Reynolds, 221.
[33] Emerson, "John Brown," 122
[34] Emerson, 123.
[35] Thoreau, "A Plea for Captain John Brown," 1156.
[36] Thoreau, 1158.

crusade."[37] It was not the case, however, that Thoreau was the only person to recognize in John Brown a martyr on the scale of Christ. Immediately after his execution the hangman, who had cut the rope holding the trapdoor through which Brown fell to his death by suffocation, removed a small piece of the scaffold. This he sent to the antislavery journalist James Redpath, who give it the label "A Bit of the True cross, a Chip from the Scaffold of John Brown." He kept is as a cherished religious relic for many years, understanding that John Brown's sacrifice in the name of higher law had forged the defining character of the Civil War.[38]

UNCLE TOM'S CABIN

The Transcendentalists' response to John Brown was by no means the only cultural driver of an acceptance of the idea of higher law in the North. An already rapidly growing anti-slavery movement was accelerated almost immediately upon the release of Harriet Beecher Stowe's novel *Uncle Tom's Cabin* in 1852; the novel not only cast new light on the horrors of slavery for many readers, it also directly challenged the Fugitive Slave Law. The most direct allusion to the law comes early in the account of the escaping slave Eliza, who finds herself at the home of a Senator Bird, who had recently returned from Washington having voted for such a law, imposing penalties on Northerners found assisting fugitive slaves as they attempted to make their way to freedom. Although Senator Bird has cast his vote with great conviction, his wife successfully implores him to look upon the escaping Eliza and her young son as real humans in need of aid. "The magic of the real presence of distress," Stowe's narrator says, "the imploring

[37] Trodd & Stauffer, *Meteor of War*, 13-14.
[38] Trodd & Stauffer, 162.

human eye, the frail, trembling human hand, the despairing appeal of helpless agony,—these he had never tried. He had never thought that a fugitive might be a hapless mother, a defenceless child…"[39] The sense among readers that conscience should serve as a stronger guide than an act of Congress was dramatic. Frederick Douglass understood Stowe to be the most important popularizer of the idea. Of *Uncle Tom's Cabin* he said, "We doubt if abler arguments have ever been presented in favor of the "Higher Law" than may be found here [in] Mrs. Stowe's truly great work."[40] Reviewers in the South vilified the book, complaining that it justified and reinforced those agitators who, in claiming a status for higher law, were acting as enemies of the Constitution.[41] Meanwhile, a reaction to the horrors of slavery amplified a growing mass anti-slavery movement among white Northerners whose eyes had become more fully opened by the novel. In *The 1619 Project,* Nikole Hannah-Jones claims that Black Americans have had to bear all of their struggles for freedom with virtually no support from white allies. But it was in fact this mass anti-slavery movement, more than any other single cause, to which the Civil War can be traced.

POPULAR EXPRESSIONS OF THE IDEA OF HIGHER LAW

But what evidence is there that the idea of higher law really moved through the culture in a manner sufficient to drive such a mass anti-slavery movement? An important answer lies in the archival record of the popular press from 1850—the year the fugitive slave law was passed—and continuing into the war years. The record reveals that far from being a subtle philosophical

[39] Stowe, *Uncle Tom's Cabin*, 90-91.
[40] Quoted in D. Reynolds, *Mightier Than The Sword*, 118.
[41] D. Reynolds, *Abe*, 347.

notion narrowly debated among a refined intellectual class, the concept of higher law—specifically in response to the passage of the Fugitive Slave Law—spread like wildfire through the Northern populace. Thousands of references to higher law appear in poems, articles, reports of public speeches and more published in Northern newspapers and magazines, providing substantial evidence that Northern anti-slavery sentiment was not the domain of a select few abolitionists. The idea was the common currency of a Northern, anti-slavery mass movement.

The broad concept of higher law had, in fact, been moving, at least in a loose form, through Northern culture ever since the establishment of the Constitution. An anecdote printed in 1855 in the *Provincial Freeman*, an anti-slavery Canadian weekly published by the Black, female activist Mary Ann Shadd from 1853 to 1857, illustrates the point. After the first fugitive slave law was passed by Congress in the late 1700s, the *Freeman* recounts, a fugitive slave was said to have been brought before a Judge Harrington of Vermont. Federal law required that in order for the statute to be invoked, it would be necessary for the claimant to prove that he was the rightful owner of the person in question. In this case, an abundance of proof was supplied by the claimant; it is implied that before almost any other magistrate the evidence presented would have been more than satisfactory. However, much to the claimant's surprise, the Judge was not moved. "Your proof does not satisfy me," he said. "Not satisfy your honor!" the claimant exclaimed, "what will then satisfy you?" The judge looked at the claimant. "Nothing short of a bill of sale from God Almighty," he replied. The anecdote ends with this sentence: "This was just after the revolution."[42]

[42] "The Higher Law," *Provincial Freeman*.

Now, with the passage of the Fugitive Slave Act in 1850, new expressions of the idea of higher law began to proliferate through the popular media. Songs and poems were a favorite literary form among anti-slavery writers; they provided a means to convey emotional content in a pithy and digestible format. Sometimes, they took the form of a simple rallying cry, like this song called, "The Higherlaw," published in *The Liberator*, William Lloyd Garrison's abolitionist newspaper, in 1851:

> Sons of freedom! now's the hour
> To oppose proud Slavery's power;
> Freemen we're resolved to be,--
> "Give us death or liberty". . .
> Hark! we hear *the nobler call*
> Echoing through the Senate hall;
> We its mandate will obey,
> Battling bold for liberty.
> *That* commands us, one and all,
> Not at tyrants' fest to fall;
> But to obey heaven's 'higherlaws,'
> Like brave men in freedom's cause. . . .
> Freemen! cry with every breath,
> 'Give us Liberty or death!'[43]

In other cases, the idea of higher law was highlighted in a way that might feel surprising to a contemporary reader, like in the 1855 poem "How Are the Mighty Fallen," also appearing in *The Liberator*, which juxtaposed the Godly idea of higher law with the ills of slavery, which the poem links to the excesses of democracy.

> . . . A truckling brood of Northern slaves,—
> The scorn of Freemen winning, —

[43] "The Higherlaw" (Song), *Liberator*.

We loudly bawled 'Democracy,'
The more that we were sinning.
We've cursed the 'higher law' of God,
Proclaiming man a 'chattel,'
That curling hair and sable skin
Mark but 'two-leggéd cattle'—
That selling them on auction-blocks,
Or in the coffle driven,
Is serving two great Gods at once,
DEMOCRACY and HEAVEN![44]

But separating higher law from the laws created by "the people" does have an internal logic to it; if there is such a thing as higher law at all, it must be a law higher than some other law, and if the Fugitive Slave Law is the outcome of a "legitimate" process within the democratically elected representative government of the United States, then democracy and heaven do indeed appear to be in conflict. But some poets, less inclined to indict the Constitutional system of the United States, preferred to relegate the source of the conflict to the forces of good and evil operating outside the human realm. These writers positioned higher law, which they understood to come from God and to be both intuitive and egalitarian, to be in conflict with what they called "lower law," which they associated not with man *per se*, but with Satan. Consider "The Arch Apostate" by J.M. Whitfield, a Black poet and anti-slavery activist, which appeared in the *Frederick Douglass Paper* in January of 1852.

. . . All owned the wisdom of those laws,
By which the first Almighty Cause,
Throughout Creation's vast expanse,
Imposed on every creature's mind,
Through endless ages to advance,

[44] "How Are the Mighty Fallen!" *Liberator.*

In good and evil unconfined:
The "higherlaw," which, fixed as fate,
Binds all of high or low estate. . . .
[But] a third part of the heavenly host
Drew with him in rebellion blind;
And strove to make the lower law
Of his own lust, and hate, and pride,
The only source from whence to draw
For rules and precepts to decide;
And thus beneath his feet he trod
The statutes of Almighty God. . . . [45]

Of course, beyond songs and poems, more common expressions of the idea of higher law could be found, for example, in newspaper editorials throughout the North, particularly. Sometimes editorials were positioned in dialogue with other newspapers, like this 1853 piece from *The National Era*, in response to the *Fairfield Herald* from South Carolina: "Enjoy your own private opinion," the editorial quotes from the *Herald*, "but when you approach to an attack upon our institution in solid phalanx, under the banner of universal emancipation, emblazoned with the fanatical mottoes of a 'higher law than the Constitution,' or an organized 'National Anti-Slavery' party, in defiance of the sanction of the Bible, then we say infidelity is rampant." *The National Era* offers astonishment at this assessment on the part of the *Herald*, defending the link between higher law and an understanding of Christ and the implications of Christian faith for equality among all people. "Christianity is the religion of those who profess to believe in the doctrines of Christ; i.e. supreme love to the One God, and love to All Men," it argued. "A belief in 'a higher law than the Constitution,' and adherence to 'an organized National Anti-Slavery party,' do not constitute a man an infidel. By the *Herald's* own admission, he [i.e. the

[45] Whitfield, "The Arch Apostate," *Frederick Douglass' Paper*.

editorialist] has met with men opposed to slavery who were 'near perfection,' and an organization of these men in a National Anti-Slavery party does not change their characters."[46]

Other columns provided reports of events—in particular, political speeches and sermons given around the country; often one newspaper would report on another newspaper's account. In April of 1860, *Douglass' Monthly* picked up a piece reported by a Washington correspondent of the *Evening Post*, which recounted details of a particular Tuesday evening in Rochester when a very large audience turned out to hear a sermon delivered by the Rev. Thomas H. Stockton, a Methodist minister from Pennsylvania who served several times as Chaplain of the U.S. House of Representatives. "The chaplain was, himself, a picture—tall, slim, and with long and thick hair of snowy whiteness falling down upon his shoulders, he brought to mind the patriarchs of the Old Testament," the Post reported. "He has been very ill of late, and was too weak to stand, so sat while delivering his sermon; yet, in spite of this fact, it was one of the most touching, eloquent and impressive sermons I ever heard. A remarkable feature of it was its bold defence of 'the higher law.' Raising his voice to its shrillest tones, the old man said: 'No man, who is not an unblushing infidel, will deride the higher law!'"[47]

Many newspaper items—in the form of editorials, letters to the editor, etc.—took on the task of examining the finer semantic and philosophical dimensions of the concept of higher law. An 1854 letter from a Frances Barry in Berlin Heights, Ohio to the editor of *The Liberator* sought to parse a distinction between "real laws," which come from Heaven, and "laws," which are mere artifacts; Barry appears to say that man-made laws have no meaning at all, though a

[46] "Infidelity in Disguise," *National Era*.
[47] "The Higher Law," *Douglass' Monthly*.

more generous interpretation would assume that he means that man-made laws which are inconsistent with "real laws" ought to have no power. "[Laws] are 'made' in great abundance," he argued, "but real law is not an article that can be 'made.' [Real] law is eternal, self-existent. . . It is no greater to make a God, and say to it, 'rule over me,' than to make a law, and say to it, 'There, operate!' The expression 'higher law,' is, strictly speaking, improper; for the 'lower law' is no law at all."[48]

In another letter to the editor of *The Liberator*, this one in 1856, responding to a speech made by abolitionist Wendell Phillips at Abington, Pennsylvania, a reader by the name of George Sunter, Jr., objects to Phillips' understanding of higher law. Sunter quotes Phillips: "My friend Mr. Conway, in his pulpit at Washington . . . strikes a better anti-slavery blow than the best Free Soiler in the House of Representatives, because he is founded on the granite of an unmistakable position, *and there is nothing between him and the Higher Law but God's own inspiration.*" Sunter takes issue with this latter sentence. "…If I understand [the clause] right, [it] makes a distinction between 'the Higher Law' and "God's own inspiration.' . . . What is the Higher Law, if it is not 'God's own inspiration!'" he asks. One wonders whether readers of *The Liberator* were generally appreciative of this kind of theological precision, or whether they found it pedantic. In any case, it is clear that Sunter regards this question as a matter of great urgency. "I press this question," he says, "because there is a most pregnant delusion abroad on the subject, and from which few reformers seem to be free." The editor of *The Liberator* replied to Sunter's letter. "We presume all that Mr. Phillips meant by this expression was, that there was nothing but

[48] Barry, "Law," *Liberator*.

God's inspiration, in the mind of Mr. C., to settle on his part what it is that the higher law teaches—without reference to political expediency."[49]

Not only does the sheer volume of newspaper editorials and other items testify to the ubiquity of the discussion of higher law, but many of the editorials themselves testify to it explicitly. "So much has of late been said in legislative halls, at Union meetings, at laudation dinners, from the pulpit and press, on the subject of Higher Law, so many sneers have been cast on the subject, that it falls without interest on the ear," said one editorial in *The National Era*, an abolitionist newspaper published in Washington D.C. by erstwhile physician Gamaliel Bailey, whose offices in both Cincinnati and Washington had been attacked by anti-abolitionist mobs. This piece, published in 1851, and directed to those who were questioning the relationship between constitutionality and higher law, sought to clarify the relationship between the two concepts. "The question is not whether there is or is not a higher law, which shall absolve us from obedience to the Constitution," the paper argues, "but whether there is not a higher law (to wit: the law of God,) which should *regulate our conduct under that Constitution*."[50]

By 1860, much of the semantic and philosophical parsing of the idea of higher law had evolved into an exploration of the relationship between higher law and revolution, suggesting that this is where the conversation had shifted in the broader culture. A letter to William Lloyd Garrison at *The Liberator* from a K.R. Place defended the moral right of the individual to hold firm to an understanding of higher law. "When the contemners of the higher law are reminded that our government had its origin in the practical recognition of the supremacy of that law," he

[49] Sunter, "Wendell Phillips and the Higher Law," *Liberator*.
[50] "The Higher Law," *National Era,* emphasis mine.

said, "they are in the habit of replying, in substance—'We admit the truth of the statement; but the right of appeal to that law is a revolutionary right; a revolutionary right can be rightfully proclaimed and exercised only when the people are ripe and cager for revolution, having first exhausted all means of redress.'" But how, he wonders, could the people get to the point of revolution if they did not first, individually, come to an understanding that the current movement of society was in a direction away from higher law? "We might pause to inquire here," he said, "how a revolution can ever be effected by a people, if individuals, *as such*, are never to recognize the higher law; if each man is to wait for his neighbor to speak first, till, by and by, a majority of the whole shall speak at once!"[51]

Another testament to the ubiquity of the concept of higher law is the number of newspaper items either written in opposition to the idea, or reporting on others' expressions of opposition. In a speech before the House of Representatives which was picked up by several papers shortly before secession began, Congressman A. Harding of Kentucky made an impassioned argument against the acceptance of higher law, linking the idea to the worst excesses of the French Revolution, and anti-Constitutional zeal in the North. "Sir," he said, "it was this higher-law spirit which 'dominated' over France in that fearful reign of terror, and made her streets run with blood. It is the ravings of that impious spirit in the North which declares the Constitution, framed by our patriotic ancestors, to be "a league with death and a covenant with hell."[52] That final phrase came from William Lloyd Garrison, who had proclaimed words to that

[51] Place, "Thomas Jefferson and the 'Higher Law,'" *Liberator.*
[52] "Emancipation of Slaves in the Rebel States," *Spirit of Democracy*.

effect as he publicly burned his copy of the Constitution, because he believed it supported slavery.

Railing against what he saw as the incoherence of higher law, Daniel Webster, Secretary of State under President Fillmore and key contributor to the passage of the Fugitive Slave Act as a senator from Massachusetts, offered vigorous criticisms against the idea, which were also reported on by several newspapers. "When nothing else will answer, they [the abolitionists] invoke religion, and speak of the "higher law!" he fumed. "Gentlemen, this North Mountain is high, the Blue Ridge higher still, the Alleghanies higher than either; and yet this "higher law" ranges further than an eagle's flight above the highest peak of the Alleghanies! No common vision can discern it; no common and unsophisticated conscience can feel it; the hearing of common men never learns its high behests; and therefore, one would think *it is not a safe law to be acted upon in matters of the highest practical importance.* It is the code, however, of the abolitionists of the North."[53]

Writing in the *Vincennes Weekly Courant and Patriot* in 1856, meanwhile, the editorialist J.A. McClaugherty expressed his opposition to the use of the pulpit to disguise political commentary as an expression of Christian values. Late in January, McClaugherty had attended an evening service at a Methodist church in Vincennes, Indiana, during which a sermon was delivered by the Rev. M.M. Tooke. Tooke had delivered "an ordinary sermon of ordinary length," McClaugherty reported, when he then "proceeded to inform his hearers that the time was near at hand when 'the laws of God should be held supreme over all laws'." In McClaugherty's retelling, the preacher's message grew nearly apocalyptic. The time was nigh,

[53] "Webster's Contempt for the 'Higher Law'," *Liberator.*

Tooke had said, "'when constitutions, and statutes, and laws of man should become powerless and the great higher law of God be the recognized law of the people.' He said that the day would soon arrive when Kings, and Presidents, and Statesmen and Rulers would think differently on these subjects from what they now do—that they would retreat from the doctrines they now hold and yield to the 'higher law' as the rule of their administration of governments." And this doesn't begin to capture the full extravagance of the minister's views, McClaugherty explains, calling Tooke "diffuse and elaborate," and calling the "wreckless political abolition and disunion tone of his speech" "disgustingly obtrusive." Like Harding, McClaugherty quoted Garrison in his diatribe against Tooke. "Let him remember that he is not in the midst of a band of fanatics who consider it their especial religious duty to make bonfires, of the Constitution and the Declaration of Independence, and denounce the union of the States as 'a league with the devil and a compact with hell,'" he said.[54]

Some opponents of higher law were, of course, pro-slavery Southerners who, like Confederate Vice President Alexander Stephens, were happy to coopt the idea for their own purposes. In an 1853 report on an address given by South Carolina Governor John Hugh Means, *Frederick Douglass' Paper* quotes the Governor, who made the argument that South Carolina had an undeniable right to capture Black seamen who entered the state's ports, imprison them, and sell them into slavery. This, he said, was "a right which is above all constitutions, and above all laws, and one which never was, nor never will be, abandoned by a people who are worthy to be free." "Here is a higher law with a vengeance," the *Paper* remarked, highlighting a significant

[54] McClaugherty, "The Sacred Desk Violated," *Vincennes Weekly Courant and Patriot*.

vulnerability of the idea of higher law; the concept could be easily turned on its head, and pressed into service in defense of pretty much anything.[55]

Among the more interesting negative commentaries on the idea of higher law, was a Shakespearean satire originally published in the *Washington Union*, and then picked up by a succession of other newspapers. Setting the leaders of the abolition movement in the role of Macbeth's three witches, the author places figures like Garrison, Phillips, and others around a burning cauldron in a gloomy cave. "Throw the Constitution in," a Prophet of the Higher Law intones, "Imp of Satan, brood of sin…" The abolitionist leaders chant in unison, as they toss their own ingredients into the brew:

> Throw the Bible with it too!
> Only writ for wicked Jew.
> Away with that old hoary chest;
> It has become quite obsolete—
> The scoff of each enlightened mind,
> The present age it lags behind; . . .
> Away with that old musty scroll,
> The higher law's enough for all.
> "Double, double, toil and trouble,
> Fire burn and cauldron bubble."[56]

A significant volume of ink was spilled in the newspapers of the era over the question of whether it was possible for a man to serve in Congress and also believe that there exists a law that is higher than the Constitution. In 1852, the *National Anti-Slavery Standard* ran an account of the debate in Congress over the Fugitive Slave Act in which Illinois Senator Stephen Douglas

[55] "A 'Higher Law'," *Frederick Douglass Paper*.
[56] "From the *Washington Union*," *Vincennes Courant*.

had participated. Douglas took the position that it would not be possible for a man to be a senator and maintain a commitment to the idea of higher law, because the Constitution requires that in order to be a senator one must take an oath to *support* the Constitution. "How does a man acquire a right on this floor to speak,' he asked, "except by taking an oath to support and sustain the constitution of the United States? . . . I know not how a man reconciles it to his conscience to take the oath to support the constitution when he believes that constitution is in violation of the law of God."[57] In the same year, *Frederick Douglass' Paper* published the portion of a speech delivered by Congressman George T. Davis from Springfield, Massachusetts which related specifically to this question. "Who among us," asked Davis, "are in a position to avail themselves of the plea of a law higher than the Constitution and inconsistent with it? Not certainly those of us who swear to support the Constitution of the United States. We are in no position to take advantage of that higher law as against the Constitution."[58]

Even those in favor of the idea of higher law sometimes argued, just the same, that the doctrine was antithetical to the oath taken by members of Congress. In an 1850 editorial under the title "The Higher Law Infamy," *The National Era* argued vigorously that all citizens had a moral obligation to follow the dictates of the higher law over man-made laws. It is "the duty of the citizen to obey all laws that have been framed on the highest principles of civilization and Christianity, and to disobey those which attempt to enjoin upon him the performance of duties in conflict with such principles. This doctrine, 'carried out to the full,' would always tend to the overthrow of bad Government, and the establishment of good." But the same editorial, nonetheless, insists that unless or until an office holder has managed to effect changes to the law

[57] "Debate in the Senate," *National Anti-Slavery Standard*.
[58] "The Higher Law," *Frederick Douglass' Paper*.

or to the Constitution itself—through Constitutional means—he has no right to defy his oath and fail to discharge his duties, no matter how morally repugnant he may find them. Once he decides that some act he is required to perform is in conflict with the higher law, he has but one option: "let him resign instantly," *The National Era* argues, "and not plead the authority of that law for the non-fulfillment of duties he has sworn to discharge. Allegiance to God is not shown by Treason to man."[59] As we will see, the position of *The National Era* bears some similarity to Lincoln's own view with respect to one's obligation to find constitutional means to effect legal and social change, though clearly the view of *The National Era* contains a logic that, if followed, would be far too untenable. If one *must* follow the mandates of higher law and one *must also* resign from office when higher law is in conflict with, say, the Fugitive Slave Law, then presumably no anti-slavery politician could possibly remain in office after 1850. *The National Era* left this worry unaddressed.

A less fraught treatment of the tension between moral and civil duty which, as we will see, was well in line with the way Lincoln had understood the problem as far back as 1838, was published just six month later in *The Liberator*, in the form of a report of a sermon delivered in Boston by one Rev. Dr. Sharp. Dr. Sharp held unequivocal anti-slavery views, but was deeply opposed to the adoption of a higher law sensibility. "Let the doctrine become prevalent," he had preached, "that we are at liberty to violate the laws and resist their execution, because they are not good or just, then resistance will be the order of the day, and riot, and disturbance, and maiming, and killing, and murder will be substituted for quiet and orderly obedience to law. . . . We are not and ought not to be self-constituted judges of the case. We may change the law

[59] "The Higher Law Infamy," *National Era*.

through our law-makers if we can, but we must submit to it whilst it is in force." Although he abhorred slavery, Sharp understood the consequences of an embrace of higher law to be nothing less than the destruction of the country. "Should such a spirit and such resistance to law be encouraged to prevail," he preached anxiously, "then farewell—a long and sad farewell—not only to our greatness, but to the Union."[60]

The views presented in these poems, sermons, editorials, and letters were not the expressions of a select few intellectuals working through the nuances of a narrow philosophical problem. They were reflections of a growing anti-slavery—and in many cases, pro-higher law—movement that was spreading rapidly across the North through the 1850s. In an editorial aimed at refuting the position of the *Washington Republic* which had argued "that individuals have no right to pronounce upon the moral character of a law they are commanded to obey," *The National Era* had spoken directly to the ubiquity of these views, as early as 1850. [61] "The majority of the People of the non-slaveholding States have been educated in the belief that the condition of slavery is morally wrong," it said. "They conscientiously believe that it is a violation of natural right and every principle of Christianity, to hold a fellow-man in bondage . . . Such a condition they believe inherently, unchangeably wrong; and, therefore, they would be criminal in the sight of God, if they should hold a fellow-being, or aid in placing him, in it."[62]

One year later, the *National Anti-Slavery Standard* published a letter recounting a speech that had been given at the Murray Institute in Baltimore by the Institute's President, J.E.

[60] "From a Sermon," *Liberator.*
[61] No right to pronounce upon it? That's a particularly extreme position.
[62] "Non-Conformity, At Time of Duty," *The National Era.*

Snodgrass, in which Dr. Snodgrass argued that while higher law sentiment had been spreading far and wide, the newspapers had hardly begun to reflect the degree to which the idea had become a movement. "The spread of "higher law" sentiments in opposition to [the Fugitive Slave Law] is so considerable as to justify the classing of them among the 'new movements' complained of. And yet," he said, "our daily newspapers do not give anything like an adequate conception of the extent of this feeling."[63]

During that decade, opponents of the higher law came to understand just how widespread these views had become. This, of course, was a key reason that so much had been published refuting higher law; but they also quite explicitly acknowledged the fact. In 1859, *The Weekly Vincennes Western Sun* ran an editorial decrying the abolitionist candidate of the "Black-Republicans of the Fifth." "They have succeeded," the Sun stated, "to a considerable extent, in educating the public mind into the belief that a denial of allegiance to the constitution and of the binding force of the supreme law of the country is proper and right, [and now] they have expressed a determination to send to Congress one George Julian, an associate and co-laborer of Garrison, Phillips, & Co., and one of the first and most zealous advocates of the "higher law."[64] Two years later, after the Civil War had begun, the same paper published an opinion that it was the widespread adoption of the higher law sentiment—more than any other cause—that was responsible for the conflict. "We do not believe," the *Sun* argued, against what it saw as the unconstitutional excesses of the wartime Lincoln Administration, "in the doctrine that our national chart is a mere fair weather Constitution—not made for the stormy weather of war and rebellion; that whilst peace has its Constitution and laws, war also has its appropriate law,

[63] "The Higher Law in Baltimore," *National Anti-Slavery Standard*.
[64] "Showing Their Hands," *The Weekly Vincennes Western Sun*.

superseding the other—this supreme, paramount law of war being the unbridled will of its commander-in-chief! This would be coming a little too near the "higher-law" dogmas of a few years past, *the promulgation of which was the main cause of our country's present calamities*."[65]

NATHANIEL HAWTHORNE & HERMAN MELVILLE

As we have already seen, resistance to the idea of higher law was not the exclusive domain of proponents of slavery. There were many who hated slavery, but who understood the higher law movement as extraordinarily dangerous. Two public intellectuals who held this view were Nathaniel Hawthorn and Herman Melville. Both resisted the idea of higher law, and particularly resisted embracing violence in the name of higher law, because they were ambivalent about the moral status of such acts, and because they very reasonably feared the potential consequences of setting off an unpredictable war. Hawthorne disapproved of slavery, and the South in general, but he also disapproved of abolitionism, at least as it was practiced among "the fiercest, the least scrupulous, and the most consistent of those, who battle against slavery."[66] The nuance of his position is clear in his famous assessment of John Brown, which appeared in his 1859 *Atlantic Monthly* article "Chiefly about War Matters." "Nobody was ever more justly hanged," he says of Brown, expressing a clear commitment against Brown's political violence, in favor of law and order. But his ambivalence compelled him to look at both sides of the issue. Even as he called Brown's siege at Harper's Ferry "enormous folly," he also

[65] "The Rampant, War-Like Correspondent," *Weekly Vincennes Western Sun*, emphasis mine.
[66] Hawthorne, *Miscellaneous Prose and Verse*, 23:350.

acknowledged both the righteousness of the act and Brown's stoic ascension to the gallows. "He won his martyrdom fairly," says Hawthorne, "and took it firmly."[67]

Like Emerson and Thoreau—and like Brown himself—Hawthorne understood Brown as a puritanical revolutionary, redolent of Oliver Cromwell. But unlike the Transcendentalists and the many other New England abolitionists who had picked up the mantle of Puritanism, Hawthorne was ambivalent about Cromwell, just as he was about Brown. As one of America's most famous students of Puritan history, Hawthorne had great admiration for Puritan piety and fortitude, while at the same time was aware of Puritan cruelty and intolerance, which he abhorred. As literary historian Larry Reynolds has said, "Cromwell as democratic rebel fighting for oppressed people evoked Hawthorne's approval; Cromwell the ruthless king killer did not."[68]

Hawthorne's ambivalence, even as the war began to rage, arose in the conflict between his desire to participate in the "enthusiasm of all sorts" that was infecting New England ever since Brown's raid, and his long-held pacifism, about which he was vocal enough to be accused of treason by several of his neighbors. The Transcendentalist Bronson Alcott, confusing Hawthorne's opposition to political violence with disloyalty, falsely and hurtfully claimed that Hawthorne "openly espoused the side of the South, and was tremendously disturbed at the Northern victories."[69] In truth, Hawthorne was deeply disturbed by slavery and the Southern cause, but he also feared that a civil war would, as he said to his sister-in-law Elizabeth Peabody,

[67] Hawthorne, "Chiefly about War Matters," 54.
[68] L. Reynolds, *Righteous Violence*, 165.
[69] *The Journals of Bronson Alcott,* 411-412.

"effect by a horrible convulsion the self-same end that might and would have been brought about by a gradual and peaceful change."[70]

Alcott was wrong about Hawthorne, but his misconstrual of Hawthorne's attitudes is easy enough to understand. Hawthorne's moderation on the issue of slavery was a rejection of hardline New England Puritanism, which may have looked to Alcott and others just like the rejection of Puritanism typical among some thinkers in the South. In 1862, in a speech to Mississippi legislators, Jefferson Davis painted the enemies of the Confederacy as "a traditionless and homeless race . . . gathered by Cromwell from the bogs and fens of the north of Ireland and England" to be "disturbers of peace in the world."[71] For many in the South, Puritanism was the source of the very "unnatural" idea of democracy, and from this perspective the Civil War was understood as a struggle to reverse the errors of the American Revolution, which had misguidedly replaced what *DeBow's Review* called "the natural reverence of the Cavalier for the authority of established forms over mere speculative ideas."[72] Democracy, according to this line of thinking, was an intellectual excess of Puritanism—a misguided idea—which ran counter to the natural, established hierarchies that had, until the monarchy had been thrown off, reflected a society in proper order. For such thinkers, democracy "threw political influence into the hands of inorganic masses" causing "the subjection of the Cavalier to the intellectual thralldom of the Puritan."[73] According to historian and journalist Colin Woodard, some Southern thinkers even put forward the idea that the Confederacy's true mission was to fight a Huguenot-Anglican counterreformation against Puritan excess. Preserving slavery, the

[70] Hawthorne, *The Letters, 1857-1864,* 18:590.
[71] Quoted in Woodard, *American Nations*, 235.
[72] Moore, "Southern Civilization," 11-13.
[73] Quoted in Woodard, 235.

idea went, was not the core issue for the Confederacy in fighting the Civil War. Their purpose was to defeat democracy.[74]

While Hawthorne's aversion to revolutionary upheaval was in part attributable to what he knew of the history of Puritanism and Cromwell's rebellion, Melville had similar anxieties about the potential unintended consequences that can arise from acts of political violence, though in his case they were, like in the speech from Congressman Harding, drawn largely from what he knew of the French Revolution's Reign of Terror. Both of these conflicts had unleashed waves of abject brutality and bloodshed, and both Hawthorne and Melville recognized the way that higher law could easily lead down that road. And neither was sanguine about inviting that specter into the United States.

Like Hawthorne, Melville was deeply criticized by radical Republicans for his pacifism, which came not from any sympathy with slavery or the slaveholding South, but from a great distrust of mass movements, and even a deep ambivalence about democracy generally. On the one hand, he was deeply committed to the *ideal* of democracy—based as it is on the belief that the people are the best judges of how to govern themselves. On the other hand, he was a conservative elitist who doubted the ability of the mass of mankind to make reasonable judgements at all. Larry Reynolds finds this dichotomy represented in *Moby-Dick* (1851), when Ishmael declares, "take high abstracted man alone; and he seems a wonder, a grandeur, a woe. But . . . take mankind in mass, and for the most part, they seem a mob of unnecessary duplicates."[75]

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[74] Woodard, 235.
[75] Melville*, Moby-Dick,* 341; L. Reynolds, *Righteous Violence*, 187.

Melville easily discerned the dangers associated with the kind of single-minded focus on justice that was increasingly characterizing Northern abolitionism. "Only absolute justice is safe," declared an editorial in the *New York Independent*. "Peaceable, by all means peaceable, in God's name; but *first pure*, in God's name also." But for Melville, pure truth was hard enough to discern—in *Moby-Dick* it seems impossible to form a single, coherent understanding of a whale—but the pursuit of pure justice, untempered by practical considerations (like becoming a catalyst for civil war, for example), was physically and psychologically perilous—the path to certain ruin. Just ask Captain Ahab.[76]

[76] L. Reynolds, 183.

CHAPTER II

LINCOLN'S RESPONSE TO HIGHER LAW

The power and ubiquity of the popular idea of "higher law," the popularity of the novel *Uncle Tom's Cabin,* and the writings and speeches of Emerson and Thoreau in defense of John Brown were among the most important cultural factors leading to an abolitionist sentiment in the North that was powerful enough to drive the election of Republican Abraham Lincoln to the presidency in 1860. It is notable that had the fundamental white culture in the United States really been driven solely by a putative "DNA" of "racial exploitation and racial conflict" as Hannah-Jones claimed in *The 1619 Project*, the outspoken, vigorously anti-slavery Lincoln could never have been elected.

However, Lincoln himself was not, strictly speaking, an Abolitionist, and did not share the views of Stowe, Emerson, Thoreau, and much of the public regarding higher law; with respect to the potential anti-Constitutional nature of higher law, he was really much closer to Hawthorne and Melville in his thinking. Although he admired Seward, Lincoln believed that the higher law reference in Seward's 1850 speech had been infelicitous—an encouragement to those who would break the law for the sake of their own opinions. What Lincoln recognized was that anyone could invoke the principle of higher law to justify any position. Alexander Stephens, for example, had claimed that higher law supported slavery in the South. "Let no man . . . say that African slavery as it exists in the South . . . is in violation of either the laws of nations, the laws of nature, or the laws of God!"[1] As Reynolds says, "Lincoln saw that the higher law was,

[1] Johnson and Browne, *Life of Alexander Stephens*, 313.

potentially, the most centrifugal force in the culture because it could be pointed in any direction. Indeed, it *was* pointed in all directions in the 1850s."[2]

Despite his vehement hatred of slavery, the Kansas-Nebraska Act, and the Fugitive Slave Law, Lincoln's understanding of the United States was that it required of citizens a strict adherence to law and to the Constitution. Of course, the Constitution provides provisions for its own modification, and Lincoln was clearly in favor of using Constitutional processes in order to effect such changes when the equality of all people was at stake; later, in 1865, Lincoln would drive the passage of the Thirteenth Amendment, which permanently abolished slavery. But until such a time as laws or the Constitution might be amended, Lincoln was committed to compliance, even when he thought it immoral. As early as 1838, in his address to the Young Men's Lyceum in Springfield, he had made this point explicit. "Let me not be understood as saying there are no bad laws, nor that grievances may not arise, for the redress of which, no legal provisions have been made[,] . . . although bad laws, if they exist, should be repealed as soon as possible, still while they continue in force, for the sake of example, *they should be religiously observed*."[3]

Lincoln worried that appeals to higher law in contravention of human law or the Constitution would weaken the political institutions the Founders had established, and potentially destroy the Union. We cannot, in every generation, be revolutionaries and still retain the Union, he said—even though the Union itself was established through revolution. "Passion helped us," he says of the revolutionary generation, "but can do so no more. It will in the future be our

[2] D. Reynolds, *Abe,* 348.
[3] Lincoln, "Address Before the Young Men's Lyceum," 18, emphasis mine.

enemy. Reason, cold, unimpassioned reason, must furnish all the materials for our future support and defense. Let those materials be moulded in to general intelligence, sound morality, and, in particular, a reverence for the constitution and laws."[4]

Lincoln's position stood in striking contrast with those for whom higher law provided the greatest imperative. In his denunciation of the Fugitive Slave Law, Emerson considered nothing sacred; he had seen enough immorality, he felt, committed in the name of the Constitution and of religion. "These things show that no forms, neither constitutions, nor laws, nor covenants, nor churches, nor bibles, are of any use in themselves," he argued. "[T]he devil nestles comfortably into them all."[5] With Lincoln, Emerson shared a reverence for the origins of the United States, as well as a clear-eyed anxiety that competing political forces were starting to destabilize the nation. But unlike Lincoln, Emerson did not subscribe to the view that the Constitution, having been framed by a previous generation of authors, must now be passionlessly guarded by the next generation. His sense of the Constitution, at least in 1837 when he gave his address to the Phi Beta Kappa Society at Harvard, was that it could only retain its viability by being reinformed with the passions of each successive generation. Lincoln was concerned about preserving the institutions that had been established by the framers of the Constitution. But for Emerson, the great prophet of "self-reliance," it was not the legal Constitution that needed preserving, but rather the "constitutional act of self-constituting." This act required continual passion and inspiration. "It is a mischievous notion," says Emerson, "that we are come late into nature; that the world was finished a long time ago."[6]

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[4] Lincoln, 21.
[5] Emerson, "Fugitive Slave Law," 83.
[6] Emerson, "The American Scholar," 219; "The American Scholar" was originally titled "An Oration, Delivered before the Phi Beta Kappa Society at Cambridge, August 31, 1837"; Meltzer, *Secular Revelations*, 85.

Emerson's view was, in fact, well aligned with that of Thomas Jefferson, whose private correspondence to James Madison in 1789 revealed his own skepticism about the wisdom of a "permanent" Constitution, lasting through successive generations. "The question whether one generation of men has a right to bind another, seems never to have been stated…," Jefferson observed. "I set out on this ground which I suppose to be self-evident: 'that the earth belongs in usufruct to the living;' that the dead have neither powers nor rights over it."[7] The Abolitionist William Lloyd Garrison was certainly in agreement with Jefferson and Emerson when, in the name of higher law, he publicly burned his copy of the Constitution. But Lincoln was firm in his position. "I agree with Seward in his 'Irrepressible Conflict,' he wrote in the margins of a newspaper while reading an article about slavery, referring to an 1858 speech delivered by Seward, "but I do not endorse his 'Higher Law'."[8]

LINCOLN'S RHETORICAL STRATEGY

Lincoln also did not relish the idea of armed conflict over slavery but, again, that does not mean that he was happy for slavery to continue. He wanted slavery to come to an end as much as any abolitionist. But Lincoln was a moderate; his moderation had been, in part, learned from two Whig leaders—Zachary Taylor, who died in the White House, and Kentucky statesman Henry Clay. Like Taylor and Clay, Lincoln opposed extremism at both ends of the spectrum. He believed that radical abolitionists would happily burn the Union to the ground if it meant ending slavery immediately, while Southern slave owners were ignoring the imperatives of the

[7] Jefferson to Madison, "Letter," 30 November 1789.
[8] Lincoln, "Endorsement," 50.

Declaration of Independence, whose words about human equality made the immorality of slavery unambiguous.

The challenge for Lincoln, then, was to continue to walk the tightrope of moderation, while actively pursuing the elimination of slavery. Interestingly, Lincoln understood even from an early age the tension between Southern "Cavalier" culture, which valued aristocracy, nobility, and honor, and New England Puritanism, marked by rebellion against monarchical authority and a strong sense of personal liberty and "self-ownership"; he had been born into it. Lincoln's own mother had been the daughter of a Virginia nobleman planter, and he was proud of his Cavalier ancestry. At the same time, he was keenly aware of the meaning of his Puritan ancestry on his father's side. He understood the culture of Puritanism and the fascinating history of the Protestant rebellions and upheavals. One of the books he kept close in his youth was John Bunyan's *Pilgrim's Progress*. Bunyan had served for three years in Oliver Cromwell's New Model Army during the 1640s.[9]

Lincoln needed to find a way of talking about slavery that would not alienate New England Puritans, conservative Northerners nor even, to the extent possible, the Cavalier South. His primary political objective in the late 1850s was to unify a highly factional Republican party. To do this, he adopted a rhetorical strategy comprising three prongs.

The first was to simplify a fragmented and cacophonous national debate down to a single issue. Southern thinkers were making a case that the appearance of a vast array of "isms," which "abound at the North and are unknown at the South" were endemic to Northern culture. In his sociological study *Cannibals All! Or, Slaves Without Masters* (1856), George Fitzhugh argued

[9] D. Reynolds, *Abe*, 8-9.

that the highly individualistic ethos of the North had resulted in a philosophically chaotic and incoherent society, rampant with women's rights activists, socialists, spiritualists, atheists, Shakers, Mormons (and adherents to many other heresies), and more. "Universal liberty has disintegrated and dissolved society," Fitzhugh said, "and placed men in isolated, selfish, and antagonistic positions—in which each man is compelled to wrong others, in order to be just to himself." Universal liberty, of course, arose from a Puritan sensibility, and defied what many understood as the wisdom of an ordered Cavalier society. According to Fitzhugh, the many isms plaguing the North had arisen in reaction to the atavistic culture of universal liberty, as people came together seeking refuge. "Man's nature is social, not selfish," he says, "and he longs and yearns to return to parental, fraternal, and associative relations. All the isms concur in promising closer and more associative relations . . . and in insuring the weak and unfortunate the necessaries and comforts of life."[10]

Although Fitzhugh was exaggerating terribly when he argued that this multifarious stew of issues was evidence that "free society is a failure," Lincoln understood that cutting through this great clutter of ideas and isms was essential for unifying the party, and ultimately the nation. By way of one example, in June of 1858, in his speech delivered at Springfield, Lincoln made clear that the crisis facing the nation was not one encompassing a thousand questions, but rather a single question. Invoking the language of the Gospels—an effective rhetorical device in its own right—Lincoln proclaimed that "a house divided against itself cannot stand." The core issue was whether the United States was to be slave or free; all other questions were secondary. "I believe this government cannot endure, permanently half *slave* and half *free*," he said. "I do not

[10] Fitzhugh*, Cannibals All!,* 122.

expect the Union to be *dissolved*—I do not expect the house to *fall*—but I do expect it will cease to be divided. It will become *all* one thing, or *all* the other."[11]

This kind of message was effective from more than one angle. Of course, it asserted that there was one key issue facing the nation, and clearly this would appeal to the abolitionists within the party. But unlike most abolitionists, Lincoln was not asserting that it was time for Congress simply to abolish slavery. Rather, he appeared to have been making a *prediction* about possible outcomes of the growing crisis. And, there is even a subtle, implied optimism in that prediction. Because although he recognizes that a seismic shift is on the horizon for the United States, he does not predict *disunion*. His forecast is, rather, for a unified nation which has gone either one way or the other.

The second prong of his rhetorical strategy was to adopt a tone that was often equivocal, suggesting—as he did in his speech on the Kansas-Nebraska Act in Peoria in 1854—that he would like to free all the slaves, but then immediately addressing the potential negative consequences of doing so. David Reynolds has called this a "benign subversive" style, which he describes as "packaging rebellious or progressive themes in conservative containers."[12] At times, that equivocation even turned highly conciliatory toward the slave-holding South. For example, he appears happy to defend the rights of Southerners to capture their fugitive slaves, even as he argues vigorously against the spread of slavery to Kansas. But in doing so, he is very careful not to take a tone of moral superiority toward those who continued to hold slaves. "I have no prejudice against the Southern people," he said. "They are just what we would be in their

[11] Lincoln, "A House Divided," 461.
[12] D. Reynolds, *Abe*, 356.

situation. If slavery did not now exist among them, they would not introduce it. If it did now exist among us, we should not instantly give it up."[13]

The third prong—arguably the most critical—involved finding a way to talk about what he believed was the fundamental antislavery nature of the Constitution, without accepting the premises of the higher law arguments that had become such a salient dimension of Abolitionist rhetoric. The individual ideas contained in his solution to that problem may not have been original with Lincoln, but the way he fit them together certainly was. His speech in Peoria—a watershed moment in his political career—illustrated the key ideas. One was an appeal to the intent of the Founders. There may have been references to slavery in the Constitution, he argued, but that was only because the framers of the Constitution simply could not purge it altogether, and still get it ratified. But note, he says, the way a slave is spoken of in the fugitive recovery provision obliquely as a "person held to service or labor," and how the provision abolishing the African slave trade calls such trade "'The migration or importation of such persons as any of the States now existing, shall think proper to admit,' &c." These are the only references to slavery in the Constitution, and they could hardly be less direct. "Thus," Lincoln said, "the thing is hid away, in the constitution, just as an afflicted man hides away a wen or a cancer, which he dares not cut out at once, lest he bleed to death." He also provided an enumeration of prohibitions on slave trading passed between 1794 and 1820, meant to further prove that the attitude among the Founders was one of "hostility to the principle [of slavery] and toleration, only by necessity." [14]

[13] Lincoln, "Speech at Peoria, Illinois," 255.
[14] Lincoln, 274-275.

One of the many reasons Lincoln's interpretation of the Founders' intent with respect to slavery is so interesting today is because of how it compares, for example, with the interpretation offered by Nikole Hannah-Jones in *The 1619 Project*. For Hannah-Jones, as for Lincoln, the absence of the word "slavery" in the Constitution is indicative of a deep conflict among the Founders over slavery. But while for Lincoln this absence was a strategy on the part of Northern delegates to the Constitutional Convention to ensure that no reference to slavery was codified into the fabric of America, Hannah-Jones offers the cynical view that "the founders did not want to explicitly acknowledge their hypocrisy."[15] If either of these interpretations is truly accurate, it is almost certainly Lincoln's. This is because the delegates to the Constitutional Convention were simply not of one mind on the matter of slavery. Southern delegates argued vigorously for the interests of slave holders, while Northern delegates, in general, accepted compromises that would keep the Southern states at the table.

What is most important about Lincoln's positioning of the absence of the word "slavery" from the Constitution is that the claim served as a key pillar of Lincoln's argument that slavery was antithetical to the fundamental character of the United States. He again made this assertion in his Address at Cooper Institute in New York in February of 1860. Never in the Constitution, he repeats, are slaves referred to as "property" nor even, for that matter, as "slaves." "Wherever in that instrument [i.e., the Constitution] the slave is alluded to, he is called a 'person'," he says. "Also, it would be open to show, by contemporaneous history, that this mode of alluding to slaves and slavery, instead of speaking of them, was employed on purpose to exclude from the

[15] Hannah-Jones, *The 1619 Project*, 19.

Constitution the idea that there could be property in man. To show all this," he asserts definitively, "is easy and certain."[16]

Not only did the founders dislike slavery, he argued, they had also deflected blame away from themselves in the maintenance of the institution, indicting the British for not having done more to keep it out of the colonies. "We have been in the habit of deploring the fact that slavery exists among us," he said in his 1856 Speech at Kalamazoo. "We have ever deplored it. Our forefathers did, and they declared, as we have done in later years, the blame rested on the mother Government of Great Britain . . . She would not interfere to prevent it, and so individuals were enabled to introduce the institution without opposition."[17] Many of the framers of the Constitution, he argues, were antislavery.

It is true that in the Peoria speech he had defended the right of Southerners to maintain and defend their "property," but even as he did so he continuously asserted his clear moral objection to slavery. Ostensibly objecting merely to the expansion of slavery by way of the Kansas-Nebraska Act, he calls slavery in general a monstrous injustice and, importantly, objects to it "because it assumes that there can be moral right in the enslaving of one man by another."[18] In referring to the slave as a "man," he is directly refuting the proslavery position that Black men, women, and children were mere chattel. And how can it be, he asks, pointing out the obvious incoherence, if Blacks are nothing more than "things,"—objects worth $500 a piece, he

[16] Lincoln, "Address at Cooper Institute," 545.
[17] Lincoln, "Speech at Kalamazoo," 361.
[18] Lincoln, "Speech at Peoria, Illinois," 274.

notes— that there are free Blacks among us? "How comes the vast amount of property to be running about without owners?"[19]

Lastly, and perhaps most importantly, he used the Peoria speech to present his own vision of a "higher law." This was not the higher law defended by the Transcendentalists, John Brown, and William Lloyd Garrison, but the idea that the United States was indeed established upon a key moral principle which was now being degraded. That principle was the equality of all people. "Near eighty years ago," Lincoln says, "we began by declaring that all men are created equal; but now from the beginning we have run down to the other declaration, that for some men to enslave others is a 'sacred right of self-government.' These principles cannot stand together. They are as opposite as God and mammon; whoever holds the one, must despise the other." The idea that all people are equal he calls "the first precept of our ancient faith." [20] This is the core principle of the Declaration of Independence, and when the Constitution is read through that lens—as it must be for the survival of the very idea upon which the nation was established, he believed—then there can be no question that the Constitution is an antislavery document. As David Reynolds says, "Lincoln transformed the higher law, potentially anarchistic and omnidirectional, into a force for renewed patriotism. He did so by demonstrating that the nation itself originated in a higher law; the ideal of human equality announced in the Declaration of Independence, and codified in the Constitution."[21] This was Lincoln's ingenious move: synthesizing the problematic idea of higher law with the equally problematic idea of a

[19] Lincoln, 265.
[20] Lincoln, 276; 275.
[21] D. Reynolds, *Abe*, 359.

Constitution which might otherwise have been read as supporting slavery, into a vision of an antislavery Constitution which must be defended.

During the 1850s, Lincoln continued to develop and refine this critical argument linking the rights of Black Americans to the Declaration of Independence. In the first of his seven debates with Steven Douglas during the 1858 Illinois senatorial campaign, held on August 21st, he made the connection to the Declaration highly explicit. In his opening remarks, Douglas had aggressively criticized Lincoln's use of the Declaration to support the ideal of equality between whites and Blacks. "Mr. Lincoln . . . reads from the Declaration of Independence, that all men are created equal, and then asks how you can deprive a negro of that equality which God and the Declaration of Independence awards to him. He . . . maintain[s] that negro equality is guaranteed by the laws of God, and that it is asserted in the Declaration of Independence." Interestingly, it is not primarily Lincoln's invocation of the Declaration, *per se*, with which Douglas takes issue. In other words, he could have argued that the Declaration was irrelevant to the question of whether Blacks were entitled, *under the Constitution*, to equal rights. Instead, he challenges Lincoln on the question of equality itself and whether, indeed, there was any such "higher law" driving the equality of the races. "He holds that the negro was born his equal and yours," he says of Lincoln, "and that he was endowed with equality by the Almighty, and that no human law can deprive him of these rights which were guaranteed to him by the Supreme ruler of the Universe. Now, I do not believe," he says, "that the Almighty ever intended the negro to be the equal of the white man. If he did, he has been a long time demonstrating the fact."[22]

[22] Lincoln, "First Debate," 10.

Lincoln addressed Douglas' characterization head on. He did not believe, he said in his reply to Douglas, that the Black man was the social, moral, or intellectual equal to whites; these comments are likely an accurate reflection of his attitudes at that time, although his views would undergo significant change during the course of the war and his Presidency. However, in terms of the legal equality which the Constitution—so construed—should assure to all people (all men, at least), he dug in. "There is no reason in the world," he says, "why the negro is not entitled to all the natural rights enumerated in the Declaration of Independence, the right to life, liberty, and the pursuit of happiness." To loud cheers from the Ottawa, Illinois audience, he said, "I hold that he is as much entitled to these as the white man." For Lincoln, the "higher law" articulated in the Declaration, which governs the Constitution, requires that under the law Blacks must be treated equally with whites. "In the right to eat the bread, without leave of anybody else, which his own hand earns, he is my equal and the equal of Judge Douglas, and the equal of every living man."[23]

Not only does Lincoln tie together the Constitution and the Declaration of Independence, but he further links both to the ideals of the American Revolution itself. Anyone denying that liberty and the equality of all men are the founding ethos of the United States, he says, must deny all of the moral force of the Revolution. "Henry Clay once said of a class of men who would repress all tendencies to liberty and ultimate emancipation, that they must, if they would do this, go back to the era of our Independence, and muzzle the cannon which thunders its annual joyous return," he says. "They must blow out the moral lights around us; they must penetrate the human soul, and eradicate there the love of liberty; and then and not till then, could they perpetuate slavery in this country."[24] When Douglas denies that the Declaration of Independence applies

[23] Lincoln, 16.
[24] Lincoln, 29.

equally to the Black man as to the white, Lincoln claims, Douglas is rewriting history. Taking this position not only reminds Lincoln's listeners of the enormous cost of the liberty and equality before the law won by the founding generation, but it serves an additional rhetorical purpose as well. By invoking the Revolution, he is not merely wading into the conflict between Puritan abolitionists and the Southern Cavaliers' commitment to a hierarchical society. Rather, he is reaching back in time to invoke the non-sectional—and thus potentially unifying—spirit of the earliest generation of Americans, who had mutually pledged to each other their Lives, their Fortunes, and their sacred Honor, in the dangerous pursuit of these ideals.

Nikole Hannah-Jones would like readers of *The 1619 Project* to believe that the Founders of the United States were all slave-holding hypocrites (indeed some were, and some were not), and that Lincoln's real understanding of the problem of slavery was informed primarily by his racism. This is not true. Lincoln's commitment to the idea that the Constitution is inseparable from the Declaration of Independence and the Revolution itself found its most succinct expression five years later, when he stepped up to deliver his famous address at the dedication of the cemetery on the battlefield at Gettysburg. "Four score and seven years ago," he begins, " our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal." For Lincoln, the founding of the United States—unlike the founding of other countries in days long forgotten—was *about* something; that something was the commitment of the founders to human equality under the law, however imperfectly it may so far have been effected. In his brief address, Lincoln rhetorically connects the Civil War back to the Revolution: while the Revolution had been fought to establish a nation

built around these ideals, the Civil War was now a contest to determine whether those ideals would survive. “Now we are engaged in a great civil war,” he said, “testing whether that nation, or any nation so conceived and so dedicated, can long endure.”[25]

For Lincoln, the very survival of the nation depended upon forging a more certain bond between the Constitution and the ideals of the Declaration and the Revolution and, in an important sense, he used the Gettysburg Address to assert that the primary purpose of the Civil War was to finish the work begun by the revolutionary generation. We have one objective, he said in his two minute address. That is to ensure that the principles of freedom are distributed equally across all men in America, and in doing so, to ensure the survival of democracy and the nation. “We here highly resolve,” he said, “that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth.”[26]

[25] Lincoln, “Address at Gettysburg,” 23.
[26] Lincoln, 23.

CHAPTER III

LINCOLN'S ANTISLAVERY PLAN

When Lincoln was elected to the Presidency on the eve of the secession crisis in November of 1860, he believed that his primary task was to free the slaves. But he also believed that he must do so without violent—i.e., military—intervention. While he understood the Constitution to be an antislavery document, he also believed that the Constitution gave the federal government no right to regulate slavery in the states. He made this point explicit in his First Inaugural Address, delivered just over a month before Confederate forces attacked the military garrison at Ft. Sumter, starting the war. "I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists," Lincoln said. "I believe I have no lawful right to do so, and I have no inclination to do so."[1] It is worth noting, as James Oakes points out, that even many Radical Republicans shared this understanding with the moderate Lincoln. In January 1860, Pennsylvania Congressman Thaddeus Stevens, during a debate over slavery in the House of Representatives, took the same position. "Undoubtedly," he says, "had [Congress] the legal right and the physical power, we would abolish human servitude and overthrow despotism in every land that the sun visits in its diurnal course. But we claim no such high privilege or mission. . . . And we do deny now, as we have ever denied, that there is any desire or intention, on the part of the Republican party, to interfere with those institutions…"[2]

[1] Lincoln, "First Inaugural Address," 284.
[2] *Congressional Globe*, 586.

What Republicans did believe they had the power to do was to attempt to disrupt slavery within the bounds of the Constitution. This they did, by implementing an antislavery policy designed to put so much pressure on the slave states that they would abolish slavery themselves, one by one, just as the Northern states had done years before. The idea was that surrounding the slave states with what they called a "cordon of freedom"—a ring of states where slavery had been abolished—would choke slavery to its eventual end. Among other reasons, this would work, they believed, because with no geographical opportunity for slavery to spread, the concentration of slaves would grow too great in that constrained area and erupt in danger and revolt. Oakes' study of this strategy, *The Scorpion's Sting*, takes its name from a comment made by Stevens that the intent of the Republican Party "was to encircle the slave States of this Union with free States as a cordon of fire, and that slavery, like a scorpion, would sting itself to death."[3]

In their first session after the 1860 election the Republicans, who had won control of Congress, employed five key tactics to establish their cordon of freedom. The first was the abolition of slavery in the Western Territories. The idea that the Federal Government had the power to do that had been controversial. The Supreme Court, under Chief Justice Roger Taney, had ruled in the Dred Scott decision that Congress did not have the right to prohibit slavery in any territory, because any ban on slavery would be a violation of the Fifth Amendment to the Constitution—which provides that no person shall be deprived of "life, liberty or property without due process of law."[4] Stephen Douglas, in his argument against the right of the federal government to limit slaves in the territories had leaned on the Tenth Amendment which provided that "the powers not delegated to the United States by the Constitution," "are reserved to the

[3] *Congressional Globe,* 586.
[4] US Constitution, amend 5; Taney, *U.S. Reports: Dred Scott.*

States respectively, or to the people."[5] Both the Supreme Court and Senator Douglas had argued that the framers of the Constitution, who wrote the first ten amendments in addition to the body of the Constitution itself, never intended for the Federal Government to have any authority whatsoever over slavery, as they would have understood that such power would mean interfering with property rights and encroaching on rights held by "the people."

In his Cooper Institute Address, however, Lincoln had provided a meticulously researched counterargument. It was designed to show that the majority of the framers of the Constitution had been present during discussions in which they had either not asserted any objection when federal control of slavery in the territories was discussed—as surely they would have had Douglas and the Taney Court been correct—or, even more compelling, had explicitly affirmed their belief that the federal government did indeed have the authority to control slavery in the federal territories. This excerpt from the Address gives a flavor of the painstaking historical precision Lincoln hoped to convey:

> In 1789, by the first Congress which sat under the Constitution, an act was passed to enforce the Ordinance of '87, including the prohibition of slavery in the Northwest Territory. . . . It went through all its stages without a word of opposition, and finally passed both branches without yeas and nays, which is equivalent to an unanimous passage. In this Congress there were sixteen of the thirty-nine fathers who framed the original Constitution. They were John Langdon, Nicholas Gilman, Wm. S. Johnson, Roger Sherman, Robert Morris, Thos. Fitzsimmons, William Few, Abraham Baldwin, Rufus King, William Paterson, George Clymer, Richard Bassett, George Read, Pierce Butler, Daniel Carroll, James Madison. This shows that, in their understanding, no line dividing local from federal authority, nor anything in the Constitution, properly forbade Congress to prohibit slavery in the federal territory. . . . George Washington, another of the "thirty-nine," was then President of the United States, and, as such, approved and signed the bill . . . thus showing that, in his understanding, no line

[5] US Constitution, amend 10.

> dividing local from federal authority, nor anything in the Constitution, forbade the Federal Government, to control as to slavey in federal territory. [6]

There are several such passages in the Cooper Institute Address, many of them detailing the specific votes cast by various members of the "thirty-nine," compellingly illustrating that, indeed, those who now believed that the federal government had authority over slavery in the territories were well aligned with the framers of the Constitution. Although we may correctly call Lincoln a "moderate" with respect to his general policy toward slavery, on this point he not only rejected Democratic claims that he and the Republicans were taking a radically new position, but argued that the true radicals were the Democrats, introducing an interpretation of the Constitution out of step with what the founders had believed. "You say that you are conservative," he says to those opposing federal intervention on the issue of slavery in the territories, "while we are revolutionary, destructive, or something of the sort." But, he asks, "what is conservatism? Is it not adherence to the old and tried, against the new and untried? We stick to, contend for, the identical old policy. . . which was adopted by 'our fathers who framed the Government . . .,' while you . . . spit upon that old policy, and insist upon substituting something new."[7] There were very few people in 1860 who would have called the Republicans "conservative," but on the issue of slavery, Lincoln very deftly argues that they were.

In addition to abolishing slavery in the Western territories, Congress further abolished slavery in Washington, D.C., ceased the enforcement of the Fugitive Slave Law, signed a treaty with Great Britain to suppress the Atlantic slave trade, and established a policy that no state

[6] Lincoln, "Address at Cooper Institute," 527.
[7] Lincoln, 537.

could be admitted to the Union without having first abolished slavery; the first such state admitted would be West Virginia, in June 1863.[8] Oakes persuasively argues that, on the one hand, Republicans assumed that the Southern States would not secede, because they would have understood that to do so would cause a war, and that in case of war, the North would put in place a policy of military emancipation, a practice born of military necessity that had been used since ancient times. Interestingly, militant slaveholders in the South argued that Northern antislavery and disunion rhetoric—like Seward's comments about "irrepressible conflict"—were designed precisely to force Southern secession with the intent of using that secession as a justification for a war of conquest.[9] In any case, it was the "scorpion's sting" strategy which the Southern states hoped to escape, and they attempted to do so by seceding. Oakes cites historian William Freehling, who has shown that it was the "threat of slow strangulation by encirclement, that provoked the Southern states to seceded from the Union, thereby leading to Civil War."[10]

Although the First and Second Confiscation Acts (1861 & 1862), the Militia Act (1862), and the Emancipation Proclamation (1863) represented forms of military emancipation, none of those efforts would, or even could, result in universal abolition. Lincoln, of course, understood this plainly—a fact that makes Nikole Hannah-Jones' argument in *The 1619 Project* that the Emancipation Proclamation was nothing more than "a tactic to deprive the Confederacy of its labor force"[11] merely a tendentious strawman. Lincoln never understood the Proclamation to be the tool with which slavery would be ended. How could it have been? The Southern states

[8] Oakes, *Scorpion's Sting,* 17-18.
[9] Varon, *Disunion!*, 13.
[10] Oakes, 28; 14; 18.
[11] Hannah-Jones, *The 1619 Project*, 22.

claimed not to be part of the United States, and certainly did not recognize the man who had signed that executive order as their President.

Lincoln's actual strategy of using constitutional means to put an end to slavery turned out to be powerfully effective for getting his antislavery agenda across the finish line. By the time the Civil War ended, six Border States had abolished slavery. By 1864, as the outcome of the war was beginning to look certain, it was Union policy that no seceded state could be readmitted to the Union without abolishing slavery. In addition, three new free states—including West Virginia—had been admitted since the war began. As a result, all it took was the abolition of slavery in one more state to tip the balance of slave states to a ratio of three to one. When three fourths of the states were free, the ratification of the Thirteenth Amendment which abolished slavery throughout the nation and was sent to the states in January of 1865, was assured.[12]

So, did Lincoln fight the war to "save the Union," as he had claimed? Or did he fight it to end slavery? "The Union had entered the war not to end slavery but to keep the South from splitting off," says Hannah-Jones in *The 1619 Project*.[13] But this is a significantly under-nuanced understanding. For Lincoln, saving the Union was fundamentally about one thing: making slavery impossible to sustain in every state. In other words, Lincoln fought the Civil War for four, long, horrific years—at the cost of 700,000 American lives—in order to free the slaves.

[12] Oakes, *Scorpion's Sting,* 176.
[13] Hannah-Jones, *The 1619 Project*, 24.

EPILOGUE

On November 25, 1862, Harriet Beecher Stowe met Abraham Lincoln. Although the story is apocryphal, he is reported to have greeted her with the words "Is this the little woman who made this great war?" Did Stowe indeed "make the war"? Not directly, of course, no, but Lincoln understood very well the incomparably powerful role the 1852 publication of her novel *Uncle Tom's Cabin* had played in helping to accelerate an already rapidly growing mass anti-slavery movement. By 1855, the majority of white Northerners opposed slavery, many of them embracing the concept of higher law. Adding to that sentiment, Emerson and Thoreau had lionized John Brown, turning him from a terrorist to a spiritual warrior. From a cultural perspective, these were among the most impactful preconditions for the election of the antislavery Lincoln in 1860.

Interestingly, in his Cooper Institute Address earlier that year, Lincoln had distanced himself from John Brown. John Brown was a madman, Lincoln had argued, and certainly was "no Republican."[1] Is this what Lincoln really believed, or was he simply asserting a moderate position for political reasons? It is hard to know, but by the time of his Second Inaugural Address in 1865, he had come to sound remarkably like Brown. We will keep fighting, he says, "until all the wealth piled by the bond-man's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash, shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said 'the judgements of the Lord, are true and righteous altogether.'"[2]

[1] Lincoln, "Address at Cooper Institute," 244.
[2] Lincoln, "Second Inaugural Address," 450.

These words suggest a much more distinct parallel between John Brown and Abraham Lincoln than would have been obvious before 1865, and perhaps illustrate Lincoln's philosophical debt to Brown. Brown himself believed that he had been predestined by God to destroy slavery in the United States. Who's to say that he was wrong?

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