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STATES' RIGHTS AND AMERICAN FEDERALISM

A Documentary History

Edited by FREDERICK D. DRAKE and LYNN R. NELSON

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Part III

States' Rights in the Antebellum Period and the Civil War, 1828–1865

In 1850 during a senatorial debate between two spokespersons, one from the North and one from the South, the issue of states' rights and American federalism took a new turn. John C. Calhoun of South Carolina had been the leading spokesperson for the South since the 1830s. William H. Seward of New York was a rising leader in the Senate and symbolized the views of many people in the North. Central to the 1850 debates was the discourse that took place between Calhoun representing the South and Seward representing the North. The Calhoun-Seward exchange heralded the intractable North-South polarization concerning the nature of federalism (see Documents 34 and 35). Moreover, it contrasted two models in the 1850s that reflected what had transpired throughout the nineteenth century leading up to the Civil War: the nineteenth century was a battle over the constitutional direction of states' rights and federalism that would ultimately be decided by the Civil War.

Calhoun believed that rights were a product of social circumstances—intelligence, patriotism, and virtue.¹ A society composed of citizens who were ignorant, unpatriotic, and vicious would produce a government that was inferior. The individual, he argued, must have society for self-preservation, and government was necessary as the controlling power to maintain society. The government, the South Carolinian firmly believed, should correspond to the character of the citizenry.

What was necessary was to ensure that citizens were composed of intelligent, patriotic, and virtuous members.

Representing the southern view, Calhoun urged a community of states to allow for control of their social and economic interests. He summarized the southern model with the observation that "the separate governments of the States [should] maintain and protect the powers reserved to them, and among others, the sovereign powers by which they ordained and established, not only their separate State constitutions and governments, but also the Constitution and Government of the United States."² Clearly Calhoun shared the views of Antifederalists of the previous century concerning the powers and roles of state and national governments.³

Senator William H. Seward of New York challenged his South Carolina adversary on two points. First, the "Wizard of the North" (as Seward was called by southern opponents) opposed the southern leader on federalism; and second, he wanted to condemn slavery from the point of view of appealing to a higher law. Representing the northern view, Seward found a national community of individuals to be indispensable. He forthrightly challenged states' rights theory and slavery, with a reference to higher law. In particular, he criticized protections of slavery that were lodged in the Constitution. Article IV, section 2 of the Constitution permitted a fugitive slave law, which Seward believed violated higher law. Thus, Seward turned to the Declaration of Independence and the belief that "all men are created equal" to expose and condemn southern violations of higher law.

Seward's elevation of the Declaration of Independence to constitutional status meant that the Declaration would supersede all other constitutional documents, such as the Articles of Confederation, all state constitutions, and the U.S. Constitution. The inclusion of higher law caused Seward's contemporaries to ask several questions concerning states' rights and federalism in the antebellum period. Does popular sovereignty mean the people will make decisions within their respective states or within the national community of sovereign individuals? Does a state have the power to nullify national policies when it believes the policies are adverse to state interests? Can the national government enforce its policies over the objections of a state? Answers to these questions were ultimately resolved with the outcome of the Civil War. Yet from 1828 to 1865, state or national supremacy was yet to be determined.

POWER AT THE LOCAL, STATE, AND SECTIONAL LEVELS

The logic of local democracy, fervently expressed by Antifederalists during the ratification of the Constitution, lay behind states' rights doc-

trine. States' rights proponents situate power in local authority that is sympathetic to the culture, experiences, and the dispositions of its people. Spokesmen of states' rights such as John Taylor of Caroline, Thomas Jefferson, and John C. Calhoun understood that local control over political decisions would encourage their particular vision of republican government. States' rights, they argued, give voice and power to local virtues and is more responsive, as well as understanding, of the needs and demands of its citizens.

States' rights may suffer, however, from the problem of parochialism. Local prejudices and beliefs, whether on race or other issues, can dominate the actions of local majorities, which can manifest a tyrannical intimidation over minorities and individuals and coerce them through legislation.

JOHN C. CALHOUN'S SECTIONAL-AND STATES' RIGHTS POSITION

In 1828, John C. Calhoun quietly authored (written but not signed by him) *South Carolina's Exposition and Protest*, which championed federal compact theory. *Exposition and Protest* contains both theory and means of implementation. The theory was not Calhoun's original idea; it was drawn from previous states' rights doctrines contained in the Virginia (the right to repeal) and Kentucky (the right to threaten nullification) Resolutions. States have rights, according to the theory. Under the constitutional compact, states participated in a voluntary partnership of the states. If the national government violated the compact, states could declare a congressional legislative act unconstitutional. If a state questions a congressional law, its legislature can call for a special convention to determine the constitutionality of the law. If the state approves the law, then the law may be enforced. On the other hand, if the state disapproves of the law, then the federal compact has been violated and the special convention can move for remedial interposition, which would invoke nullification. Thus, the state authority interposes itself between the federal law and local enforcement of the law. In essence, the state could veto an act of the federal legislature.

Calhoun was well aware the North (and West) controlled the terms of government by an absolute majority and that the South was in the perpetual minority, so he devised this plan to protect his section of the country from northern dominance. In order to prevent dictatorship by the North, the Congress, according to Calhoun, had two alternatives. The first was to accept the decision of the nullifying state. The law would then exist in full force in all the states except the state where it was nullified. The second option could be taken if the Congress felt strongly about the law. If so, the Congress could call for a constitutional

amendment and submit it to the states for ratification. If approved by two-thirds of the states, all states—including the state that nullified the federal act—would have to live with it. Thus, Calhoun created a concurrent majority that expressly protected states' rights.

Calhoun recognized the slow and tedious nature of his states' rights-compact theory. It was conceived that way to protect the state and the numerical minority against the majority in constitutional terms. Calhoun knew that implementation of his compact theory would overturn the working basis of the federal system of government. However, he defended these states' rights ideas to provide alternatives because, in his and other southerners' view, the South was being overrun by "consolidation" or majority sentiment expressed through the voice of a powerful national government. He believed that minority sections would see his model of implementation for states' rights as a good way to defend against the majority in the national community. The South Carolina spokesperson knew it was revolutionary because he was challenging the sacred idea of majority rule in the context of the national community. He was also drawing from defiant Antifederalist thought, which had been rejected by the more urban and populous sections of the nation.

In the 1830s John C. Calhoun and Robert Y. Hayne, a colleague of Calhoun, vociferously advanced the social compact theory during the nullification crisis. It resulted in one of the most stirring debates in American history. In the ensuing Webster-Hayne debate, Robert Y. Hayne of South Carolina and Daniel Webster of Massachusetts sharpened the lines between states' rights and the concept of Union (see Document 28). Ultimately the issue of states' rights contributed to a rift in relations between President Andrew Jackson and John C. Calhoun, a member of the Jackson cabinet. Their split centered on South Carolina's ordinance of nullification directed against high protective tariffs and Jackson's firm response to threats of secession.

The idea of nullification was certainly not a uniquely southern perspective. Over thirty years earlier, following the national government's passage of the Alien and Sedition Acts of 1798, James Madison and Thomas Jefferson had written the Virginia and Kentucky Resolutions as a response to national violations on individual rights. Madison and, especially, Jefferson raised the specter of nullification. Later, during the War of 1812, New England opponents to the conflict met in December 1814 in Hartford, Connecticut, to voice their dissatisfaction with national policy. At the Hartford Convention (see Document 26), New England Federalists offered amendments that would limit the power of the national government in foreign affairs, bar immigrants from government positions, and imply the threat of secession. By the 1830s only southern spokespersons articulated the states' rights-compact theory with its right of nullification. Initially southern state leaders protested

that northern encroachments concerning tariff policies threatened the welfare of the South. John C. Calhoun of South Carolina wrote the *South Carolina Exposition and Protest* and expressed the right of interposition to protect the rights of a minority against imposition by the majority (see Documents 29 and 30).

Ultimately the southern states took the compact theory to its extreme by seceding from the Union. On the eve of the Civil War, southern leaders argued that the Constitution represented a mutual contract between the states and the federal government. They tenaciously believed that the states had created the national government and that when the national government (or North) abrogated its part of the agreement, the contract was no longer valid. The Civil War, fought between 1861 and 1865, brought to an end this specific argument concerning federalism when the Union prevailed.

ROGER B. TANEY AND THE SUPREME COURT ON STATES' RIGHTS AND FEDERALISM IN THE ANTEBELLUM PERIOD

How did the Supreme Court in the mid-nineteenth century respond to the states' rights challenge to national sovereignty? Slavery had become a moral and political issue intertwined with popular sovereignty. In 1857 the Supreme Court reached a decision in what would later be characterized as the Court's great "self-inflicted wound." The Supreme Court attempted to impose a judicial solution to the political and moral issue of slavery. Chief Justice Roger Taney and the rest of the Supreme Court justices wanted to prevent any constitutional doctrine that would endanger a state's absolute authority over slavery as an institution, slaves, and freedmen. Thus, Taney hoped to do two things when the *Dred Scott* case came before the Court. First, he hoped to keep African Americans in a state of subjection to the white race. And second, he wanted to remove all other constitutional theories that opposed those of John C. Calhoun. Through him, southern slaveholding demands would have constitutional support.

Before 1850, the Supreme Court rarely heard cases involving slavery. Sometimes the cases they did hear concerning the commerce clause in the Constitution raised slavery questions, since abolitionists hoped to use the law to prohibit interstate slave trade. A major issue came before the Court based on the antislavery doctrine of "once free always free." Dred Scott, a slave owned by Peter Blow and purchased by John Emerson, an army physician, had traveled from Missouri to Illinois and Wisconsin. Both of the latter were free states. When Emerson died in 1843, he left Scott (as legal chattel property) to his widow. Three years later, Scott (aided by abolitionists) sued for his freedom on the grounds that his earlier residence in Illinois had liberated him from slavery.

When the case came before the Supreme Court, Taney and the eight other justices all wrote separate opinions. They decreed that any African American, slave or free, had no right to sue in a federal court because no African Americans could be a "citizen." Taney denied the assertion that any African American could ever attain the status of citizenship. Thus he precluded African Americans from ever enjoying any constitutional rights guaranteed in the U.S. Constitution.

Taney made a second important decision in the *Dred Scott* case. He shifted the importance of individual rights to a conflict over states' rights and federalism (see Document 37). His interpretation coincided with the ideas of John C. Calhoun. Taney ruled that Congress did not have the power to prevent slaveholders with their slaves from settling in the territories. He then ruled that popular sovereignty, when related to the issue of slavery, had no merit: neither the people in a free state nor settlers in a western territory could decide on the issue of slavery. While Republicans, on the eve of the Civil War, reaffirmed their belief in free-soil (no slavery in the western territories). Taney and the Supreme Court held to the rigid dogma of racial inequality. No doubt some Republicans shared a belief in racial inequality, but what they wanted was a free-soil environment, which would not allow slave labor, to improve their free economic system. The *Dred Scott* decision upheld the concept of slave labor, thus abrogating the free-soil principle and popular sovereignty.

John C. Calhoun had articulated a states' rights-compact theory of government, and Taney bolstered Calhoun's arguments with the *Dred Scott* decision. Northerners, however, viewed Taney's national court authority as a violation of their states' rights because it did not allow a state to exclude slavery from its land. Popular sovereignty was thus endangered. William H. Seward, having spoken for the Declaration of Independence as a higher law, urged national supremacy. The states were subordinate to the national government in Seward's mind. Unfortunately, the issue of state or national supremacy would be resolved on the battlefield.

NOTES

1. John C. Calhoun, "Speech on the Oregon Bill," in *Union and Liberty: The Political Philosophy of John C. Calhoun*, ed. Ross M. Lence (Indianapolis: Liberty Fund, 1992), 568.
2. John C. Calhoun, *Congressional Globe*, 31st Cong., 1st sess., 1850, p. 452.
3. John C. Calhoun challenged Publius in the *Federalist* essays, particularly the extended republic in the Tenth *Federalist*, numerical majority in the Twenty-second *Federalist*, the compound government of the Thirty-ninth *Federalist*, and limited government through separation of powers in the Fifty-first *Federalist*. Calhoun also criticized judicial review as described in the Seventy-eighth *Federalist*.

DOCUMENT 28: Liberty and Union, Now and Forever, One and Inseparable, January 1830

In 1830 Daniel Webster rose to answer a speech given by a Senator Robert Y. Hayne of South Carolina on the tariff issue, which had angered the South. Senator Hayne had expressed his belief, formulated by John C. Calhoun, that the Constitution was a creation of the states and therefore the states retained the right to judge the constitutionality of laws passed by Congress and to nullify laws they found unconstitutional. Webster summarized the position that the Constitution was a creation of the people, not the creation of a compact among the states.

* * *

THERE YET REMAINS to be performed, Mr. President, by far the most grave and important duty which I feel to be devolved on me by this occasion. It is to state, and to defend, what I conceive to be the true principles of the Constitution under which we are here assembled. I might well have desired that so weighty a task should have fallen into other and abler hands. I could have wished that it should have been executed by those whose character and experience give weight and influence to their opinions, such as cannot possibly belong to mine. But sir, I have met the occasion, not sought it; and I shall proceed to state my own sentiments, without challenging for them any particular regard with studied plainness, and as much precision as possible.

I understand the honorable gentleman from South Carolina to maintain, that it is a right of the state legislatures to interfere whenever, in their judgment, this government transcends its constitutional limits and to arrest the operation of its laws.

I understand him to maintain this right as a right existing under the Constitution, not as a right to overthrow it on the ground of extreme necessity, such as would justify violent revolution.

What he contends for is that it is constitutional to interrupt the administration of the Constitution itself, in the hands of those who are chosen and sworn to administer it, by the direct interference, in form or law of the states, in virtue of their sovereign capacity. The inherent right in the people to reform their government I do not deny; and they have another right, and that is to resist unconstitutional laws without overturning the government. It is no doctrine of mine that unconstitutional laws bind the people. The great question is—Whose prerogative is it to

Uacace

Excerpts: Slavery a Positive Good

John C. Calhoun

February 06, 1837

Accessed: <http://teachingamericanhistory.org/library/document/slavery-a-positive-good/>

I do not belong to the school which holds that aggression is to be met by concession. Mine is the opposite creed, which teaches that encroachments must be met at the beginning, and that those who act on the opposite principle are prepared to become slaves. In this case, in particular I hold concession or compromise to be fatal.

As widely as this incendiary spirit has spread, it has not yet infected this body, or the great mass of the intelligent and business portion of the North; but unless it be speedily stopped, it will spread and work upwards till it brings the two great sections of the Union into deadly conflict.

Already it has taken possession of the pulpit, of the schools, and, to a considerable extent, of the press; those great instruments by which the mind of the rising generation will be formed.

It is easy to see the end. By the necessary course of events, if left to themselves, we must become, finally, two people. It is impossible under the deadly hatred which must spring up between the two great nations, if the present causes are permitted to operate unchecked, that we should continue under the same political system. The conflicting elements would burst the Union asunder, powerful as are the links which hold it together.

Abolition and the Union cannot coexist. As the friend of the Union I openly proclaim it--and the sooner it is known the better. The former may now be controlled, but in a short time it will be beyond the power of man to arrest the course of events.

We of the South will not, cannot, surrender our institutions. To maintain the existing relations between the two races, inhabiting that section of the Union, is indispensable to the peace and happiness of both. It cannot be subverted without drenching the country in blood, and extirpating one or the other of the races. Be it good or bad, [slavery] has grown up with our society and institutions, and is so interwoven with them that to destroy it would be to destroy us as a people.

But let me not be understood as admitting, even by implication, that the existing relations between the two races in the slaveholding States is an evil:--far otherwise; I hold it to be a good, as it has thus far proved itself to be to both, and will continue to

prove so if not disturbed by the fell spirit of abolition. I appeal to facts. Never before has the black race of Central Africa, from the dawn of history to the present day, attained a condition so civilized and so improved, not only physically, but morally and intellectually.

But I take higher ground. I hold that in the present state of civilization, where two races of different origin, and distinguished by color, and other physical differences, as well as intellectual, are brought together, the relation now existing in the slaveholding States between the two, is, instead of an evil, a good—a positive good.

Let there be concert of action, and we shall find ample means of security without resorting to secession or disunion. I speak with full knowledge and a thorough examination of the subject, and for one see my way clearly. . . . I dare not hope that anything I can say will arouse the South to a due sense of danger; I fear it is beyond the power of mortal voice to awaken it in time from the fatal security into which it has fallen.

Confederate Reckoning

Power and Politics in the Civil War South

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the fire, and it had remade them all and the governments under which they lived. The lessons of that war, and of the Confederate experience, registered in the region, the nation, and in the hemisphere.

The Confederate war involved a profound reckoning. Before Confederates were defeated, their political project had failed. The new nation Confederates set out to build had fallen victim not just to enemy armies but to the manifest poverty of its reactionary vision of the republic, and the determined resistance of the Confederate people to it. Their story tells us something surely worth remembering: That power counts in politics, is often exercised brutally, and almost always wins, but that once in a very long while—as in the Civil War South—history opens up, resistance prevails, and the usually powerless manage against all imaginable odds to change the world.

CHAPTER 1

Who Are the People?

THE CIVIL WAR BEGAN with a political campaign as complicated as any in American history. For as long as a year and a half and in some cases much longer, a group of Southern politicians conspired, schemed, and colluded to maneuver their states out of the Union. From the Southerners' perspective, secession represented both an end and a beginning: an end to the frustration and stagnation of sectional conflict; a beginning of the great work of making a new nation. The brute fact of Confederate defeat in the American Civil War and the short-livedness of the Confederacy's national career has made it difficult to grasp what they attempted. But the singularity of their political project and its significance as an event in the history of the United States and the nineteenth-century Western world means that we should try.

The architects of the Confederacy had a powerful vision born out of the struggles and endemic tensions of the nineteenth century. They sought nothing less than to build the first independent slaveholders' republic in the Western Hemisphere and to launch it into a leading role in the game of nations. "We have all the essentials of a high national career," as Alexander Stephens, Georgia politician and just-named vice president of the breakaway state put it early on. What they had in mind was an explicitly proslavery and antidemocratic nation-state, one that would put

slavery on a permanent footing and provide a resolution to the problems of labor, capital, and democracy which beset other Western states in the nineteenth century.¹

Confederates had an expansive vision of their political future; they traded in big ideas. The original American Union, Stephens explained in March 1861, "rested upon the assumption of the equality of races." "Our new government is founded upon exactly the opposite ideas: its foundations are laid, its cornerstone rests, upon the great truth that the negro is not equal to the white man; that slavery is his natural and moral condition. This, our new government, is the first, in the history of the world, based upon this great . . . truth." What Stephens and others imagined, in other words, was the first nation-state erected on the modern scientific "truth" of negro inferiority. The Confederate States of America was to be a tribune of racial truth throughout the world.²

Peculiar as it now sounds, that vision marks the Confederacy as part of a broad reactionary movement among regional agrarian and slaveholding elites that formed a steady counterpoint to the age of revolution and emancipation in Europe and the Americas. But it also marks the Confederacy's anomalous status among those elites. For alone among them, Southern secessionists and proto-Confederates attempted to found an independent nation. Confederates, that is, present the only case of a proslavery ruling class confident enough to launch its own state-building project and the only example of proslavery nationalism to arise in the Western Hemisphere.

Secessionists saw a bright future for slavery if they could set its destiny in a new republic. To them slavery was no worn-out vestige of the past but a social system uniquely adapted to the conditions of the modern world. "Slavery—our institution of it at least, is scarcely a half century old. It is just beginning its career," the South Carolinian politician and historian William Henry Trescott offered in 1859. Amid what Southerners saw as the heap of failed experiments in slave emancipation—Haiti, Jamaica, and the rest of the French and British West Indies—the Confederate States of America would stand for a different future for slavery in the hemisphere. Like the Alabama politician Jabez Lamar Curry, many secessionists would point to the West Indies as "a conclusive refutation of anti-slavery theories." Escaping the fate of slaveholders in Haiti, the British

West Indies, and other failed post-emancipation societies, they chose secession from the United States and a risky national independence. "We will not consent to become another Jamaica or San Domingo," as the Georgian Henry Benning put it. Against the perversion of the United States Constitution by a Northern antislavery party and ideology, they would preserve slavery and with it the liberty of the people unimpaired into the next generation. The Confederate States of America would represent a new birth of liberty: theirs was to be a proslavery nation and a white man's republic.³

But if secessionists' experiment in proslavery nationalism was hemispheric in scope and ambition, it was also uniquely American in origin and design. The political system white Southerners proposed to export was simply, as many claimed, the original republic of the United States redeemed and perfected. Secessionists' political project represented a reckoning with the republican form of government at home as well as in the eyes of the world. In March of 1861 Alexander Stephens charged the Union with the original sin of racial equality. But that was a late political conversion. He had been an avowed Unionist all his life and had embraced secession only after his state went out.⁴ Devotion to the Union ran deep even among secessionists, and it was the desire to redeem and perfect it that drove so many to the dangerous experiment of independence.

Certainly that was the case with Jefferson Davis, longtime congressman, U.S. senator from Mississippi, and, starting in February 1861, the first and only president of the slaveholders' new republic. Davis was a reluctant secessionist. In him, love of the original republic and its perfect Constitution provided the only reason sufficient to destroy the Union. He had long struggled against the necessity. But when, on January 21, 1861, Davis received notice that his state had voted itself out of the Union, he rose on the floor of the Senate to explain why that had to be. Mississippi, he said bluntly, had no choice but to secede because "we are to be deprived in the Union of rights which our fathers bequeathed to us." And that, he observed bitterly, proceeded from an elemental and irresolvable conflict over the very nature of the political community. At issue in secession, according to Davis, was nothing less than the American conception of "the people."⁵

Jefferson Davis's views of the people and the republic were revealing and historically consequential, for, as it turned out, they had to carry the burden not just of secession but of nation making and war. Davis's personal political history, his tortured course through secession, national independence, and war, serves as a touchstone of the Confederate experience registering the impress of many of its key moments and developments. In Davis, foundational Confederate principles found both their fullest expression and most profound trial. Davis laid out his views fully and clearly in the course of the secession crisis and the precarious opening months of the new Confederate States of America. They tell a good deal about what politically moderate white Southerners like him valued so dearly they would risk all to secure it.

Jefferson Davis's views were well known from public speeches over his many years as a congressman, then as a senator. Although to our ear they may sound cryptic and euphemistic, his construction of the people and their rights would have been instantly discernible to his colleagues on the Senate floor and to the men and women who packed the galleries to hear his farewell speech. The rights in question were, of course, property in slaves, and "the people" were those whose rights to such property the Constitution was bound to protect. In January 1861, in the midst of the secession crisis, Davis's strict constructionism was plainly on display. "Mississippi," he said disdainfully, "has heard proclaimed the theory that all men are created free and equal, and this made the basis of an attack upon her social institutions." But that, he declared, was a deliberate perversion of the Declaration of Independence. When they wrote the Declaration, he insisted, "the people of those communities were asserting that . . . men were created equal—meaning the men of the political community; that there was no divine right to rule; that no man inherited the right to govern; that there were no classes by which power and place descended to families, but that all stations were equally within the grasp of each member of the body politic. These were the great principles they announced . . . They have no reference to the slave."⁶

For Davis there was no mistaking the point. Politically speaking, slaves were property, not persons. They were not "put upon a footing of equality with white men." And they were not, and never could be, members of the political community. "The condition of slavery is with us nothing but

a form of civil government for a class of people not fit to govern themselves."⁷ Slaves, as he once put it, were part of a separate polity; slavery was the slaves' state, masters the authority to which they owed allegiance. Against the fanatically innovative ideas of Black Republicans and Abraham Lincoln, their president-elect, Senator Davis, Mississippi, and yet unknown numbers of the slaveholding states would stand even unto civil war.⁸ Secession for them was nothing less than an attempt to reconstitute the original American notion of "the people," and of the republic, in a new proslavery state. That he had to repudiate the Declaration of Independence confirms that far from embracing a proslavery view of the people and the government that had been uncontroversial among the founders, Davis was in fact choosing sides in a political fight that had raged since the origins of the republic itself.

Senator Davis did not just speak for himself; he spoke for his state and his section. His views were mainstream and commonplace in early 1861. They were widely shared by other Confederate founders, and they took firm constitutional ground. Indeed, they bore striking resemblance to the definition of citizenship Chief Justice Roger Taney had offered in his decision in the critical Supreme Court case, *Dred Scott v. Sandford*, just three years before, which stood as the definitive ruling on the subject in the late antebellum period. Taney held firm to the view that people of African descent "formed no part of the people who framed" the Declaration of Independence; that citizenship was a status reserved for those men of the political community—white men—who had always possessed the right to vote and the obligation to bear arms. "The words 'people of the United States' and 'citizens' are synonymous terms," he ruled in *Dred Scott*. More so even than aliens, he declared, negroes are "rejected from the duties and obligations of citizenship." This was the eminently useful formulation Davis and other Southern politicians claimed simply to uphold through secession.⁹

Chief Justice Taney's decision was embraced by white Southerners as a final answer to the increasingly troubling question, "Who are the people?" And indeed, as a legally binding Supreme Court decision and the new law of the land, Taney's decision can be taken, as Southerners claimed, as the definitive statement of the status quo antebellum with respect to rights of property in slaves and American citizenship.

This notwithstanding the two dissents written by other justices in the case, and the storm of public outrage and declarations of resistance with which it was met in the North. Even Abraham Lincoln agreed to abide by it.

But like Davis's stated opinions in defense of secession, Taney's decision in *Dred Scott* raised a host of important historical questions—about race and citizenship certainly, but also about American citizenship more broadly in the divisive late antebellum moment. For Taney cut a wide swath through contemporary fights over representation and suffrage waged between abolitionists and their woman's rights allies and proslavery forces, North and South. On black citizens Taney was definitively negative. Whether slaves or free blacks, they were excluded. But what about white women? Were they citizens by his definition? Were they part of the people? A married woman "has no political relation to the state any more than an alien," a Massachusetts lawyer had argued before the state supreme court in 1805. Nor was that position entirely obsolete by the outbreak of the Civil War, feminist encroachments notwithstanding. On white women Taney's view as expressed in *Dred Scott* was ambiguous, simultaneously indicating membership and exclusion. A person, he acknowledged, may be a citizen but exercise no share of the political power. "Women and minors . . . form a part of the political family" although they "cannot vote." But if Taney recognized white women's citizenship, the terms of membership he used (in the political family) suggests the importance he attached to their exclusion. When he cited the 1792 United States Militia Law—which specified membership only of "free able-bodied white male citizens"—as prima facie evidence of the exclusion of "the African race" from American citizenship, he explained that "the word 'white' is evidently used to exclude the African race, and the word 'citizen' to exclude unnaturalized foreigners." Who the word "male" sought to exclude apparently went without saying, so obvious and unquestioned was women's exclusion from the political rights or privileges of citizens.¹⁰

For Chief Justice Taney as for U.S. Senator Jefferson Davis, citizenship was synonymous with the political rights possessed by white men and not by slaves or women. Such views of slaves' and white women's political incapacity, although lately under challenge, had long undergirded the defense of slavery and conservative resistance to the expansion of democ-

cracy in the United States. By 1860 they were being put in the service of secession. As writer of the majority opinion, Chief Justice Roger Taney had put Southern politicians, including Jefferson Davis, on firm ground in the secession crisis. Secessionists claimed his highly restrictive view of "the people" as the constitutionally orthodox one through secession and new nationhood.

But that vision of the people had to do more than justify secession and take the South out of the Union. It also had to do much of the challenging work of nation building as well. On February 9, 1861, about a month after he left the U.S. Senate, Jefferson Davis was in his garden at Briarfield, his plantation on the Mississippi River, when he received notice that he had been nominated as president-elect of the new Confederate States of America. In the long secession winter of 1861, Davis struggled to give constitutional form and emotional substance to the idea of a Confederate people. The new president did not embrace that task with the joyous optimism of some Confederate founders. He was a realist. He never could convince himself, as many more-eager fire-eaters did, that there would be no war. But as he made his slow way from home to the new Confederate capital in Montgomery, Alabama, Jefferson Davis began the task of converting the constitutional arguments of past sectional struggle and the still-raging secession crisis into a powerful image of the new nation.

Who were the Confederate people Davis called into being? Would they provide a strong foundation for the making of a new republic? In his inaugural address as provisional president of the new Confederate States of America in Montgomery in February, Davis celebrated the Confederacy as a living illustration of the "American idea that governments rest upon the consent of the governed." As before, he left no doubt about whose consent mattered; it was white men who had the right to alter or abolish governments. The people were still those white men who had used the vote to exercise their constitutional right to secession. But now Davis moved to infuse^d that cold category with a new living, breathing identity. Standing on the balcony of the Exchange Hotel a few nights before, he had spoken emotionally to the crowd of men and women below, evoking a strong sense of national feeling. "Fellow Citizens and brethren of the Confederate States of America," he addressed them, "for now we are brethren, not in name merely but in fact, men of one flesh, one bone,

one interest, one purpose, and of identity of domestic institutions." In 1861 when the Confederate president envisioned the people, it was the brothers he saw—the voters and the soldiers—not the great Southern majority, the white women and enslaved men and women removed from public vision and political relevance by the South's domestic institutions.¹¹ Jefferson Davis's view of the body politic was strictly fraternal and patrilineal. Liberty was the Southern freeman's patrimony, passed from fathers to sons in strict succession. "They have labored," he said of the Southern people, "to preserve the Government of our fathers in its spirit," to preserve "the richest inheritance that ever fell to man," and to transmit it, as he once put it, "untarnished to our children." The Confederate president had no doubt about what history was and who made it. "When the time and occasion serve," he would say a few months later, "we shall smite the smiter with manly arms, as did our fathers before us and as becomes their sons . . . We will drench [the battlefields of Virginia] with blood . . . We will make a history for ourselves."¹² Like politics, history was a martial affair, its chapters were war, and in it the defense of the state, like that of liberty, was entrusted only to citizen-soldiers. Jefferson Davis's view of the Confederate nation and people at the outset of the American Civil War was as brethren, a band of brothers, dedicated to the proposition that all men were not created equal.

Jefferson Davis's fraternal conception of the nation was hardly unique to the Confederacy. It had often served as a myth of national origin. But if its ordinariness is not really in question, its meaning certainly is.¹³ Far from simply describing the natural landscape of nineteenth-century American politics, Davis's fraternal vision mustered powerful affective and potentially coercive ties of race, gender, and generation to give shape to a new Confederate nation facing war. It did so, in part, by staking out a particularly conservative position in a rapidly escalating conflict over the nature of citizenship and democracy, sustaining a reactionary vision of a republican polity defined by a perfect "homogeneity" of white men's persons, interests, rights, and duties. In 1860 free black men could vote in only four New England states (and that in small numbers), women of any race in none. But slavery as the normative status for four million African

American men and women was under relentless assault, and traditional grounds of civil and political exclusion were being challenged by activists of various abolitionist and woman's rights stripes in the Northern states in the late antebellum moment.¹⁴ So while it is true that all native-born white men could vote in the North and the South by 1860, in the South slavery rendered the white man's franchise more exclusive by effectively excluding the region's working class. Secessionists made much of the fact that slavery constituted white men as a privileged class in the South; that it made them members of a political elite and turned the franchise into a particularly valuable possession and mark of manhood and whiteness. This was the centerpiece of their campaign strategy. Thus to naturalize Davis's fraternal notion of the people, as political historians typically do, is to miss something that was essential (and not incidental) to Southern political culture both before and after secession.

If Alexander Stephens, Jefferson Davis, and other Southern politicians thought secession settled the question of political membership, they were terribly wrong. Fundamental questions about the composition of the body politic not only took secessionists out of the Union but plagued the racial and patriarchal state they set out to build. Jefferson Davis's delimited notion of the people might have been adequate to the imagined new nation, but it would prove utterly inadequate in the struggle that lay ahead. The political history of the Confederate States of America was one long bloody trial of their foundational principles and stated objective: to build, once and for all time, the perfected republic of white men.

When Alexander Stephens spoke in late March 1861 about the grand future envisioned for the new Confederate nation, he referred confidently to the "late United States." But from the point of view of many Southerners still in the Union, that obituary was a little premature. The problem, of course, was that to take part in the game of nations they first had to bring theirs into existence. Dislike it as they might—and many did—secessionists could proceed only by electoral means. First they had to win the consent of the people, and then they had to have it confirmed at the ballot box. As of March only seven of fifteen slave states had seceded from the Union, and that after hard-fought and always downright dirty election

campaigns that raised questions about democratic legitimacy. Given the great American principle Jefferson Davis identified, that all legitimate government rests on the consent of the governed, the act of nation making had to be done in the name of the people.¹⁵

A more vivid portrait of "the people" was rarely offered by an American political campaign than the one that emerged on the ground in the last moment of peace before the outbreak of war. It was a prelapsarian view, innocent in its assumptions about political life, about whose consent mattered in the fate of the nation heading into war and whose did not.

In the winter and spring of 1861, Southern politicians of every stripe, from fire-eating secessionists to ironclad Unionists, fanned out to the most remote points of their districts to make their case for Union, for secession, or for a wait-and-see moderation. Hardly anyone escaped their net. In the long secession season, the battle to don the mantle of the people constituted the form and substance of the political fight. It could hardly have been otherwise. For much as the movements for secession in every Southern state were orchestrated by cadres of elite politicians and resisted by others, ultimately only the people could confer legitimacy on each state's decision to secede from or stay in the Union. So all looked to the people. Every politician, everywhere, claimed to speak as and for them, and the sheer volume of appeals is striking still. But it was a highly conventional identification of "the people," notwithstanding the momentousness of the decision for the nation and the entire Southern population who would have to share its fate. It gives a very useful account of whose consent was solicited and of the ambit of citizenship in the first days of the C.S.A. against which future developments could be charted.

Politicians were pretty explicit about whom they meant by the people. The secession crisis was an orgy of speechifying, and every speech began and ended with a direct appeal to those whose support was courted. There was not much variation between the imagined audiences of the Unionist and secessionist parties, or among politicians of different stature. Thus when the moderate Unionist, Virginia governor John Letcher, addressed the General Assembly, he urged legislators to live up to their sacred trust "to the people, our common constituents." He then proceeded to identify the people as the citizens who owe allegiance to Virginia and who are bound "every man . . . to risk himself" to restore peace

to the nation and to protect Virginia, "the land of our birth, the burial place of our fathers, and the peaceful homes of our wives and daughters." Similarly, the secessionist governor of Alabama, A. B. Moore, wanting to know the "minds of the people," looked forward to the decision of "each voter of the state . . . He must decide the great and vital question of submission to an Abolition Administrator or of secession from the Union." "Fellow Citizens," the secessionist Henry Benning of Georgia began one of his speeches, cutting right to the chase. The immediate association of the people with the citizens and the voters was a commonplace of political speech. And although hardly surprising it is nonetheless meaningful, for it communicated, then and now, something essential about the understanding of consent and political obligation that obtained in the crisis of the Union, and something important about the sense of national belonging in that precarious nation-making moment.¹⁶

Yet predictable as it might seem, that restricted definition of the people was controversial on numerous counts. For there was little about the identity of the citizen and the voter that could be taken for granted in 1860. Just who were the citizens and who were the voters in the American republic? That was a key national question in the election of 1860 and in the secession crisis. Virtually everyone in the South put the racial threat to white men's exclusive citizenship front and center in the campaign. From state and local meetings, all over the South a chorus of charges erupted that Lincoln had been elected by black men's votes and that the Republican Party was advancing a radical agenda of abolition and racial equality. All believed that slavery, the bulwark of the white man's republic, was under direct assault. Against the humanitarianism of the Black Republicans and the horrific future that awaited a post-emancipation South—"Our lovely land an American Congo," as one put it—Southern politicians worked to secure slavery and the permanent exclusion of black men from citizenship and the political community.¹⁷

That much was clear in the great debate over secession staged in Milledgeville, Georgia, during the third week of November 1860, shortly after Lincoln's election to the presidency. As the state legislature deliberated on the necessity of calling a state secession convention, in the evenings the state's leading orators rehearsed all the arguments pro and anti before capacity audiences of citizens, subjects, and legislators. Alexander

Stephens, not yet vice president of the Confederate States nor a secessionist, spoke powerfully for the Union camp, insisting that slavery was safest in the Union. He abhorred precisely the kind of rash experiment in government for which he later became a spokesman. But while Stephens fetishized "the people," filling his speech with obsequious references to their sovereignty and majesty, it was the spokesman for secession, state legislator Thomas R. R. Cobb, who mastered the populist appeal. Cobb headed straight for the bottom line: "This Constitution was made for white men—citizens of the United States," he bellowed to the crowded hall. "This Union was formed by white men, and for the protection and happiness of their race." The right "of suffrage should be given to none but citizens of the U.S.," he insisted, and it slandered the "memory of our fathers" when free negroes were declared to be citizens of this nation, allowed to vote and "to select rulers for you and me."¹⁸ Cobb's point was clear: the citizen was, and had to remain, white. Secession—in the name of slavery and white supremacy—was the only remedy.

Cobb was a fire-eater, meaning that he supported immediate separate state secession and was given to extreme formulations of the Black Republican threat. But outraged statements about the way black men were being introduced to citizenship and political equality arose surprisingly often from public meetings of citizens out in the rural counties of Georgia in mid-November 1860. Nor was the complaint restricted to secessionists. From a meeting in Merriwether County came demands that the North admit that "negroes shall not vote [and] are not citizens under the Constitution of the U.S." Security in the Union, not necessarily out of it, was their early aim. Men in Spalding County, Georgia, sounding exactly the note Jefferson Davis would in exiting the U.S. Senate two months later, proclaimed that in 1787 the people of Georgia entered into "solemn constitutional compact with the white people of other states to 'form a more perfect union'" and that "this Government is and ought to be, the Government of the WHITE PEOPLE . . . Made by and for the citizens—men capable and worthy to be free citizens." Citizens in still-Unionist Habersham County complained that the Black Republicans and Lincoln had elevated to the "right of suffrage, citizenship and equality a race of beings never contemplated as citizens by the Constitution" and charged that it was black men's votes that had elected Lincoln. "These sovereign

states of Union were composed solely of white men, and formed governments only for white men," the people of Bibb County insisted in a rough restatement of Cobb's view.¹⁹

The racially exclusive character of citizenship was no arid constitutional principle but a volatile touchstone of popular politics in the antebellum South. Ideologically speaking, it was not far from the county meetings to Alexander Stephens's cornerstone speech about the Confederacy as the white man's perfected republic. Accusations that Lincoln had been elected by black votes epitomized the challenge to foundational Southern beliefs about the character of the people in their republic. Talk of white supremacy was increasingly overt. One representative to the Alabama secession convention put it: "We are sent to protect, not so much property, as white supremacy" against the danger of abolition rule.²⁰

In defining the people and the citizens as white, politicians not only proscribed black men from the body politic; they also dispensed with white women. In moving seamlessly between citizens and voters, they elided white women entirely and arrived at a radically delimited definition of the people. Adult white women were citizens in a constitutional sense although the obligations of citizenship had been defined by gender throughout the nation's history. In the North and South, women's standing as citizens had always been refracted through their normative adult status as wives, and by the state's equal or greater commitment to upholding marriage and the law of coverture. That law put women under their husbands' legal power in the interests of marital unity. The transformation of woman into wife made "citizenship—a public identity as a participant in public life—something close to a contradiction in terms for a married woman." The terms of female citizenship had always been set by the perceived necessities of marriage and its gender asymmetries between man and woman, husband and wife. In the North by 1860, agitation for the woman citizen's natural right of suffrage had, in conjunction with antislavery, already made serious political inroads. Increasingly women's continued exclusion had to be dignified by an argument. But nowhere in the nineteenth-century United States did any women's rights, not to mention demands for the vote, emerge outside of the context of antislavery politics. So in the South, where a proslavery agenda set the tone in politics and where politicians regularly dragoned marriage into the work

of legitimizing slavery (as just another desirable form of domestic dependence suitable to the weak), women's status as citizens hardly mattered.²¹ There, politicians were habituated to thinking of women as existing at a remove from the body politic, as part of the family or the household, and not of the people and the citizens.

The gender of the people, unlike the race, was communicated largely by thoughtlessness and indirection and often simply by the saturation of male pronouns. Georgia governor Joseph Brown could hardly have been clearer when he elaborated citizens' obligations in his special message to the state legislature in November 1860. "The state," he said, "has the right to require from each citizen, prompt obedience to her [Georgia's] laws; to command his services in the field of battle against her enemies, whenever, in her judgment, it may be necessary to her protection or the vindication of her honor; and to tax him to any extent which her necessities may at any time require." Georgia can make these demands on all her citizens. In return, the citizen "is entitled to demand and receive . . . full and ample protection of his life, his liberty, his family, his reputation and his property of every description."²² The effect is cumulative and inescapable: the state is female and the citizen is male.

Certainly this was nothing new or unusual. It reiterates precisely what John Adams had laid out at the dawn of the republic as the grounds of women's mandatory exclusion from political life: unfitted by nature for the businesses of life or hardy enterprises of war, they had nothing of value to offer the state. That was what Governor Brown said: A woman cannot meet the primary obligation of the citizen in military service; having no personal property, she cannot be taxed to support the state; she has no rights that can be plundered or that are worth defending; she is part of the citizen's "family" but is not the citizen whose family it is; she requires protection but cannot offer it. Brown's view effectively proscribed women from the identity of citizen. Women were homebound: part of the family or the household government. They were not part of the public deliberative life of the community by which the people make their will known to their representatives. In that most important sense they were not part of the people. When the battle comes in earnest, one anguished West Virginia Unionist would warn late in that state's secession debate, it will be women's battle too.²³ New Confederates would have plenty of time to learn that lesson. But in 1860 and 1861 women citizens'

consent for secession and new nationhood was neither solicited nor secured.

What is significant is not the fact of white women's political exclusion but the meaning of it in time and place. The drawing and maintaining of boundaries around membership—setting "the 'interior frontiers' of national communities"—was an elemental task of every political system. In marking the body politic as the exclusive preserve of white men, Southern politicians and voters maintained the central principle of Southern political life, one so fundamental it was never the subject of partisan politics.²⁴

But if women were absent from serious deliberation in political life, they were ever-present in another role, as objects of protection symbolic and real. Governor Brown did not just imagine the citizen as male; he also imagined the state as female. And that strict division constituted a case for the political obligation of white men to the state as a woman, and to their own wives and daughters. In a very real sense, it was women's absence from the deliberative domain of politics that made them available as symbols in the political culture. In convincing white men of the immediate vulnerability of the state and their households to Black Republican invasion, in demonstrating the necessity of defense, either in the Union or out of it, and, especially, in framing the kind of appeal that would bridge the looming social divide between slaveholders and nonslaveholders, we begin to see the real significance of gender in the secession crisis. In the so-called Black Republican threat to womanhood, politicians attempted to render abstract fears about the republic and the political and civil equality of black men concrete, immediate, and emotionally compelling.

Images of the state as woman proliferated in Southern political discourse and iconography. True, there were antecedents. Ireland's tragic Dark Rosaleen, France's martial Marianne, and the United States' regal Columbia all evidence the same symbolic structure. The individual Southern states in question were not yet nations (and never would be in their original form), but they were invoked as homelands, beloved birthplaces, and thus as states in an affective and not just administrative sense. In that respect, the Southern partakes of the more general case and problem of the fusion of the national and feminine in literature, politics, and history.²⁵

In the late antebellum Southern states, the female figure of the state

took many forms—genius of liberty, old lady in hoop skirts—but none more commonly than mother, the better, presumably, to summon the loyalty of her sons. If the Black Republicans trampled on Virginia, Henry Wise said, even the Unionists would “rush to some Sister Commonwealth and beg her to come and help me save my mother.” Thomas Cobb rallied the people to the secessionists’ cause “as brothers, as friends, as Georgia’s sons[.] [L]et us come and take counsel together, how we shall avenge her wrongs, promote her prosperity and preserve her honor.” Images of the political mother proliferated in secessionist discourse in the upper and lower South states, feeding into a larger theme of politics as filial piety, and rooting the political and martial duties of male citizens, not in the abstraction of the state but the intimate body of the mother, “the soil which gave him birth,” as one put it. We must be “united at home as a band of brothers ready to defend the honor of an insulted mother,” a South Carolinian warned in late 1859.²⁶ Images of mother and sons gave powerful form to the gender and generational character of the people and, in some wishful sense, to the nation they were trying to make.

But symbolic representation could go only so far. Politicians anxious about their ability to draw the people behind them reached for more immediate and emotionally laden ways to present the threat the Republican Party posed to Southern men. Women figured centrally, indeed ubiquitously, as embodied symbols of the property and rights at risk in the crisis: not just as the abstract Mother state but as real, vulnerable wives and daughters. In Georgia, the populist governor Joseph Brown offered women as the fundamental basis of man’s property and manhood rights and as what distinguished poor white men from slaves. What interests do “the large class of nonslaveholders and poor white laborers” have in maintaining the rights of wealthy slaveholders, Brown asked, bearding the lion in its den. “If our rights of property are assailed by a common enemy shall we not help each other? Or if I have a wife and children and a house, and another has neither wife nor children nor house. Will he therefore stand by and see my house burned and my wife butchered because he has none? . . . We all poor and rich have a common interest, a common destiny . . . a common enemy.”²⁷ Images of women as objects of protection were reached for most readily in nervous briefs about nonslaveholders’ loyalty to the planters’ regime.

Unionists used the strategy, too, although to opposite political ends. In Alabama the spirited resistance of Unionists to the straight-outs (as the radicals were called there) turned on the image of Eden destroyed, “our lovely state . . . converted into a kind of American congo,” as one North Alabama man put it. In averting that future he pleaded ostensibly on behalf of “our mothers and our sisters—of helpless humanity throughout the borders of our state,” for the radicals to concede something to these brothers of North Alabama. Virginia Unionists pointed to the dangers that awaited a separate South and to the necessity of saving “wife and children . . . from the red and reeking hand, from the midnight torch, from the danger of the assassin, and from ruined, ruined property.”²⁸ Clearly Unionists could play the scare game too, and by late February 1861 the stakes in that political struggle had been considerably ratcheted up.

The specter of rape loomed larger in appeals to the people as secessionists became more desperate. Vague insinuations about pollution and dishonor had long been a part of the political discourse. The idea that so-called Black Republicans would rape the South itself was sometimes ventured. “Is there a son of her [Virginia’s] classic soil who would not blush to see her clinging to those free states who would degrade and dishonor her,” one Virginia secessionist reportedly put it at a public meeting in Richmond. John Townsend, the South Carolina moderate turned propagandist for secession, used a less genteel version when he asked a public audience in October 1860 whether they were prepared “to drag out a dishonored existence under Black Republican rule.” A few short weeks will bring us “under subjection to that ravaging [Black Republican] majority,” he warned ominously, and then they could expect the “sort of leniency shown by a conqueror over a subjugated and craven people.” “Will the South remain a passive victim” facing destruction after “a few years of besotted indulgence,” or will she mount “timely and manly resistance.” Townsend’s conception of power and powerlessness was relentlessly sexual.²⁹ The rape of the South was imminent, and where the people were all male, it could seem at times as if it were men’s bodies that would be violated.

More commonly white women’s bodies were the ones allegedly at risk. Beginning around the time of Harper’s Ferry and escalating up to the moment of Lincoln’s inauguration, politicians and propagandists pointedly

insisted that political action was necessary to protect white women from imminent rape at the hands of Black Republicans and their (male) slave allies. The tactic was most commonly secessionist, most pronounced in the Deep South campaigns, and most in evidence when the loyalty of nonslaveholders was most in doubt. By the time of Lincoln's election the tone often verged on the hysterical, with secessionists routinely using images of rape to cast the protection of women and the family as the unsailable values at stake in the fight.³⁰

Thomas Cobb, the Georgia secessionist, used the image of rape prominently in his bid to unify that state's white men around immediate secession during the great debate in November 1860. He offered a graphic vision of violation that purposefully conflated state and household, "black" Republicans and the black men (slaves) they aroused to their foul work. "I think I see in the future a gory head rise above our horizon," he began. "Its name is Civil War. Already I can see the prints of his bloody fingers upon our lintels and doorposts." Only secession could avert the scourge. Reminding his listeners that, as he spoke, slaves on a plantation a mere seven miles away had "revolted from their labor, declaring themselves free by virtue of Lincoln's election," he said. "I cannot say but that your home or your family may be the first to greet your returning footsteps in ashes or in death." The woman who needed protection was no longer just Georgia. "Remember the trembling hand of a loved wife," he said, "as she whispered her fears from the incendiary and the assassin. Recall the look of indefinable dread with which the little daughter inquired when your returning footsteps should be heard—And if there be manhood in you, tell me if this is the domestic tranquility which the 'Glorious Union' has achieved." In pointing to the household, the family, and vulnerable wives and daughters, and identifying the ultimate violation, Cobb cast the Black Republicans as a threat to every white man's property and honor. "What then is our remedy," he railed that night in Milledgeville. "Shall it be the boy's redress of recrimination? The 'bully's' redress of braggadocio. Or the manly freeman's redress of independence?"³¹ The freeman was, presumably, everyman.

Fire-eaters' political work was crudely done. At one level, it was racial fear mongering. In all of the speeches and appeals, the truly inflammatory pair presented was white women and black men. The threat of violence

Black Republicans posed was always directed not at the white race in general but at white women in particular, and the threat itself was posed not by "black" Republicans (who were mostly white men) but by black and usually slave men incited to rape and pillage. The racial and gender threats were invariably a linked pair. And they were linked in pursuit of the nonslaveholders' vote.

On the eve of the presidential elections in 1860, a propaganda association was formed in Charleston, South Carolina. Called, appropriately enough, the 1860 Association, one of its avowed aims was to prepare, print, and distribute tracts and pamphlets. The publications committee made good on its promise, ultimately distributing more than 166,000 pamphlets. None had a bigger circulation than John Townsend's two incendiary contributions, "The South Alone Shall Govern the South" and "The Doom of Slavery in the Union." Both directly considered the effects of Black Republican government, which Townsend construed to include slave emancipation, on "the nonslaveholding portion of our citizens." Both insisted that the poor white man's racial superiority was bolstered only by slavery and would disappear with it, and both insisted that submission to Black Republican rule would touch off a race war between poor white and black men. "The midnight glare of the incendiaries' torch will illuminate the country from one end to another," Townsend railed in one of the pamphlets, "while pillage, violence, murder, poison, and rape will fill the air with the demonic revelry of all the bad passions of an ignorant, semi-barbarous race, urged to madness by the licentious teachings of our northern brethren."³² If they did not secede, Southern freemen would live to see their women seized as booty of war or, worse, raped by bestial and now emancipated black men. In Townsend's apocalyptic scenario the gender and racial threat to white men's rights are inextricably linked, their common property identified as white women, beloved objects men were pledged to protect. All over the South, but particularly in the Deep South, politicians eager to unite voting men—the people—behind their plans envisioned the defense of the state as the defense of white men's wives from rape and murder.

The fusion of the national and the feminine in Southern pleas has been repeated ever since along with the images and rhetoric of 1860 and 1861 in the argument that Southern men went to war to protect their

womenfolk. In treating those images as truisms, as unproblematic and transparent articulations of men's beliefs, historians and others continue to deploy women as objects and symbols in a history made exclusively by men, just as Jefferson Davis had said. Where the nation became a woman, the woman took on a national posture.³³ But the women offered to us in fire-eaters' and Unionists' narratives in 1860 and 1861 were not real. Like the virgin emblazoned on one side of the Virginia flag (who matched the shield on the other), or the female form adorning the hilt of a sword, they were figurative versions edited and simplified to serve as signs. They never spoke for themselves, never offered up their complicated and divisive perspective on events, their perceived truths about the dangers and the necessities in the historical moment. They were timeless forms, outside history. The challenge is to make women subjects of, as well as images in, the history we write.³⁴

The exclusion of women and slaves from the body of the people was not a part of the natural landscape of late antebellum Southern political culture but its most telling man-made feature. Historians pass over it at their own peril, for the most significant lines drawn in any political culture are the ones that mark the boundary between inside and out, between trusted members and persons held under sufficient suspicion that they had to be kept out. Any practice of political history focused exclusively on the enfranchised thus misses this essential dimension of the system. In the slave South, as in many other political societies known as democracies, lines were drawn so as to admit some and keep many more out of the privileges of membership. The condition of exclusion and disfranchisement cast both white women and slaves as referents for white men's status as citizens and voters; it established the men as freemen, as their contemporaries would have put it, and grounded their claims to manhood and whiteness. A freeman was neither a woman nor a slave, as Townsend put it, unwilling either to accept a submissive position within the Union or to wear the "federal collar."³⁵

More so even than white women, enslaved men and women were unable to speak for themselves in the political crisis. As slaves they were, by definition, subjects for whom masters spoke. And indeed, it is startling to

fathom the extent to which Southern whites (including nonslaveholders) internalized an instrumentalist view of slaves, regarding them as tools for use by them or their enemies. That slaves had no politics of their own—no strategic interests to pursue in the crisis—went without saying. It was the rare Unionist who suggested otherwise. As a result, during the secession crisis in the South, slaves were routinely figured in one of two ways: as bestial murderers and rapists, violent instruments of Black Republican rule; or as an element of strength, productive resources in an independent Southern nation. Either way, slaves' exclusion was central to the Confederate political project.

It is immensely difficult to understand just how completely white Southerners wrote off slaves in their political calculations. How, we ask, could they contemplate war without worrying about the possibilities it opened up to four million enslaved people? But so irrelevant were slaves to their thinking that William Yancey, the influential Alabama fire-eater, could recommend secession as a resolution of all the old struggles. It would augur, he said, a future with "no irrepressible conflict and no domestic enemy to incite our vigilance." Black Republicans—that is to say, white Northern men and not slaves—were the domestic enemy Yancey had in mind.³⁶

Southerners of all political persuasions worried publicly and to good effect about the way abolitionists incited slaves to violence. One can readily discern the heavy weight of racial thinking about people of African descent. It was hard for white Southerners to think of slaves as "the enemy within." More than thirty years of proslavery training had mostly dissuaded them from that view. But the fear lurked just below the surface, and a benevolent paternalism always confronted a deeper antagonistic view. One can hear their conflicting emotions when white Southerners learned of John Brown's attempt to raise slave support in his raid on Harper's Ferry. One contributor to the *Charleston Mercury* opened with a brave denial that planters had anything to worry about at all—"they would as soon suspect their children of conspiring against their lives"—but descended quickly into a tortured consideration of circumstances in which slaves might indeed pose a threat. When "constantly tampered with," the writer fretted, faith in the Africans' good nature could prove a flimsy defense. "Our negroes are constantly tempted to cut our throats

or pink us" with rifles. It was well to be prepared for the worst. Those "foot peddlers" from New York trolling the neighborhoods could "put the devil in the negros' heads," and could have been down there already "for all we know, arming the troops." The conflicted view of slaves' nature was palpable but controlled. Slaves were said to be, by nature, good, childlike, and loyal servants to their masters; they posed a danger only when white outsiders attempted to "rouse an ignorant people [by appealing] to their superstition and lust." Thus when secession dispensed with the Black Republicans, as Yancey promised, slaves would no longer represent a force of any sort.³⁷

That slaves were incapable of independent action, devoid of political subjectivity, was an article of faith, communicated usually (as with white women) by grammatical default. Slaves had to be "incited" to violence by Yankees—this was Southern orthodoxy. But in November 1860, Joseph Brown, the Georgia governor, offered a rare consideration of slaves' capacity for political action. His ostensible purpose was to dispute the northern claim that in the event of secession the Southern people "would be in great danger from their slaves." He admitted that Northern spies might be able to incite small numbers to murder innocent women and children, but those would be rare. To prove the point, Brown listed slaves' considerable political disabilities in the South: "They have no means of communication with each other at a distance" as they could not read, write, travel on the railroads, or use the mail; "they have not been accustomed to claim or exercise political rights," and "few of them have any ambition beyond their present comfort and enjoyment." In the event of a plot, some would "immediately communicate it to their masters." Slaves lacked not only the means but the capacity for independent political action. For the more important (and comforting) fact, as Brown explained it, one "well known in Southern society, is that nine-tenths of them are truly and devotedly attached to their masters and mistresses, and would shed in their defence, their last drop of their blood." Like many others, then, Brown attributed to slaves a subjectivity constructed entirely from racial characteristics generated out of proslavery ideology. They "feel and recognize their inferiority as a race, and their dependence upon their owners for their protection and support." Racial thinking, ingrained by years of proslavery schooling, provided the only political analysis required.³⁸

Slaves were resolutely racial subjects, not political ones, in the late antebellum South. The racialized slaves whom white Southerners conjured for themselves in the secession crisis were available to do whatever work white men required. Unionists, warning that "secession would be no holiday work," predicted war and even emancipation, and thus worried openly about slaves as ready tools of Black Republican armies. Jonathan Worth, a bitter North Carolina Unionist, thought secession insane if the preservation of slavery was the object. The first thing the Northern masses will do, he said, is "proclaim freedom to the slaves and arm them against us." In Unionist discourse, slaves often appeared in their old eighteenth-century guise as the enemy within.³⁹

But secessionists saw it differently when their strategic intention was to maneuver their states out of the Union. They spoke in glowing terms of the resources to which the South would lay claim in its new career as a separate nation, among which they counted slaves prominently. And while they denied that secession would mean war, they talked gleefully about slaves as an element of strength in the unlikely event that war should come. "Both our wars with England and the whole history of the world, demonstrate that a slave population is an element of strength in war, and not of weakness and insecurity," the editor of the *Richmond Dispatch* declared confidently a few weeks before South Carolina troops fired on Sumter, the federal fort in Charleston Harbor. "Give us 4 millions of slaves under the management and discipline of Southern planters and southern men," a Virginia secessionist similarly boasted, "and they will give you more sinews of war, than ten millions of free men, agitated with the cares of families and the harassments of military duty." Slaves, with no commitments or interests except those of their masters, "would produce the means of subsistence" and strengthen Confederate military operations.⁴⁰

African slaves in New World societies underwent a process of instrumentalization rather than simple suppression or exclusion. White Southerners were so deeply implicated in that process that they had great difficulty shaking an instrumentalist view of African American people even when confronted with evidence to the contrary. Rare, indeed, was the commonsense observation like that of Waitman Willey, a western Virginia Unionist, who, disparaging the secessionists' argument that slavery would be safer out of the Union, asked bluntly what the consequences of

destroying the Union would be: "What then. The common national obligation [to return fugitive slaves] is destroyed. Will not the negro find out? The motives to flee across the line would be increased, because he would know that whenever he crosses that line he will be free." What Willey predicted was precisely what most white Southerners denied: that slaves had motives and interests entirely their own, channels of communication that kept them apprised of relevant developments, and allies whose help they knew to seek.⁴¹ It would take Confederates a long time to learn those lessons.

When Southerners made the decision for secession or for Union in 1860 and 1861, they did so in the name of the people. But who were the people? In every utterance that question was posed and answered, by direction and indirection, express and customary proscription, and the endless reiteration of terms of address and inclusion. Identifying the people was the fundamental undertaking of the political culture in the crisis, recasting it a key task in writing its political history. What had emerged from the pivotal secession campaign in the American South was nothing less than a collective portrait of the people as a band of brothers. In June 1861, the Rubicon crossed, the governor of Virginia attempted to forestall treason to the new Confederate States of America by urging Unionists in the northwest of the state to abide by the sovereign people's decision for secession. Secession, he wrote, was a "right which no person should ever relinquish." Then, correcting himself, he crossed out "person" and in his own hand wrote "freeman." "The troops are posted at Huttonsville," he rallied the Union men. "Come with your own good weapons and meet them as brothers."⁴²

The idea of the people and the nation as a band of brothers had a long provenance in Southern and American history. The original Union had been perceived as such. Robert M. T. Hunter, a Virginian and an ambivalent secessionist, fantasized about the restoration of the original Union, purified by a brief separation, as "united once more, brothers in war, and brothers in peace, ready to dominate the game of nations where the prizes are power and empire." Protagonists in the long political struggle that preceded the war, they saw the sections as brothers contending for power

and distinction within the national family. One Southerner likened the North and the South to Spenser's *The Faerie Queene*, a poem featuring "two brothers, one of whom saw the soil of his inheritance daily wasting away and added to that of his rival, without the power of maintaining or restoring the original unity." The freemen were always a band of brothers—in the Union, in resistance to it, in the new nation secessionists imagined making. "Let us unite as a band of brothers in the now holy cause of PROMPT RESISTANCE," a Virginia secessionist urged his fellow voters before that state's election of delegates to the secession convention.⁴³ The fraternal conception of the nation significantly predated "the Brothers' War."

There was a mythic element to the idea of national origins and belonging as brotherhood. Schoolchildren learn the tale of brothers Romulus and Remus founding Rome, but the list goes on into modern times. Beyond its classical and early modern antecedents, the generational identity of the brothers—and the horizontal ties of membership it invoked—had special utility in a republican polity like that the secessionists attempted to build. Generationally speaking, the brothers were the sons, free white men newly arrived at manhood and looking to secure their claim to its privileges. In every version, Unionist and secessionist, that threshold of race, gender, and generation was pivotal to the political message. Southern Unionists leaned heavily on the model of filial piety, urging the sons to protect the heritage of liberty secured by revolutionary fathers. Secessionists had their version, urging young men to prove themselves "worthy sons of worthy sires" by securing the substance of the original constitutional liberty in a new national compact. But secessionists also plied more dangerous waters, making bellicose claims that a new generation of men was upon the stage, ready to oust the too-cautious fathers. The oedipal charge was intentional. "It is time for you to stand forth the *men* you claim to be," one editorial in the radical *Charleston Mercury* taunted, "to be known not by words but by deeds." Urging action as the proof of manhood, the writer powerfully evoked the sensitive coordinates of that gender and racial identity in the late antebellum slaveholding South. "We are young men," he prodded them. "We are ignorant, unwise, impolitic, devoid of judgment. We are told that we are 'boys' in these particulars. But I tell you that you *are* men."⁴⁴

The brothers had something to prove and a new stage on which to prove it. Suggestions that the young were particularly prone to radicalism were made with regularity in time and place and have lingered on ever since. Both Henry Wise and Robert Hunter, Virginia political leaders, were gripped by old men's fears about the propriety of secession. Not so their sons, who stole the march on the fathers by taking extralegal action to break the political impasse in the state. Jokes abounded about young men "who are full of fight and . . . will never be satisfied until they get to fighting with somebody"; "elder citizens" occasionally wrote public thanks "to the young men . . . [who] are preparing to defend the rights and honor of Virginia."⁴⁵ Gender, race, and generation were not just described by the fraternal image of the nation; in the right historical moment they contributed to making a new nation.

The fraternal conception of the people resonated powerfully in the quickened political life of the South in the secession crisis because the voter and the man armed in defense of the state were, and always had been, one and the same. Freedom, Christopher Memminger, the secession commissioner from South Carolina, reminded the Virginia Assembly, was not a beautiful young girl but a bearded and scarred warrior. That image collapsed the figure of liberty into the soldier charged with its defense, merging politics and war in an entirely conventional way.⁴⁶ In nineteenth-century America, North and South alike, the voter had to have the attributes of the soldier. In that sense, the brothers were always poised to become the band of brothers.

The politics of secession in the American South, like so many other dramas of revolution and nation making, unfolded as a family romance, deploying metaphors of family relations to imagine political order, prescribe obligation, and evoke belonging. The story of the band of brothers animated the "affective charge implicit in the notion of fraternity" and tried to harness it alternately for secession, for union, and, potentially for war. In the end it posited a theory of politics and history as the transmission of liberty across generations in an exclusively male lineage. History was the story, one South Carolinian said, "of great heroes . . . martyrdom . . . triumph . . . the wise and the good, the gallant and the noble," which together represented the "monumental summits of the nation."⁴⁷

In the American South in 1860 and 1861, as in many other places and

times, people reached for images of brotherhood to represent the ideal political and national community. In the commonplace idea of the people as the band of brothers white Southerners set the terms of national belonging as they imagined them before the war. Secession, war, and nation making were to be the work of freemen, a band of brothers creating a white man's republic, dedicated to the proposition that all persons were not created equal. Secession was not the most difficult test of Confederates' political vision, but it was the first. It is surely worth noting that the vision of fraternal unity summoned was prescriptive, the unity itself ever illusive.

