

This chapter will appear in:

***When Democracy Breaks:
Studies in Democratic Erosion and Collapse,
from Ancient Athens to the Present Day***

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Forthcoming from Oxford University Press**

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Chapter 3

The U.S. Secession Crisis as a Breakdown of Democracy

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This chapter examines the U.S. secession crisis of 1860-1861 as a case of democratic breakdown.¹ From December 1860 to early June 1861, eleven of the fifteen slaveholding states in the U.S. South declared secession from the Union. The trigger for the crisis was Abraham Lincoln's victory in the presidential election of November 1860. Many Southerners rejected the outcome of the election as intolerable. Together, the seceding states tried to form a new, proslavery nation, the Confederate States of America (CSA). They went to war with the United States to win their independence, only to be completely defeated within four years. The death toll from the war was approximately 750,000 (on both sides).² Importantly, the war also led to the emancipation of four million enslaved Americans.

The secession crisis involved both the mass rejection of a lawful electoral outcome and a large-scale turn to violence to resolve political differences. Notably, almost no one seriously disputed the procedural results of the election. Lincoln had won a plurality of the national popular vote and a majority of the Electoral College. Under the Constitution, he had won the election and was the president-

¹ Parts of this chapter are adapted or excerpted from Dean Grodzins and David Moss, "Secession, Slavery, and American Democracy" (Draft Case Study; Case Method Project, 2019).

² J. David Hacker, "A Census-Based Count of the Civil War Dead," *Civil War History* 57:4 (2011), 307-348.

elect. Indeed, until this point in U.S. history, no matter how bitterly contested a presidential election had been (and some had been very bitterly fought), the losers had always abided the outcome, believing that they could continue to defend their interests through the constitutional political process.

This time was different. Lincoln's Republican Party had pronounced slavery among the "relics of barbarism" and opposed the spread of slavery to federal territories in the American West.³ Lincoln himself argued in his famous "House Divided" speech in 1858 that this restriction would place slavery on the path to "ultimate extinction."⁴ Yet Republicans, including Lincoln, also repeatedly declared that they would not "interfere" with slavery in the states where it already existed, believing they lacked the constitutional right to do so.⁵ Nonetheless, many Southern leaders insisted that the fifteen slaveholding states of the South must not "submit" to Republican "rule," but instead exercise a controversial constitutional right (one that even a significant number of Southerners denied existed) to secede from the Union.⁶

The secession crisis is not normally treated as a case of democratic breakdown. This may be because the Civil War itself (1861-1865) dramatically overshadowed the reality of democratic corrosion and collapse. Also, many modern observers understandably do not regard the antebellum South as having been any sort of democracy in the first place, given the existence of slavery and the exclusion of nearly all but white men from the franchise. In this chapter, we will suggest that although the antebellum South was not remotely a democracy by modern standards, it was widely regarded as a democratic republic at the time and can usefully be studied as a kind of quasi-democracy, in some ways analogous to ancient Athens, which also enforced slavery and excluded the majority of adults from formal participation in political governance.

³ Quotation from the Republican Party Platform of 1856, <https://www.presidency.ucsb.edu/documents/republican-party-platform-1856>.

⁴ Abraham Lincoln, "A House Divided" Speech, *The Collected Works of Abraham Lincoln*, Roy P. Basler, ed., 9 vols. (New Brunswick: Rutgers University Press, 1953), 2:461.

⁵ Lincoln repeatedly denied that he wanted to interfere with slavery in the South, or that he believed he had the constitutional right to do so. See, for example, Lincoln, *Collected Works*, 3:16, 87, 300, 402, 404, 440; 4:263-264, 267. The Republican Party Platform of 1860 declared "inviolable" the "right of each state to order and control its own domestic institutions according to its own judgment exclusively." Republican Party Platform of 1860, Declaration 4, <https://www.presidency.ucsb.edu/documents/republican-party-platform-1860>.

⁶ See e.g. Eric H. Walther, *The Fire-Eaters* (Baton Rouge: Louisiana State University Press, 1992), 179; William W. Freehling and Craig M. Simpson, eds., *Secession Debated: Georgia's Showdown in 1860* (New York: Oxford University Press, 1992), 58.

With this in mind, we will advance two core arguments regarding secession and the associated pattern of democratic breakdown: first, we will demonstrate that most Southern states suffered significant democratic erosion over the antebellum period, stemming in particular from their crackdown on any and all criticism of slavery; and second, we will show that this democratic erosion, which involved far-reaching suppression of dissent, contributed directly to secession by limiting information flow and, in turn, limiting the ability of leading Southern political figures to see and understand the economic, political, and military realities that rendered secession far less likely to succeed than they seemed to believe.

Perhaps it should not be surprising that the perilous political act of secession, which was achieved through notably undemocratic means in the early seceding states and which, by design, broke the American republic in two, was itself born out of a critical erosion of democratic norms that gradually reshaped the South through the antebellum period. Yet the story of this erosion and its connection to secession has remained largely untold until now. It is to this story – and the broader story of secession and democratic breakdown – that we now turn.

Leading Explanations for Secession

Historians have written extensively on the secession crisis and the outbreak of the Civil War, and the leading explanations mostly fall into three broad categories. The first emphasizes growing economic and ideological divergence between the slaveholding South and the non-slaveholding North, which is thought to have made war between them almost inevitable. Although both North and South had commercial, market-dominated economies, and the two were interconnected, the differences between them were obvious, both to people at the time and since. The Southern economy, especially that of the Lower South, was based on the export of staple crops produced on slave plantations, while the Northern economy was based on free labor, with an agricultural sector grounded mostly in small farms, a strong merchant sector, and a growing industrial sector. The economic differences separating North and South inevitably led to sectional disputes, because leaders of each section tended to champion different federal economic policies regarding trade, banking, and internal improvements, among others, and had different visions of national expansion.⁷ Historians have also recognized a growing ideological divide between the sections. They have focused on how Southern leaders after 1830 moved away from what had arguably been a shared belief among most white people across both sections that slavery was a

⁷ On this point, see Marc Egnal, *Clash of Extremes: The Economic Origins of the Civil War* (New York: Hill and Wang, 2009).

“necessary evil,” to the claim that it was a “positive good.”⁸ Northerners, meanwhile, generally rejected “proslavery” thought. Most Northern voters came to support the Republican Party, which emerged in 1854 and promoted “free labor” and a ban on slavery in the Western territories.⁹

Another category of historical explanation focuses on political developments in the 1850s, especially the breakdown of what historians call the Second Party System (of Whigs versus Democrats, in which each party enjoyed significant support in both North and South), the rise of the sectional Republican Party in the North, and the split of the Democratic Party between its Northern and Southern wings. Historians advancing this view tend to portray the outbreak of the Civil War as a contingent event, which could have been avoided had political leaders been more willing to compromise at critical junctures or to resist the temptation to exploit sectional differences for short-term political advantage.¹⁰

Finally, there are historians who focus less on the conflict between the sections and more on developments within the South itself. These scholars suggest that whether the war was inevitable or not, the cause of it must ultimately lie in the South because the South initiated the conflict. Scholars in this vein examine a

⁸ Harold D. Tallant, *Evil Necessity: Slavery and Political Culture in Antebellum Kentucky* (Lexington: University Press of Kentucky, 2003), 4-7. A useful introduction remains Drew Gilpin Faust, ed., *The Ideology of Slavery: Proslavery Thought in the Antebellum South, 1830-1860* (Baton Rouge: Louisiana State University Press, 1981).

⁹ See Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party Before the Civil War* (1970; 2nd ed., New York: Oxford University Press, 1995). More broadly, the Republicans advocated for the idea that freedom was national, and slavery merely a state institution. According to Republicans, slavery violated natural law, and therefore could only exist when explicitly sanctioned by “positive law.” Republicans argued that the U.S. Constitution recognized slavery only in specific, defined instances, such as allowing slaves to be counted as three-fifths of a person for purposes of congressional representation and federal taxation, but that it otherwise did not sanction slavery (the word “slavery” did not even appear in it). The logic of the Republican position was that Congress had no authority to recognize the existence of slavery in the Western territories but did have the authority to ban it there. On the “Freedom National” idea, see James Oakes, *Freedom National: The Destruction of Slavery in the United States, 1861-1865* (New York: W.W. Norton, 2013), 2-4; a celebrated statement of the idea was Charles Sumner, *Freedom National; Slavery Sectional: Speech of Hon. Charles Sumner of Massachusetts* (Washington: Buell & Blanchard, 1852), 6-14.

¹⁰ Michael F. Holt, *The Political Crisis of the 1850s* (New York: Wylie, 1978); Daniel W. Crofts, *Reluctant Confederates: Upper South Unionists in the Secession Crisis* (Chapel Hill: University of North Carolina Press, 1989); Michael E. Woods, *Arguing Until Doomsday: Stephen Douglas, Jefferson Davis, and the Struggle for American Democracy* (Chapel Hill: University of North Carolina Press, 2020); Holt, *The Fate of Their Country: Politicians, Slavery Extension, and the Coming of the Civil War* (New York: Hill and Wang, 2004).

wide range of tensions within the South (including political, cultural, economic, ideological, and racial), particularly those produced or intensified by slavery, to explain the growth of support for secession there, especially among leaders of the Lower South.¹¹

While the historical scholarship on the coming of the Civil War is rich and varied, we believe we can contribute to it by calling attention to significant democratic erosion in the South prior to the war (specifically, the erosion of certain democratic freedoms for white Southerners), and how such erosion ultimately strengthened the drive for secession.¹²

Can the Antebellum South Be Studied as a Democracy?

We believe the antebellum South's democratic institutions merit careful study, even though the region was not nearly a democracy by modern standards. It is obviously painful to connect the word "democracy" in any way with a society that enforced chattel slavery and restricted suffrage to a privileged subset of the population. In 1860, 32% of the total population of the Southern states was enslaved. This enslaved population, entirely of African descent, comprised 94% of all people of African descent across the South and a majority of the population of

¹¹ William W. Freehling, *The Road to Disunion, Volume I: Secessionists at Bay, 1776-1854* (New York: Oxford University Press, 1990) and *The Road to Disunion, Volume II: Secessionists Triumphant, 1854-1861* (2007); Manisha Sinha, *The Counterrevolution of Slavery: Politics and Ideology in Antebellum South Carolina* (Chapel Hill: University of North Carolina Press, 2000); Keri Leigh Merritt, *Masterless Men: Poor Whites and Slavery in the Antebellum South* (New York: Cambridge University Press, 2017). See also William L. Barney's useful historiographical essay on the literature concerning how internal Southern tensions produced secession, in the introduction to the 2004 edition of Barney, *The Secessionist Impulse: Alabama and Mississippi in 1860* (1974; New Edition, Tuscaloosa: University of Alabama Press, 2004), xv-xxiv.

¹² Some politically significant democratic erosion occurred in the North. Most notably, a small number of Northern antislavery activists, the most famous being John Brown, became advocates of violent revolution to end slavery. There were also examples of systematic anti-abolitionist violence in the North. Overall, however, we believe there was much less democratic erosion in the North than the South. The suppression of the Republican Party and the rise of radical secessionism, for example, had far more mainstream political support in the South than antislavery violence or anti-abolitionist violence ever did in the North. For a case of a leading radical abolitionist whose support for antislavery violence was limited by commitment to democracy, see Dean Grodzins, "Wendell Phillips, the Rule of Law, and Antislavery Violence," in A. J. Aiséirithe and Donald Yacovone, eds., *Wendell Phillips, Social Justice, and the Power of the Past* (Baton Rouge: Louisiana State University Press, 2016), 89-110.

two states, South Carolina and Mississippi.¹³ Moreover, of the free population in the South in 1860, almost no person classified as black, and almost no white women, could vote.¹⁴ Yet slavery and major restrictions on suffrage in the antebellum South should not prevent scholars from studying its democratic institutions, just as the existence of slavery and restricted suffrage have not stopped scholars from studying the democratic institutions of ancient Athens, or, for that matter, the United States as a whole at the time of its founding, when slavery as well as race, sex, or property restrictions on suffrage could be found in every state.¹⁵

Notably, the United States—including the South—was commonly viewed as a democratic republic through the antebellum period. Some abolitionists denied that the South was a democracy, owing to slavery there, but these views were not widespread.¹⁶ Most white Northerners did not see themselves as compromising democracy when they voted for slaveholding candidates for president, and eight of the first twelve U.S. presidents owned slaves while in office.¹⁷ Meanwhile, the French scholar Alexis de Tocqueville—who traveled

¹³ Here and elsewhere, we use the term “Southern states,” as Americans did in the 1850s, to refer to all fifteen slaveholding states, including the four Border South states of Delaware, Maryland, Kentucky, and Missouri, which would later side with the Union in the Civil War. For population data, see Roger L. Ransom, “Population of the slave states, by state, race, and slave status: 1860–1870” (Table Eh1–7), in Susan B. Carter et al., eds., *Historical Statistics of the United States, Earliest Times to the Present: Millennial Edition* (New York: Cambridge University Press, 2006).

¹⁴ Free black men had the formal right to vote (in that there was no explicit racial exclusion) in Delaware until 1792, Kentucky until 1799, Maryland until 1801, Tennessee until 1834, and North Carolina until 1835; how often they were able to exercise this right is unclear. A small group of black men retained the formal right to vote in Tennessee after 1834. Also, starting in 1838, white property-holding women (meaning single women, as wives’ property at this time belonged to their husbands) could vote in school-related elections in Kentucky. See Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* (2000; Rev. ed, New York: Basic Books, 2009), 315–319, 365.

¹⁵ *Ibid.*, 306–307. Note that in New Jersey, from 1776 to 1807, women and free black people could vote if they met a property and residency requirement. See *ibid.*, 43–44.

¹⁶ See for example Theodore Parker, *The Relation of Slavery to a Republican Form of Government: A Speech Delivered at the New England Anti-Slavery Convention* (Boston: William Kent, 1858).

¹⁷ The following U.S. presidents were Southerners who owned slaves while president: George Washington (Virginia, 1789–1797); Thomas Jefferson (Virginia, 1801–1809); James Madison (Virginia, 1809–1817); James Monroe (Virginia, 1817–1825); Andrew Jackson (Tennessee, 1829–1837); John Tyler (Virginia, 1841–1845); James Polk (Tennessee, 1845–1849); Zachary Taylor (Louisiana, 1849–1850). Two other presidents, who did not own slaves while in office, had come from slaveholding families and themselves owned slaves at some point before becoming president: Martin Van Buren (New York, 1837–

through the North and South in the early 1830s, wrote his seminal study *Democracy in America* based on his observations, and hated slavery—never seems to have questioned that he was in a democracy wherever he went, North or South.¹⁸

This nineteenth-century perspective on American democracy, held by so many white Americans and Europeans, frequently rested on deeply racist beliefs about the unsuitability of black people for equal citizenship.¹⁹ Still, there are reasons why the antebellum South was viewed as a democracy at the time and has often been treated by scholars as such—or at least as having some of the attributes of democracy—in the years since. By the 1840s, suffrage among white men was effectively universal in every Southern state except Virginia and North Carolina, which dropped their property-based suffrage restrictions in 1850 and 1854, respectively.²⁰ This translated into average suffrage rates of about 30% of all adults in the late antebellum South.²¹ By contrast, in Britain in the 1840s, only about 7% of all adults were entitled to vote, and in Tocqueville’s France (when he wrote *Democracy in America*), fewer than 2% of adults could vote.²² Moreover, voters in the American South actively exercised their suffrage; in the presidential elections of 1852, 1856, and 1860, voter turnout in the region (among white male adults who were permitted to vote) was 59%, 69%, and 74%, respectively.²³ Local, state, and

1841) and William Henry Harrison (Ohio, 1841). The only presidents before 1850 who had never owned slaves were John Adams (Massachusetts, 1797-1801) and his son John Quincy Adams (Massachusetts, 1825-1829). A useful compilation of information can be found at <https://pres-slaves.zohosites.com> (accessed 11/1/2019), and in Stephen A. Jones and Eric Freedman, *Presidents and Black America: A Documentary History* (Washington, DC: CQ Press, 2012).

¹⁸ A standard scholarly edition in English is Alexis de Tocqueville, *Democracy in America*, ed. J.P. Mayer, tr. George Lawrence (Garden City, NY: Doubleday & Co., 1969).

¹⁹ Tocqueville unfortunately shared these attitudes. See Tocqueville, *Democracy in America*, 353-358.

²⁰ Keyssar, *Right to Vote*, 308-314. (South Carolina had a property requirement for voting, but the requirement could be waived with six months’ residency in the state.) *Ibid.*, 314n1.

²¹ Ransom, “Population of the slave states, by state, race, and slave status: 1860–1870” (Table Eh1-7), and Michael R. Haines, “State Populations” (Series Aa2244-6550), both in Carter et al., eds., *Historical Statistics of the United States*.

²² Stefano Bartolini, “Franchise Expansion,” in Richard Rose, ed., *International Encyclopedia of Elections* (Washington, DC: CQ Press, 2000), 119-120. It is worth noting that the percent enfranchised in France increased to 36% in 1848 with the adoption of universal male suffrage, but elections would not be “free and fair” until at least 1870. See Andrew McLaren Carstairs, *A Short History of Electoral Systems in Western Europe* (Boston: George Allen & Unwin, 1980), 176-177; Peter Campbell, *French Electoral Systems and Elections 1789-1957* (London: Faber and Faber Limited, 1958), 20, 64-66.

²³ Curtis Gans and Matthew Mulling, *Voter Turnout in the United States, 1788-2009* (Washington, DC: CQ Press, 2011), 168-169. These figures were calculated by totaling

national political offices in the South were filled by election, and elections to fill them took place frequently; in nine Southern states by the 1850s, even the judiciary was entirely elected.²⁴ Partisan electoral conflict in most Southern states was vigorous in the late antebellum period, between Democrats and Whigs, and after the Whig Party collapsed in the mid-1850s, between Democrats and the (short-lived) Know-Nothing or Constitutional Union Parties or between Democrats and “Oppositionists.” Until 1860-1861, moreover, transfers of power after elections in the South typically took place peacefully.

According to one prominent list of criteria for what constitutes a democracy, proposed by Juan Linz in a landmark 1978 volume on the breakdown of democratic regimes, the political system of the antebellum South, *as experienced by white Southerners*, would largely seem to qualify. Linz’s list includes “legal freedom to formulate and advocate political alternatives with the concomitant rights to free association, free speech, and other basic freedoms of person; free and nonviolent competition among leaders with periodic validation of their claim to rule; inclusion of all effective political offices in the democratic process; and provision for the participation of all members of the political community, whatever their political preferences.” In turn, these criteria suggest “the freedom to create political parties and to conduct free and honest elections at regular intervals without excluding any effective political office from direct or indirect electoral accountability.” Linz also observes that “‘democracy’ implies at least universal male suffrage, but perhaps in the past it would extend to the regimes with property, taxation, occupational, or literacy requirements of an earlier period, which limited suffrage to certain social groups.”²⁵

Notably, while suggesting that sex-based exclusion from the franchise could fit within his definition of democracy, Linz does not comment on how or whether race-based exclusion from voting or citizenship would factor in. Clearly, neither of these exclusions would be remotely consistent with democracy as we

votes cast in 14 of the 15 slaveholding states and then dividing by the combined voter-eligible population for those states. (The 15th slaveholding state, South Carolina, did not hold popular elections for presidential electors.)

²⁴ Jed Handelsman Shugerman, *The People’s Courts: Pursuing Judicial Independence in America* (Cambridge, MA: Harvard University Press, 2012), 276-277. The nine Southern states with fully elective judiciaries were Florida, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Tennessee, Texas, and Virginia. Two more Southern states, Alabama and Arkansas, elected circuit judges. In Georgia, the judiciary was fully elective except for the state Supreme Court, which the legislature created in 1845 and changed to popular election in 1896 (*ibid.*, 61, and <https://www.gasupreme.us/court-information/history/>).

²⁵ Juan J. Linz, “Introduction,” in Linz and Alfred Stepan, eds., *The Breakdown of Democratic Regimes* (Baltimore: The Johns Hopkins University Press, 1978), 5.

understand it today. As we will show, however, even beyond the issue of legal exclusions based on race or sex, some of the core freedoms on Linz's list—including especially the rights to free speech and association, and to create political parties—existed for white males in the early antebellum South, but were significantly eroded by 1860.

Still, despite this clear and (we will suggest) highly consequential democratic erosion in the lead-up to secession, the only regions of the world in 1860 with more developed democratic institutions than the slaveholding states of the American South were arguably the non-slaveholding states of the American North and West. Although almost no women could vote in the Northern and Western states, and men not identified as white were mostly disenfranchised, these states had universal suffrage for white men, frequent elections, vigorous partisan conflict and public debate, and voter turnout that ranged from 66% in 1852 to 79% in 1860.²⁶

Contrasting Southern with Northern and Western states does highlight features of several Southern state constitutions—beyond slavery itself—that made them seem less democratic, even by American standards of the time. Most notable was the peculiar constitutional system of South Carolina, the state in 1860 with the highest percentage of its population enslaved (57%), and a hotbed of secessionism (the first state to secede in the crisis of 1860-1861).²⁷ In South Carolina, although it had universal white male suffrage, property as well as population determined representation in the legislature; there were high wealth qualifications for holding office; and neither the governor nor presidential electors were chosen by popular

²⁶ In the 16 non-slaveholding states in 1855, black men were formally excluded from suffrage in all except Maine, New Hampshire, Vermont, Massachusetts, and Rhode Island, and were partially excluded in New York. Taxpaying women in Michigan could vote in school-related elections, starting in 1855. See Keyssar, *Right to Vote*, 69, 315-319, 365. For turnout, see Gans, *Voter Turnout*, 168-169. The turnout figures for Northern and Western (non-slaveholding) states were calculated by totaling votes cast in these states and then dividing by the states' combined voter-eligible population. The resulting percentage turnout in these states for the presidential elections of 1852, 1856, and 1860 were 66.2%, 75.6%, and 79.1% respectively. (California in 1856 was excluded from these calculations, because Gans lacked accurate information on turnout. Minnesota and Oregon are included only for the election of 1860, because they were not admitted as states until 1858 and 1859, respectively. There were 18 non-slaveholding states by 1860, all in the North and West.)

²⁷ Ransom, "Population of the slave states, by state, race, and slave status: 1860-1870" (Table Eh1-7), in Carter et al., eds., *Historical Statistics of the United States*.

vote.²⁸ The handful of other states with property-based representation and property qualifications for office were also located in the South.²⁹

Yet these undemocratic features, which limited popular influence even among white males, did not characterize the political systems of most Southern states. Mississippi, for example, had none of them, despite being the only other majority-slave state in 1860, and the second state to declare secession; and all Southern states except South Carolina held popular elections for governor and presidential electors.³⁰ Many white Southerners, moreover, made clear that they did not regard the political system of South Carolina as a model. In 1861, during a referendum on secession in Texas, a group of Texas Unionists urged voters not to follow South Carolina in declaring secession, attacking the state as unworthy of emulation in part because its government was “less popular in its form than the government of any other State in the Union, that it is in fact the only State in the Union in which the politicians can act in conformity with law, without consulting the people.”³¹ Such criticism of South Carolina, from within the South, speaks to the degree of commitment to popular government in the region, even as it was

²⁸ See the South Carolina Constitution of 1790, which remained in effect, with amendments, until the Secession Convention in December 1860; see Benjamin Perley Poore, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States* (Washington: Government Printing Office, 1877), 2:1628-1636. For property requirements for officeholding, see Art. I, Secs. 6, 8; Art. II, Sec. 2; for property representation, see the amendment of 1708; for indirect election of the governor, see Art. II, Sec. 1.

²⁹ South Carolina, North Carolina, Georgia, Florida, and Louisiana all had systems in which property (sometimes specifically in the form of slaves) helped determine representation in their legislatures. Virginia did this unofficially. Its constitutions of 1829 and 1850 did not formally count property towards legislative representation, but in practice, ownership of slaves influenced representation. The way Virginia legislative districts were drawn, voters from eastern parts of the state, which had more slaves, had more representatives in the legislature than voters from the western part of the state, which had fewer slaves. See Ralph A. Wooster, *The People in Power: Courthouse and Statehouse in the Lower South, 1850-1860* (Knoxville: University of Tennessee Press, 1969), 7-8, 10-15, 17-18; David Brown, *Southern Outcast: Hinton Rowan Helper and the Impending Crisis of the South* (Baton Rouge: Louisiana State University Press, 2006), 83-85, and 83-84n29 (on North Carolina); Freehling, *Road to Disunion*, 1:511-515 (on Virginia).

³⁰ See the Mississippi Constitution of 1832, Poore, *Federal and State Constitutions*, 2:1067-1078. See also “Presidential Elections: Methods of Choosing Electors” and “Gubernatorial Elections: Methods of Election” in *Guide to U.S. Elections* (Thousand Oaks, CA: CQ Press/Sage Publications, 2010), 820-822, 1560.

³¹ Martin D. Hart et al., “Address to the People of Texas!” (Broadside, Feb. 6, 1861), Briscoe Center for American History, Digital Collections, accessed at http://www.cah.utexas.edu/db/dmr/image_lg.php?variable=di_06900.

grounded upon both a distressingly narrow definition of the electorate and – most tragically – the mass enslavement of human beings.

Slavery, Sedition, and the Erosion of Democratic Institutions in the Antebellum South

As we will show, the breakdown of democratic norms across much of the South, evidenced most strikingly by the rejection of Lincoln’s election in 1860, was in part the product of years of democratic erosion, itself the consequence of an increasingly ardent and absolutist defense of slavery. Over the years, opposition to slavery had become tantamount to sedition in many slaveholding states; and in time, even an antislavery tract asserting that slavery undercut economic performance was widely seen as seditious and effectively banned in many locations.

Until around 1830, while slavery was a central feature of the Southern economic, social, and legal systems, and the number of slaveholding states steadily increased, criticism of slavery in the South was not uncommon. Thomas Jefferson embodied the contradictions of many Southern leaders in this era regarding slavery. He wrote the Declaration of Independence, which asserted that “all men are created equal.”³² Yet he owned more than six hundred enslaved persons during his lifetime, while only freeing a small number of them (several now believed to have been his children with an enslaved woman he owned, Sally Hemings).³³ In his book, *Notes on the State of Virginia* (1787), he claimed that slavery could not be abolished soon, not only because he thought it was economically necessary for the South, but because he thought black people were likely “inferior to the whites in the endowments both of body and mind.” He further insisted that, if slavery ended, there would be “provocations” and “convulsions” ending in the “extermination of the one or the other race.”³⁴ Still, in the very same text, Jefferson also strongly criticized slavery, writing that the “whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most

³² For the official National Archives transcription of the Declaration, see <https://www.archives.gov/founding-docs/declaration-transcript>.

³³ Lucia Stanton, *“Those Who Labor for My Happiness”*: Slavery at Thomas Jefferson’s Monticello (Charlottesville: University of Virginia Press, 2012), esp. 106, 179-180, 248-249; see also, Annette Gordon-Reed, *Thomas Jefferson and Sally Hemings: An American Controversy* (Charlottesville: University of Virginia Press, 1997; with author’s 1999 preface), and <https://www.monticello.org/site/research-and-collections/slaves-who-gained-freedom>.

³⁴ Thomas Jefferson, *Notes on the State of Virginia* (London: John Stockdale, 1787), 229-240 (quotations pp. 229, 239).

unremitting despotism on the one part, and degrading submissions on the other." He professed that slavery in America made him "tremble for my country when I reflect that God is just...."³⁵

Notably, Jefferson predicted that slavery would someday disappear and expressed support for policies that he saw as indirectly promoting that goal. In 1784, he drafted a proposal (not enacted) that would have banned slavery from all western territories after 1800. As president, he enthusiastically endorsed the 1807 law, which took effect in 1808, banning importation of slaves into the U.S. and forbidding Americans from participating in the international slave trade.³⁶ He also tentatively suggested gradual emancipation in his home state of Virginia (by freeing slaves born after a certain date), so long as all freed black people could be "colonized" (deported) out of the state.³⁷

Despite Jefferson's provisional suggestion of gradual emancipation for Virginia, the legislature never considered the issue before his death, in 1826.³⁸ Then, in 1831, the enslaved preacher Nat Turner led a slave uprising in Southampton, Virginia. The sixty to eighty rebels killed sixty white Virginians before militiamen stopped them.³⁹ In the aftermath, as white authorities and vigilantes executed hundreds of black people, many white Virginians began calling for an end to slavery out of fear of a future uprising. The legislature responded in 1831-1832 with its first public debate on emancipation. Various plans were proposed, including one by Jefferson's grandson, Thomas Jefferson Randolph. The latter would have freed enslaved people born after 1840 – women when they turned 18 (therefore, starting in 1858), and men when they turned 21 (in 1861). In the end, however, the legislature rejected emancipation as "inexpedient." Even assuming, as Randolph did, that many enslaved people would be sold out of state before they could be freed, emancipation would have greatly increased the free black population in Virginia. Many white Virginians, like Jefferson, were unwilling to consider emancipation without a plan for the mass deportation of free black people from the state; and though many supported the concept of mass deportation, no workable plan was ever developed.⁴⁰

³⁵ *Ibid.*, 270, 272.

³⁶ Freehling, *Road to Disunion*, 1:136, 138.

³⁷ *Ibid.*, 1:126-127, 130-131. See also Jefferson, *Notes on the State of Virginia*, 228-229.

³⁸ Eva Sheppard Wolf, *Race and Liberty in the New Nation* (Baton Rouge: Louisiana State University Press, 2006), 102-104.

³⁹ On the Turner Rebellion, see Kenneth S. Greenberg, ed., *Nat Turner: A Slave Rebellion in History and Memory* (New York: Oxford University Press, 2003).

⁴⁰ See Erik S. Root, ed., *Sons of the Fathers: The Virginia Slavery Debates of 1831-1832* (Lanham, MD: Lexington Books, 2010); Wolf, *Race and Liberty*, 196-234; Freehling, *Road to Disunion*, 1:178-196.

Before the Virginia debate, no Southern state legislature had debated an emancipation plan; afterward, none came as close to enacting one. A shift in Southern white opinion, from seeing slavery as a “necessary evil” to viewing it as a “positive good,” became especially widespread in the 1830s, partly in response to the emergence of the abolitionist movement.⁴¹

Abolitionism drew on the tradition of antislavery agitation that had produced gradual emancipation in the North, the push to end the importation of enslaved people to the United States, and the effort to prevent the admission of Missouri as a slave state in 1820. Abolitionism was launched by a coalition of black Northerners and an initially small number of white ones, many of the latter being Quakers, a religious denomination with a history of opposition to slavery.⁴² Abolitionists denounced slaveholding as a crime and a sin, which had to be “immediately” renounced. They also rejected the idea that free black people had to leave the country, arguing that they were entitled to full citizenship. After several years of movement-building, abolitionists established the American Anti-Slavery Society (AASS) in 1833. Headquartered in New York City, it had over 100,000 members in the free states by 1838.⁴³

Despite this growth, abolitionists remained a relatively small, unpopular minority. Most white Northerners did not want slavery in their own states, but they also typically rejected abolitionists as dangerous radicals.⁴⁴ In the mid-1830s, the movement faced a violent backlash in the North. In the South, rejection of

⁴¹ Tallant, *Evil Necessity*, 4-7.

⁴² For a history of the movement, see Manisha Sinha, *The Slave’s Cause: A History of Abolition* (New Haven: Yale University Press, 2016).

⁴³ *Ibid.*, 243, 252. In the 1850s, abolitionists suffered what they saw as major setbacks, including congressional enactment of the Fugitive Slave Law of 1850 and the Kansas-Nebraska Act (1854), as well as the *Dred Scott* decision of the U.S. Supreme Court (1857). In light of these setbacks, some black abolitionists began to advocate for black emigration to Canada, Liberia, Haiti, or elsewhere. Most took pains to distinguish their support for emigration from proposals to “colonize” free black people abroad. Martin Delany is probably the most notable black abolitionist who became an advocate of emigration. See Robert S. Levine, ed., *Martin R. Delany: A Documentary Reader* (Chapel Hill: University of North Carolina Press, 2003).

⁴⁴ Many white Northerners sought to exclude black people generally from their states, along with the institution of slavery. Several Northern states, including Ohio, enacted laws that strongly discouraged black immigration (by requiring black immigrants to post expensive bonds or face deportation out of the state, for example). On these so-called “Black Laws” and the opposition to them, focusing especially on the Ohio case, see Kate Masur, *Until Justice Be Done: America’s First Civil Rights Movement, From the Revolution to Reconstruction* (New York: Norton and Co., 2021), 1-41.

abolitionism went further. Southern states outlawed antislavery speech as “incendiary” or “seditious,” claiming that it could incite enslaved people to revolt.

The earliest laws banning antislavery speech were in fact passed in the wake of a major uprising by enslaved people in the French Caribbean colony of Saint-Domingue, not far from American shores. A slave revolution began there in 1791 and culminated in 1804, when a former slave, Jean-Jacques Dessalines, proclaimed it the independent nation of Haiti.⁴⁵ Evidently in response to the Haitian declaration of independence, Georgia in 1804 outlawed speech “tending to incite” slave unrest, with the guilty to be banished from the state. South Carolina, where many white refugees from the Haitian Revolution had fled, passed a law in 1805 outlawing “inflammatory discourse, tending to alienate the affection and seduce the fidelity of any slave or slaves,” with those convicted to receive a punishment, unspecified but short of the death penalty, to be determined by the trial court.⁴⁶

In 1820, the governor of South Carolina asked the legislature to pass a second law, warning that the “expression of opinions and doctrines” sparked by the Missouri debate could both “threaten our security” and “diminish” the “value” of human property.⁴⁷ The legislature responded by outlawing the circulation of written or printed speech intended “to disturb the peace and security” of the state “in relation to the slaves of the people of this state.” White people convicted of this crime faced a fine and imprisonment, while free black people faced a fine for the first offense, and for the second, whipping and banishment from the state. (See Appendix.)

A series of new incendiary speech laws were enacted starting in 1829, largely in reaction to a pamphlet by the black abolitionist David Walker and mounting fears of slave rebellions. Walker, born free in lowland North Carolina, probably around 1796, had moved to Boston by 1825, where he opened a used clothing shop and became a prominent figure in the black community.⁴⁸ In 1829 and 1830, he self-published three editions of his pamphlet, *Appeal ... to the Coloured Citizens of the World ... but in particular ... Those of the United States of America*. As

⁴⁵ For a useful introduction to this subject, see Jeremy D. Popkin, *A Concise History of the Haitian Revolution* (West Sussex: Wiley-Blackwell, 2012).

⁴⁶ Sinha, *The Slave's Cause*, 61, refers to white refugees from the Haitian Revolution in Charleston, South Carolina. “Charity,” *Charleston Courier* (Feb. 22, 1805), 2, is a plea to the public to give money to aid impoverished white refugees from Haiti.

⁴⁷ “South Carolina,” *The National Gazette and Literary Register* [Philadelphia] (Dec. 7, 1820), 2; Marina Wikramanayake, *A World in Shadow: The Free Black in Antebellum South Carolina* (Columbia: University of South Carolina Press, 1973), 163-164.

⁴⁸ Peter Hinks, *To Awaken My Afflicted Brethren: David Walker and the Problem of Antebellum Slave Resistance* (University Park, PA: Pennsylvania State University Press, 1997).

the title indicates, he intended primarily to address a black audience. He declared that freedom was their “natural right,” and decried slavery as a “curse to nations” and “hell upon earth.” He rejected Jefferson’s claim that black people were “an inferior and distinct race” and urged his “beloved Brethren and Fellow Citizens” to “acquire learning” and oppose colonization. He denounced slaveholders who professed to be Christian or republican as hypocrites, prophesied that God would inevitably bring judgment upon them in the form of a slave revolution, and argued that the enslaved were justified in killing their enslavers.⁴⁹

Walker mailed copies of his *Appeal* to the South and gave others to sailors, some of them black, to distribute in Southern ports. Almost immediately, the pamphlets were discovered there and seized by authorities.⁵⁰ The *Appeal* so alarmed the governments of four states—Georgia, North Carolina, Mississippi, and Louisiana—that they enacted incendiary speech laws in 1829-1831.⁵¹ Virginia almost enacted an incendiary speech law in response to Walker, and finally did so in 1832, after the Nat Turner Rebellion (and after voting down gradual emancipation). That same year, Alabama enacted an incendiary speech law, while the Territory of Florida, which already had a law on its books against incitement of slave unrest, enacted a new one.⁵² (See Appendix.)

The laws were harsh. The North Carolina statute, for example, made it a felony to publish or circulate any “written or printed pamphlet or paper ... the evident tendency whereof would be to excite insurrection, conspiracy or resistance in the slaves or free negroes and persons of colour within the State, or which shall advise or persuade slaves or free persons of colour to insurrection, conspiracy or resistance....” Anyone found guilty, “shall for the first offence be imprisoned not less than one year and be put in the pillory and whipped, at the discretion of the court; and for the second offence shall suffer death without benefit of clergy.”

⁴⁹ David Walker, *Walker’s Appeal, in Four Articles, Together with a Preamble, to the Coloured Citizens of the World, but in Particular, and Very Expressly, to Those of the United States of America*, Revised edition with an introduction by Sean Wilentz (New York: Hill and Wang, 1995), 3, 11, 19, 22, 31, 71. The title page of the first printing is dated September 28, 1829; the title page of the third is marked with, “Third and Last Edition, with additional notes, corrections, &c.”

⁵⁰ Hinks, *To Awaken My Afflicted Brethren*, 118-126, 134-138, 145-146, 149, 152; Amy Reynolds, “The Impact of Walker’s *Appeal* on Northern and Southern Conceptions of Free Speech in the Nineteenth Century,” *Communication Law and Policy* 9:1 (2004), 83-84.

⁵¹ Reynolds, “Impact of Walker’s *Appeal*,” 84, 86-87; Clement Eaton, *The Freedom-of-Thought Struggle in the Old South* (Originally published as *Freedom of Thought in the Old South* [1940]; Revised and enlarged ed., New York: Harper & Row, 1964), 121-125.

⁵² Reynolds, “Impact of Walker’s *Appeal*,” 94; Eaton, *Freedom-of-Thought Struggle*, 123; <http://www.natturnerproject.org/laws-passed-march-15-1832>, Chapter XXII, Section 7.

Moreover, anyone who “by words” tried to excite in slaves “a spirit of insurrection, conspiracy or rebellion,” would also be guilty of a felony, and if convicted should “receive thirty-nine lashes upon his or her bare back and be imprisoned for a year; and for the second offence shall suffer death without benefit of clergy.”⁵³ The Georgia and Alabama laws, and the new Florida law, were even more severe, holding that first offenders should be put to death.

The laws enacted after 1829 were more expansive than the Georgia and South Carolina laws of 1804-1805, which had focused on incitement of enslaved people; all the new laws (except that of Florida) also banned incitement of free black people, who lived in every slaveholding state. These laws were usually enacted at the same time as other laws, or as part of longer statutes, restricting the activity of free black people and tightening existing restrictions on enslaved people. Georgia and North Carolina enacted laws, for example, requiring that out-of-state black sailors arriving in a local port be jailed if they disembarked.⁵⁴ Both states also enacted laws forbidding anyone from teaching slaves to read. In North Carolina, the penalty for white people who did so was a stiff fine or prison; for free black people, a fine, imprisonment, or whipping; and for enslaved black people, “thirty-nine lashes on his or her bare back.”⁵⁵ Within a few years, every slaveholding state except Arkansas, Kentucky, Maryland, and Tennessee had enacted prohibitions against slave literacy.⁵⁶

Besides trying to limit the impact of Walker’s pamphlet, Southern officials also tried to silence its author. In 1829, both the governor of Georgia and the mayor of Savannah, where copies of the *Appeal* had been found, wrote to Mayor Harrison Gray Otis of Boston, demanding that Walker be jailed. Otis wrote back that although “all sensible people regretted what ... [Walker] wrote and what he was doing,” Walker had violated no federal or Massachusetts law and so could not be arrested. Instead, Otis warned ship captains in Boston to search their vessels and crew for seditious publications and to confiscate them before sailing South.⁵⁷ Southern leaders considered responses like that of Otis wholly inadequate. As Governor John Floyd of Virginia wrote in his diary in 1831:

⁵³ *Acts Passed by the General Assembly of the State of North Carolina, at the Session of 1830-31* (Raleigh: Lawrence & Lemay, 1831), Chapter V (pp. 10-11).

⁵⁴ Reynolds, “Impact of Walker’s *Appeal*,” 84, 86. South Carolina had already enacted a “Negro Seaman’s Act” in response to the alleged plot, uncovered in 1822, for a slave revolt in Charleston led by the literate free black carpenter Denmark Vesey; see Sinha, *The Slave’s Cause*, 196-197.

⁵⁵ Eaton, *Freedom-of-Thought Struggle*, 122; *Acts Passed by the General Assembly of the State of North Carolina, at the Session of 1830-31*, Chapter VI.

⁵⁶ Reynolds, “Impact of Walker’s *Appeal*,” 91-92.

⁵⁷ *Ibid.*, 85.

“[A] man in our States may plot treason in one state against another without fear of punishment, whilst the suffering state has no right to resist by provisions of the Federal Constitution. If this is not checked it must lead to a separation of these states. If the forms of law will not punish, the law of nature will not permit men to have their families butchered before their eyes by their slaves and not seek by force to punish those who plan and encourage them to perpetrate these deeds.”⁵⁸

What Floyd apparently meant by “the law of nature” stopping incendiaries was that people would take matters into their own hands and potentially kill them. Reportedly, white Georgians placed a \$1000 bounty on Walker’s head.⁵⁹ He did die in 1830, but of natural causes.⁶⁰

Southern restrictions against abolitionism were tightened in 1835 and 1836, in response to an ambitious AASS “postal campaign.” Abolitionists aimed to convert white Southerners to their cause with a mass mailing of antislavery literature. At the height of the campaign, in the summer of 1835, perhaps as many as 175,000 abolitionist publications—including pamphlets, tracts, and newspapers—were mailed from the free to the slaveholding states in a single month.⁶¹ Although many in the AASS expressed respect for the recently deceased Walker, the Society’s mostly white leadership renounced violence and insisted that abolitionists achieve their ends only through “moral suasion.” Unlike Walker, moreover, the AASS aimed to distribute its publications in the South only to white readers, and these publications were sent to some 20,000 Southern white political, religious, and community leaders.⁶²

Southern lawmakers denounced the postal campaign as an attempt “to interfere with the relations existing between master and slave ... and to excite in our coloured population a spirit of insubordination, rebellion and

⁵⁸ Ibid., 93. Floyd was here writing not about Walker specifically, but about the abolitionist newspaper *The Liberator*, which reprinted sections of Walker’s *Appeal*.

⁵⁹ Ibid., 86.

⁶⁰ Ibid., 88; Hinks, *To Awaken My Afflicted Brethren*, 269-270.

⁶¹ Richard John, *Spreading the News: The American Postal System from Franklin to Morse* (Cambridge, MA: Harvard University Press, 1995), 261; but see also, Susan Wyly-Jones, “The 1835 Anti-Abolition Meetings in the South: A New Look at the Controversy over the Abolition Postal Campaign,” *Civil War History* 47:4 (2001), 299-300, who indicates this figure may be an exaggeration.

⁶² John, *Spreading the News*, 262. John explains that abolitionists compiled the list of names and addresses “from city directories, the proceedings of religious bodies, and other compendia of prominent men of affairs.”

insurrection....”⁶³ In July 1835, a vigilante group in Charleston, South Carolina, calling themselves the “Lynch Men,” with a former governor possibly among them, seized abolitionist publications from the city post office and burned them in a bonfire that was watched by an “enthusiastic crowd of 2,000.”⁶⁴ Over the coming months, postmasters across the South purged abolitionist mail, either sending it back North or destroying it. By December, at least 150 public meetings had been held in the slaveholding states to condemn abolitionism. Many of these meetings appointed “vigilance committees” (groups of citizens tasked to maintain law and order in an emergency), which arrested, tried, and punished white travelers from the North and free black people suspected of disseminating abolitionist ideas.⁶⁵

A vigilance committee in Nashville, Tennessee, arrested Amos Dresser, a white traveling Bible salesman from Ohio with antislavery views, convicted him of being an abolitionist agent (which he denied), and after debating hanging him, had him publicly whipped and expelled from the state.⁶⁶ Weeks later, writing in a Nashville newspaper, one of the vigilance committee members urged “non-slaveholding brethren” from Ohio and other states to “energetically assist” in restraining “emissaries” like Dresser. He defended the makeshift trial as necessary because, after all, no law yet existed for which Dresser could be properly tried. The absence of any Tennessee law, he wrote, was a “defect” to be “remedied,” and “remedied” it was: Tennessee passed its first seditious speech act in 1836.⁶⁷ (See Appendix.)

Virginia, meanwhile, enacted a new, stronger incendiary speech law that same year. The law empowered “any free white person” to arrest any member of

⁶³ From the preamble to “An Act to suppress the circulation of incendiary publications ...” (March 23, 1836), *Acts of the General Assembly of Virginia, Passed at the Session of 1835-36* (Richmond: Thomas Ritchie, 1836), 44-45.

⁶⁴ John, *Spreading the News*, 257-259 (quotation p. 258); Wyly-Jones, “1835 Anti-Abolition Meetings,” 289-290.

⁶⁵ On the concept of a Vigilance Committee, see Dean Grodzins, “‘Constitution or No Constitution, Law or No Law’: The Boston Vigilance Committees, 1841-1861,” in Matthew Mason, Katheryn P. Viens, and Conrad Edick Wright, eds., *Massachusetts and the Civil War: The Commonwealth and National Disunion* (Amherst: University of Massachusetts Press, 2015), 47-48.

⁶⁶ Wyly-Jones, “1835 Anti-Abolition Meetings,” 291-292, 303; see also, Amos Dresser, *The Narrative of Amos Dresser* (New York: American Anti-Slavery Society, 1836).

⁶⁷ W.H. Hunt, “Amos Dresser – The Cincinnati Gazette,” *National Banner and Nashville Whig* (August 24, 1835), 3. The identity of the vigilance committee member and newspaper writer is disclosed in an earlier editorial he authored, and again in a response editorial by an Ohio paper: W.H. Hunt, “ABOLITIONISTS BEWARE!” *National Banner and Nashville Whig* (August 10, 1835), 3; C. Hammond, “‘Amos Dresser’s’ Case,” *Cincinnati Daily Gazette* (August 20, 1835), 2.

an antislavery organization “who shall come into this state, and ... advocate or advise the abolition of slavery.” Those found guilty would be fined \$50 to \$200 and imprisoned from six months to three years. If an enslaved person was found guilty of circulating incendiary publications, he or she was to be “punished by stripes, not exceeding thirty-nine” and “transported and sold beyond the limits of the United States”; if a white person, he or she was to be imprisoned for two to five years. The law also mandated censorship of the U.S. mail. It required that if a postmaster found incendiary publications in the mail, he must notify a local justice of the peace, who was ordered to have the material “burned in his presence.”⁶⁸

Most white Northerners apparently did not object to slaveholding states censoring abolitionist mail. In fact, allowing them to do so soon became de facto federal policy.⁶⁹ Nor did many object to Southern states suppressing abolitionism in the South. Most white Northerners themselves likely rejected abolitionism. In 1835 and 1836, anti-abolitionist public meetings took place throughout the North (including one in Boston, led by Mayor Otis). The meetings heard speeches and passed resolutions condemning abolitionists for imperiling the safety of white Southerners and the Union.⁷⁰ White mobs, reportedly led by “gentlemen of property and standing,” attacked abolitionist meetings, lecturers, editors, and presses in dozens of Northern communities, among them New York, Philadelphia, and Boston, often also rampaging through black neighborhoods. Few if any people were ever arrested for participating in these mobs, and the Northern press tended to blame the abolitionists for provoking the trouble.⁷¹

Yet there was one Southern demand that Northerners consistently declined to meet: namely, to outlaw abolitionist organizations and speech in the North. The legislature of South Carolina passed resolutions calling on Northern legislatures to “suppress all those associations within their respective limits, purporting to be Abolition Societies” and “make it highly penal” to print, publish, or circulate material that would have “an obvious tendency to excite the slaves of the Southern States to insurrection and revolt.”⁷² The legislatures of North Carolina, Virginia, Georgia, and Alabama passed similar resolutions, as did Southern anti-abolitionist

⁶⁸ “An Act to suppress the circulation of incendiary publications ...”

⁶⁹ Michael Kent Curtis, *Free Speech, “The People’s Darling Privilege”*: Struggles for Freedom of Expression in American History (Durham: Duke University Press, 2000), 174-175.

⁷⁰ For accounts of the Boston meeting, with examples of the resolutions and speeches there, see “Public Meeting in Boston,” “Faneuil Hall Resolutions,” *The Boston Recorder* (Aug. 28, 1835), 139, 140; “Speech of Harrison Gray Otis. In Faneuil Hall, Boston—August 22,” *Niles’ Weekly Register* (Sep. 5, 1835), 10.

⁷¹ Sinha, *The Slave’s Cause*, 231-234; Curtis, *Free Speech*, 131-151.

⁷² “Committee on Federal Relations. In Senate, Dec. 16, 1835,” in *Acts and Resolutions of the General Assembly of the State of South Carolina, Passed in December, 1835* (Columbia: S. Weir, 1836), [118].

meetings.⁷³ A meeting in Charleston, South Carolina, for example, resolved that Northern states should “adopt the necessary measures to punish any vile incendiaries within their limits, who, not daring to appear in person among us, where the gallows and the stake await them, discharge their missiles of mischief in the security of distance.”⁷⁴ A meeting in Camden County, North Carolina, declared that Northern states were “duty bound” to ban “incendiary and seditious associations whose avowed object is to disturb our peace” and declared that all of the Northern anti-abolitionist meetings and mobs meant little unless reinforced by “legal enactments.”⁷⁵ As a meeting in Virginia affirmed, “nothing less than absolute legal restrictions can retard or avert the awful consequences of a wild fanaticism.”⁷⁶ In 1835, Maryland enacted a law that may have been intended as a model for Northern states to follow regarding abolitionist speech: those found guilty of sending publications to other states or territories that might create “discontent” or “insurrection” among black people there would be sentenced to ten to twenty years in prison. (See Appendix.)

In 1835 and 1836, officials in some Northern states considered responding to these Southern calls for action. Yet they struggled to determine how to outlaw abolitionism without undermining freedom of speech and the press in the North. Governor William Marcy of New York, for example, sent a message to his state legislature suggesting that Northern states might consider enacting “laws for the trial and punishment ... of residents within their limits, guilty of acts therein, which are calculated and intended to excite insurrection and rebellion in a sister State.”⁷⁷ The New York legislature assigned Marcy’s suggestion to a committee, which produced a report condemning abolitionists but declining to recommend any laws to silence them. As the committee observed, “[I]t is a most delicate and difficult task of discrimination for legislators to determine at what point ... rational and constitutional liberty [of the press] terminates, and venality and licentiousness begin. It is indeed more safe to tolerate the licentiousness of the press than to abridge its freedom; for a corrective of the evil will be generally found in the force of truth.”⁷⁸ A committee of the Ohio legislature, also tasked with considering anti-abolitionist laws, rejected them even more emphatically. The states, it declared,

⁷³ *Acts Passed by the General Assembly of the State of North Carolina, at the Session of 1835* (Raleigh: Philo White, 1835), 120-121; *Acts of the General Assembly of Virginia, Passed at the Session of 1835-36*, 395-396; Russel B. Nye, *Fettered Freedom: Civil Liberties and the Slavery Controversy, 1830-1860* (1949; Rev. ed., [East Lansing, MI]: Michigan State University Press, 1963), 139.

⁷⁴ Curtis, *Free Speech*, 151; for the date, see 462, n83-84.

⁷⁵ Wyly-Jones, “1835 Anti-Abolition Meetings,” 304.

⁷⁶ *Ibid.*, 304-305.

⁷⁷ Curtis, *Free Speech*, 184-185.

⁷⁸ *Ibid.*, 188.

“have no power to restrain the publication of private opinion on any subject whatever, and the principle, if admitted, involves much greater evils to the peace of the states, than the toleration of errors and the excitements they cause can ever produce.”⁷⁹

In the end, no Northern state outlawed abolitionism. As Senator John C. Calhoun of South Carolina noted with disappointment in 1836, the “just hopes” of the South “have not been realized. The Legislatures of the South ... have called upon the non-slaveholding States to repress the movements made within the jurisdiction of those States against their peace and security. Not a step has been taken; not a law has been passed.”⁸⁰ The legislature of Kentucky approved a report complaining that “under the miserably perverted name of free discussion, these incendiaries will be permitted to scatter their fire-brands throughout the country, with no check but that which may be imposed by the feeble operation of public opinion.”⁸¹

Attacks on abolitionists, meanwhile, whether by mobs in the North or both mobs and laws in the South, seem only to have won the abolitionists greater support among white Northerners, many of whom began to see slavery as a threat to their own freedoms. Although proslavery writings continued to circulate freely in the North, after 1837 the number of Northern anti-abolitionist mobs declined sharply.⁸² In the South, by contrast, more states outlawed antislavery speech as incendiary, starting with Missouri in 1837, which prohibited “the publication, circulation or promulgation of the abolition doctrines.” Specifically, the Missouri law banned anyone from offering “facts, arguments, reasoning, or opinions, tending directly to excite any slave or slaves, or other persons of color ... to rebellion, sedition, mutiny, insurrection or murder....” Those found guilty would be subjected to fine and imprisonment.⁸³ By 1861, every slaveholding state except Delaware had enacted laws banning antislavery speech.⁸⁴ (See Appendix.)

⁷⁹ *Ibid.*, 190.

⁸⁰ *Ibid.*, 186-187.

⁸¹ *Acts Passed at the First Session of the Forty-Fourth General Assembly of the Commonwealth of Kentucky* (Frankfort: J.H. Holeman, 1836), 685.

⁸² Curtis attributes this shift in part to the Northern public reaction against the murder of the abolitionist newspaper editor Elijah Lovejoy; in November 1837, Lovejoy was killed trying to defend his press from being destroyed by a mob in Alton, Illinois. See Curtis, *Free Speech*, 216-270.

⁸³ Laws of the State of Missouri passed at the First Session of the Ninth General Assembly ... [1836-1837] (Jefferson: Calvin Gunn, 1837), 3.

⁸⁴ In addition, proslavery forces enacted an incendiary speech law in Kansas Territory in 1855, which banned (1) speech “calculated to produce a disorderly, dangerous or rebellious disaffection among the slaves in this territory, or to induce such slaves to

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The incendiary speech laws exerted a chilling effect on public criticism of slavery in the South. In December 1831, a member of the North Carolina legislature proposed a resolution directing the state Attorney General to prosecute a newspaper editor in Greensboro for having recently published “seditious and libellous [sic]” statements—meaning, a letter that had condemned slavery as a “moral and political evil.”⁸⁵ The legislature rejected the resolution, but two weeks later, it approved a seditious speech law.⁸⁶ As one North Carolina newspaper correspondent remarked, these events “put the whole Editorial corps on the *qui vive* [alert] throughout the State.”⁸⁷

In time, as sedition laws spread across the South, even debate over the economic effects of slavery grew more constrained. Since at least the 1820s, Southerners could be found who criticized the economic impact of slavery. Some had argued, including in the 1832 debates in Virginia, that slavery had “withering and blasting effects” on Southern economic development. By the 1840s, writers in both South and North were commenting on how the population of the North was growing faster than that of the South, as economic activity in the North attracted greater immigration from abroad. The 1850 Census even revealed net outward migration from the slaveholding states of the Upper South to the free states of the Midwest. By this point, several writers had published statistical comparisons between the free states and slave states in an attempt to show that slavery stymied economic advance.⁸⁸ This argument could potentially have had appeal in the

escape from the service of their masters, or to resist their authority ...” and (2) speech by free people denying “the right of persons to hold slaves in this territory....” Punishment for any person printing, writing, publishing, or circulating was for (1) imprisonment at hard labor for at least 5 years and for (2) imprisonment at hard labor for at least 2 years. See *The Statutes of the Territory of Kansas* (Shawnee M.L. School: John T. Brady, 1855), 717.

⁸⁵ *Journals of the Senate & House of Commons of the General Assembly of the State of North Carolina, at the Session of 1830-31* (Raleigh: Lawrence & Lemay, 1831), 240 (Dec. 25, 1830). The resolution condemned an antislavery letter to the editor of the Greensborough Patriot of Dec. 15, 1830, and previous issues; see “Communications ... For the Greensborough Patriot,” *Greensborough Patriot* (Dec. 15, 1830), 1.

⁸⁶ *Journals of the Senate and House of Commons ...*, 281 (Jan. 7, 1831).

⁸⁷ The “Raleigh correspondent of the Fayetteville Observer,” quoted in *The Globe* [Washington, DC] (Jan. 8, 1831), 6 (italics original).

⁸⁸ Laurence Shore, *Southern Capitalists: The Ideological Leadership of an Elite, 1832-1885* (Chapel Hill: The University of North Carolina Press, 1986), 4, 9, 199n25. In 1829, Henry Clay of Kentucky said that his state’s failure to pass an emancipation plan had left it “in the rear of our neighbors who are exempt from slavery, in the state of agriculture, the progress of manufactures, the advance of improvement, and the general prosperity of society.” Henry Clay, “To Gentlemen of the Colonization Society of Kentucky,” in *The*

South, most notably to the almost three-quarters of white Southerners who were neither slaveholders nor from a slaveholding family, and perhaps especially to the third of them, according to one recent estimate, who were “truly, cyclically poor.”⁸⁹ Yet by the late 1850s, the claim that slavery weakened the Southern economy had become particularly controversial – even dangerous.⁹⁰ Indeed, white

Papers of Henry Clay, Robert Seager II and Melba Porter Hay, eds., vol. 8, *Candidate, Compromiser, Whig, March 5, 1829-December 31, 1836* (Lexington: The University Press of Kentucky, 1984), 142. For additional statements by Southerners in the 1820s regarding slavery’s economic effects, see Shore, 199n25&26; an example is James Raymond, *Prize Essay on the Comparative Economy of Free and Slave Labor in Agriculture* (Frederick: Frederick County Agricultural Society, 1827). On economic themes in the 1832 Virginia debate, see Shore, *Southern Capitalists*, 22-23; Charles Faulkner, *The Speech of Charles Jas. Faulkner, (of Berkeley) in the House of Delegates of Virginia on the Policy of the State with Respect to Her Slave Population, Delivered January 20, 1832* (Richmond: Thomas W. White, 1832), 20; Thomas Marshall, *The Speech of Thomas Marshall, in the House of Delegates of Virginia, on the Abolition of Slavery, Delivered January 20, 1832* (Richmond: Thomas W. White, 1832), 6. On responses to the Census of 1850 and outmigration from the South to the Midwest, see James McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988), 91; Kenneth J. Winkle, *The Politics of Community: Migration and Politics in Antebellum Ohio* (New York: Cambridge University Press, 1988), 13-15. For examples of antislavery writers’ use of statistics in the 1840s, and proslavery writers’ “counterattack” in the late 1840s and early 1850s, see Shore, *Southern Capitalists*, 21, 31, 38-40. A prominent example of the antislavery position is Theodore Parker, *A Letter to the People of the United States Touching the Matter of Slavery* (Boston: J. Munroe & Co, 1848), esp. 42-60.

⁸⁹ Fewer than 400,000 Southern families owned enslaved people in 1860, and even ardent proslavery apologists claimed that these families comprised no more than 2,250,000 white people. The total white population of the South in 1860, meanwhile, was over 8 million. See Susan B. Carter, “Slaveholding families, by state: 1790-1860” (Table Bb167-195), and Haines, “State Populations” (Series Aa2244-6550), in Carter et al., eds., *Historical Statistics of the United States*; J.D.B. De Bow, *The Interest in Slavery of the Southern Non-Slaveholder* (Charleston: Evans & Cogswell, 1860), 3. For the estimate of poverty among non-slaveholding white Southerners, see Merritt, *Masterless Men*, 16, 341-348.

⁹⁰ In his history of Southern economic thought, Joseph Persky writes that a “paranoid political style” prevailed by the late 1850s: “As the South moved toward secession it pulled in on itself and became impervious to external criticism. Increasingly, anything that belittled the region was considered subversive and disruptive. Every colonial argument that disparaged the traditional agriculture of the region thus became suspect.... This mind-set demanded the complete vindication of southern institutions, especially of the slave plantation.” Although proponents of the “New South” movement would later argue that slavery had weakened the Southern economy, such views were “considered virtually treasonous before the war.” Joseph Persky, *The Burden of Dependency: Colonial Themes in Southern Economic Thought* (Baltimore: John Hopkins University Press, 1992), 93, 99-100. Notably, even proslavery economic commentators sometimes met with alarm and disapproval when they proposed economic reforms that

Southerners who made an economic argument for an end to slavery faced censure and censorship. The most famous example was that of Hinton Helper.⁹¹

seemingly “promulgated too fundamental a critique of Southern society.” This was the case, for example, when a group of proslavery reformers began in 1856 to call for a reopening of the international slave trade, believing that such a measure would create conditions for white nonslaveholders to join the slaveholding class. For writing about “nonslaveholders’ hardships,” one newspaper editor was accused of stirring up “a violent animosity in the poorer class against the richer” and eliciting the “slumbering venom of the folded snake that is in the midst of us.” Shore, *Southern Capitalists*, 55, 66. The proslavery editor J. D. B. De Bow was called an abolitionist (a “charge” he dismissed as “ridiculous”) after he included in his *Review* a piece by a Northern writer whose opinions he disagreed with but still found “in the main liberal to the South.” A biographer of De Bow suggests that in the 1850s: “Even if De Bow wanted to present a more unbiased critique of the South, the increasingly isolated worldview of conservative southerners made it more difficult for him to be as critical of the South as he had once been in the *Review*.” John F. Kvach, *De Bow’s Review: The Antebellum Vision of a New South* (Lexington: The University Press of Kentucky, 2013), 79; *De Bow’s Review* 16 (March 1854), 263; *De Bow’s Review* 15 (August 1853), 129. De Bow’s own worldview narrowed significantly over the 1850s. Despite his early aspirations to be an “impartial and neutral” editor, by 1857 De Bow had become an “unapologetic fire-eater” and his *Review* an “outlet for fanatic secessionists.” De Bow “banned unfriendly newspapers” from reporting on a commercial convention he led in 1857 and by 1861 believed that it was best to suppress information that might be damaging to the Southern cause. Ottis Clark Skipper, *J. D. B. De Bow: Magaziner of the Old South* (Athens: University of Georgia Press, 1958), 122-123; Kvach, *De Bow’s Review*, 86-87, 91-92, 135. More broadly, Michael Kent Curtis writes that speech on slavery was constrained both by “formal legal reactions” and by “the broader social reaction to dissent,” observing that when “the community sees dissent on a subject as not only wrong, but illegitimate, free discussion of that topic is likely to disappear.” Arguments about slavery’s economic effects can be understood as speech that, while not necessarily banned, was inevitably shaped by the chilling effect of seditious speech laws and the “broader social reaction to dissent.” Curtis, *Free Speech*, 142. In fact, even if economic criticisms of slavery were not censored per se, “empirical investigations of slavery’s effects” became virtually impossible in the political climate of the late 1850s. Margo J. Anderson notes that in planning for the 1860 census, Congress never proposed any questions to probe the “economic efficiency of southern agriculture” because such a set of questions would have been “politically explosive.” Anderson, *The American Census: A Social History* (New Haven, Yale University Press, 1988), 56.

⁹¹ A less famous example comes from Georgia in 1860, when a poor white man named “Pool” went before a vigilance committee for saying that he would join with abolitionists, if given the chance, in part because he thought that in the absence of slavery “he could get more for his work.” The vigilance committee ultimately let him go, observing that no one had heard his comments “except a few other simple people of his own class, whose sympathies would only be increased by a martyr in their own class,

Helper identified himself proudly as a “Southron.”⁹² He was a white native of the North Carolina Piedmont, an area that relied somewhat less on slave labor than the rest of the state. In 1856, he moved to Baltimore, Maryland (a rare Southern community that had an active, if small and sometimes persecuted, Republican Party), and the following year he published *The Impending Crisis of the South: How to Meet It*.⁹³

In his book, Helper argued that slavery had made the South economically “subservient” to the North and severely limited the economic opportunities of non-slaveholding white Southerners like himself.⁹⁴ He made his case principally with scores of statistical tables, compiled mostly from U.S. census reports, comparing the Northern and Southern economies. He presented the two regions as having engaged in an economic contest, which began with the creation of the federal government, in 1789, when the two sections had roughly equal total population and wealth. His tables suggested that by 1850, the North had sped past the South by every important economic and social measure: total population and population density (the South had few major cities); value of agricultural products; agricultural output per acre; value of farms and domestic animals; tonnage of exports and imports; manufacturing; miles of canals and railroads built; bank capital; number of public schools, teachers, and students; number of public libraries; number of newspapers and rates of circulation; and literacy rates. Though some modern scholars have pointed out errors in Helper’s figures (or questioned whether slavery hampered economic growth), Helper saw his tables as irrefutable evidence of slavery’s effects.⁹⁵ He stressed that while the South was

however their tongues might be stilled by the terror of the example.” Shore, *Southern Capitalists*, 69-70.

⁹² Hinton Rowan Helper, *The Impending Crisis of the South: How to Meet It* (New York: Burdick Brothers, 1857), vi.

⁹³ See David Brown, *Southern Outcast: Hinton Rowan Helper and the Impending Crisis of the South* (Baton Rouge: Louisiana State University Press, 2006); on Helper’s move to Baltimore and the Republican Party there, see pp. 74-76.

⁹⁴ Helper, *Impending Crisis*, 22.

⁹⁵ Brown, *Southern Outcast*, 88, 88n41. Margo Anderson has observed that both proslavery and antislavery writers, including Helper, “misuse[d] the data”; see Anderson, *American Census*, 53, 55. Robert Fogel and Stanley Engerman argued that Helper erred specifically in his estimates of agricultural production, exports, and land values. While conceding that the North surpassed the South in per capita income in 1840 and 1860, they attributed this gap to the exceptional wealth of the Northeast rather than to Southern economic weakness. They pointed out that the South was hardly an economic backwater, as it exceeded most nations in the world in per capita income in 1860. See Fogel and Engerman, *Time on the Cross: The Economics of American Negro Slavery* (Boston: Little, Brown and Company, 1974), 163-169, 247-257. Yet Fogel and Engerman also hypothesized that slavery might have impeded industrialization even while increasing

once economically self-sufficient, Southerners were now “compelled to go to the North for almost every article of utility and adornment, from matches, shoepegs and paintings up to cotton-mills, steamships, and statuary; ... we are dependent on Northern capitalists for the means necessary to build our railroads, canals and other public improvements; ... and ... nearly all the profits arising from the exchange of commodities, from insurance and shipping offices, and from the thousand and one industrial pursuits of the country, accrue to the North....”⁹⁶ The obvious cause of Southern inferiority, Helper argued, was slavery.

Helper thought that non-slaveholding Southern whites would have turned against slavery already, had not “the oligarchy” (meaning slaveholders) kept them “humbled in the murky sloughs of poverty and ignorance,” and instilled “into their untutored minds passions and prejudices expressly calculated to strengthen and protect the accursed institution of slavery.”⁹⁷ He declared “an exterminating war” against “slavery on the whole, and against slaveholders as a body....”⁹⁸ He called for the abolition of slavery, without compensation to the owners. “Chevaliers of the lash,” he argued, did not deserve compensation. He contended that land values in the South were far below those of the North, which in his view meant that farms of Southern non-slaveholders were worth, collectively, billions of dollars less than what they would have been worth without slavery. Helper charged slaveholders with having “defrauded” non-slaveholders of the difference—and himself, personally, of nearly \$20,000 on the sale of his family farm in North Carolina. He urged non-slaveholders to peaceful revolution: they should vote all slaveholders out of office, enact high taxes on slave property to force owners to emancipate, and use the money raised to colonize freed slaves to

Southern per capita income. Other historians have argued that “the appearance of economic vitality in the antebellum South was misleading” and that “the economic foundations of the slave economy were not conducive to long-term growth.” See Roger Ransom, *Conflict and Compromise: The Political Economy of Slavery, Emancipation, and the American Civil War* (New York: Cambridge University Press, 1989), 53n24, summarizing Gavin Wright, *Old South, New South: Revolutions in the Southern Economy since the Civil War* (New York: Basic Books, 1986), Chapter 2. See also Wright, *Slavery and Economic Development* (2006; Baton Rouge: Louisiana State University Press, 2013), 61-62, 66-67, 73-76; Marvin Fischbaum and Julius Rubin, “Slavery and the Economic Development of the American South,” *Explorations in Entrepreneurial History* 6 (Fall 1968), 116-127. In his own review of the 1850 census and other sources, James McPherson found significant regional disparities in literacy, population growth, technological improvements, manufacturing capacity, and banking capital, among other measures. McPherson, *Ordeal by Fire: The Civil War and Reconstruction* (New York: Alfred A. Knopf, 1982), 23-25; McPherson, *Battle Cry of Freedom*, 91, 92n26, 95.

⁹⁶ Helper, *Impending Crisis*, 21-22.

⁹⁷ *Ibid.*, 59.

⁹⁸ *Ibid.*, 120.

Africa. Yet he also warned slaveholders that if they resisted, they would face terrible consequences:

“[Y]ou shall oppress us no longer.... It is for you to decide whether we are to have justice peaceably or by violence, for whatever consequences may follow, we are determined to have it one way or the other. Do you aspire to become the victims of white non-slaveholding vengeance by day, and of barbarous massacre by the negroes at night? ... Out of our effects your [sic] have long since overpaid yourselves for your negroes; and now, Sirs, you *must* emancipate them—speedily emancipate them, or we will emancipate them for you!”⁹⁹

The Impending Crisis sold a respectable 13,000 copies its first year. In 1859, however, the book became a massive best-seller when the Republican Party issued a shortened version as a campaign pamphlet, called the *Compendium of the Impending Crisis of the South*.¹⁰⁰ At Republican urging, Helper deleted what he called “passages ... regarded as unnecessarily harsh toward slaveholders” (in the passage quoted above, for example, he cut everything after “one way or the other”).¹⁰¹ Yet the book nonetheless became the subject of intense political controversy, and by May 1860 about 140,000 copies of both the original book and the *Compendium* had been sold.¹⁰²

Almost all of its sales, however, were in the North.¹⁰³ In the South, the book was denounced (for example, in resolutions passed by the Florida legislature in

⁹⁹ Ibid., 123-135. Quotations pp. 125, 128, 129 (emphasis in original). While Helper in the late 1850s favored the elimination of slavery, he also expressed deeply racist views at that time, and his racism appears to have become even more virulent after emancipation. See George Frederickson, “Introduction,” to Helper, *Impending Crisis* (Cambridge, MA: Harvard, Belknap, 1968), xli-lxi, and Brown, *Southern Outcast*, 43-68, 107-115, 213-247.

¹⁰⁰ The *Compendium* was about half the number of pages of the original book, owing to smaller typeface and deleted passages, but it was not strictly an abridgment. It included a new chapter, “Testimony of Living Witnesses,” a compilation of antislavery statements by contemporaries; also, a later, enlarged edition of the *Compendium* added statements of support for Helper’s book from the Upper South. See Brown, *Southern Outcast*, 130, 141-144, 148.

¹⁰¹ Ibid., 142-144, quotation p. 142; compare Helper, *Impending Crisis*, 128-129, with Helper, *Compendium of the Impending Crisis of the South* (New York: A.B. Burdick, 1860), 65.

¹⁰² Brown, *Southern Outcast*, 182. For how *The Impending Crisis* became involved in the bitterly fought contest for Speaker of the House in 1859-1860, which gave the book enormous publicity, see pp. 152-184.

¹⁰³ Copies of the book are known to have circulated in the Upper South. See Brown, *Southern Outcast*, 146-147.

December 1859) as “treasonable,” and anyone caught distributing copies risked running afoul of the Southern incendiary speech laws.¹⁰⁴ In fact, in 1859-1860, Texas and Kentucky enacted their first incendiary speech laws, and South Carolina enacted a new incendiary speech law, possibly in part to block circulation of the *Compendium*. The South Carolina and Texas laws followed the example of the Virginia law of 1836 in mandating censorship of antislavery publications in the U.S. mail.¹⁰⁵ (See Appendix.)

There were notable prosecutions or attempted prosecutions of white Southerners seeking to sell or circulate Helper’s book. In western Virginia, a Republican named William Stevenson was indicted in county court for loaning a copy of the book to his neighbors. When he arrived at court to contest the charge, a hostile mob apparently showed up, only to find that a posse of his neighbors was accompanying him. In the resulting “confusion” and “excitement,” the trial was “postponed,” and Stevenson remained a free man.¹⁰⁶ In South Carolina, Harold Wyllys was less fortunate. For giving away a copy of Helper’s book, he was sentenced to a year in jail.¹⁰⁷ Perhaps the best-documented *Impending Crisis* case, however, occurred in North Carolina and involved Rev. Daniel Worth.

Worth, like Helper, was from upcountry North Carolina. Born in 1795 to a white Quaker family, he moved to Indiana in 1822 and eventually became a minister with the abolitionist-leaning Wesleyan Methodists.¹⁰⁸ In November 1857, he returned to his native state as a missionary. He settled near where he had grown up, and where many of his slaveholding relatives still lived. Over the next two years, besides preaching antislavery sermons, he sold 50 copies of *The Impending Crisis* and ordered more.¹⁰⁹ He thereby risked prosecution under the North Carolina incendiary publications law, enacted thirty years earlier in response to David Walker’s *Appeal*, and reenacted in slightly modified form in 1854. He would

¹⁰⁴ The Acts and Resolutions adopted by the General Assembly of Florida, at an Adjourned Session (Tallahassee: Dyke & Carlisle, 1859), 96-97.

¹⁰⁵ *Acts of the General Assembly of the State of South Carolina, Passed in December 1859* (Columbia: R.W. Gibbes, 1859), 768-769; H.P.N. Gammel, comp., *The Laws of Texas 1822-1897* (Austin: Gammel Book Co. 1898), 10 vols., 4:1461-1462; Harvey Myers, comp., *A Digest of the General Laws of Kentucky* (Cincinnati: Robert Clarke & Co., 1866), 381.

¹⁰⁶ Eaton, *Freedom-of-Thought Struggle*, 245; quotation from Thomas C. Miller and Hu Maxwell, *West Virginia and Its People* (New York: Lewis Historical Publishing Company, 1913), 2:600. Stevenson was later a governor of West Virginia.

¹⁰⁷ Merritt, *Masterless Men*, 274.

¹⁰⁸ Noble J. Tolbert, “Daniel Worth: Tar Heel Abolitionist,” *The North Carolina Historical Review* 39:3 (1962), 284, 286; on the Wesleyan Methodists, see John R. McKivigan, *The War against Proslavery Religion: Abolitionism and the Northern Churches, 1830-1865* (Ithaca: Cornell University Press, 1984), 84-85.

¹⁰⁹ Curtis, *Free Speech*, 289.

not have been the first. In 1850, another Wesleyan preacher had been prosecuted and convicted for giving a white girl a pamphlet that claimed slaveholders violated the Ten Commandments. Faced with whipping and imprisonment, he had been allowed to leave the state.¹¹⁰ For Worth, matters came to a head in late 1859, when he began to be attacked in the North Carolina press. “*Why is not this man arrested?*” editorialized one newspaper. “If the law will not take hold of him, let the strong arm of an outraged people be stretched forth to arrest him in his incendiary work.” On December 22, 1859, Worth was taken into custody.¹¹¹

Over the next four months, Worth was tried twice, in two separate counties, before two separate juries (although the same judge). The trials received national attention, and Northerners paid for his legal counsel. Worth’s lawyers argued that the incendiary publications law was being too broadly applied; it was intended to suppress the free distribution of pamphlets and leaflets to black people, not the sale of books to white people.¹¹² The prosecution argued that if jurors did not convict, the “darkness of midnight would be lighted up with our burning buildings to see the massacred bodies of our wives and children...”¹¹³ Jurors sided with the prosecution. Worth was convicted in both trials and sentenced, as the law required for first offenders, to a year in jail. The judge chose not to exercise the option of having him “put in the pillory and whipped,” possibly because he feared that flogging a senior white clergyman might help Republicans win votes in the North. Instead, the judge allowed Worth to post bail and leave the state. Worth did so in a closed carriage, presumably out of fear that he would be attacked by a mob.¹¹⁴ Meanwhile, state and local authorities interviewed every person thought to have bought a copy of *The Impending Crisis* from him and searched their homes.¹¹⁵ The North Carolina legislature also in 1861 amended the seditious publication law. Punishment for a first offense would no longer be a year in jail, but death.¹¹⁶ (See Appendix.)

¹¹⁰ Ibid., 262-263.

¹¹¹ Ibid., 290-291; quotation in Tolbert, “Daniel Worth,” 291-292.

¹¹² Tolbert, “Daniel Worth,” 300. Worth’s lawyers would make these arguments the basis of an appeal to the North Carolina Supreme Court, where they would lose (the appeal took place after Worth left the state). Ibid., 302.

¹¹³ Tolbert, “Daniel Worth,” 299.

¹¹⁴ Ibid., 301.

¹¹⁵ Ibid., 294-295.

¹¹⁶ Curtis, *Free Speech*, 295-296.

The Suppression of the Republican Party

The Republican Party, which promoted Helper's book, had been organized in 1854 and 1855 around the central demand of stopping the spread of slavery into the Western territories and thereby preventing the addition of more slaveholding states to the Union. In 1856, the Republicans ran their first candidate for president, John C. Frémont of California, who only narrowly lost to the Democratic candidate, James Buchanan of Pennsylvania. Almost all of Frémont's support came from outside the South. According to official returns, he received just a handful of votes in two of the fourteen slaveholding states in which a popular election was held (Delaware and Maryland), and no votes at all in the others.¹¹⁷ Four years later, when Lincoln won the national election, he did only slightly better in the South, winning a small number of votes in five slaveholding states (Delaware, Maryland, Virginia, Kentucky, and Missouri), and none in the others.¹¹⁸

Historians have rarely examined why, according to official returns, Republicans received literally zero votes in most of the South in the elections of 1856 and 1860. This lack of Republican votes is particularly remarkable given that the formal barriers limiting a party's ability to obtain votes in this era were exceedingly low. Since the 1890s, when states began to adopt the Australian ballot, new parties have had to gain access to an official, government-printed ballot in order to receive many votes. This process can sometimes be complex and expensive and must be completed weeks or months before election day. In the elections of 1856 and 1860, by contrast, there were no government-printed ballots. Each voter simply turned in a "ticket" with his preferred candidates' names on it, which at that point became a legal "ballot." Anyone could print a ticket at any time, up to and including election day, and political parties typically printed ballots listing their candidates' names and distributed them to sympathetic voters. A few states (all in the South) did not even require ballots, allowing votes to be cast by voice. New, small parties could and sometimes did appear just days before an election in some places, distributing tickets and winning a substantial number of votes.¹¹⁹

¹¹⁷ *Guide to U.S. Elections*, 763.

¹¹⁸ *Ibid.*, 764.

¹¹⁹ See David Moss, Marc Campasano, and Dean Grodzins, "An Australian Ballot for California?" (Harvard Business School Case 716-054, February 2016; revised July 2017); Alicia Yin Cheng, *This Is What Democracy Looked Like: A Visual History of the Printed Ballot* (Hudson: Princeton Architectural Press, 2020). The Southern states of Virginia, Kentucky, and Missouri also allowed *viva voce* voting in the 1856 and 1860 elections; see Paul Bourke and Donald DeBats, *Washington County: Politics and Community in Antebellum America* (Baltimore: Johns Hopkins University Press, 1995), 9.

These low barriers to political entry did not help the Republican Party in the South because—strikingly—the party was actively suppressed across most Southern states. Thus, the presidential elections of 1856 and 1860 in these states were anything but “free and fair.” The suppression of the Republican Party grew logically from the earlier suppression of abolitionism, even though the Republicans denied that they were abolitionists. Many Southern leaders dismissed Republicans’ promises not to “interfere” with slavery in the South as a smoke screen, intended to disguise the Republicans’ true intentions.

Tellingly, white Southerners frequently referred to members of the party as “Black Republicans.” Northern and Southern Democrats alike used this nickname to reinforce their claim that Republicans favored “negro equality.” Yet in the South especially, other connotations of the term “Black Republican” came to the fore. It was a play on the term “Red Republican,” commonly used in English-speaking countries to describe the red-cap-wearing radicals of the French Revolution of 1789 and the most radical European revolutionaries of 1848.¹²⁰ As John Townsend of South Carolina asked, “What difference would it make to us, whether our lives and fortunes were controlled by Red Republican France, or Black Republican Massachusetts...?”¹²¹ He and other Southern political leaders considered the “Black Republicans” just like the Red, believing that both wanted to overthrow the existing social order and constitutional system and were willing to use violence to do it. “Those French desperadoes who design the destruction of life and property are called Red Republicans,” noted another writer. “Why should not the reckless advocates of abolition ... be called the Black Republicans?”¹²²

Many white Southerners believed that the rise of the “Black Republicans” in the North was linked to a rise in slave unrest that they perceived in the South. During and immediately following the presidential election of 1856, white officials and vigilante groups charged enslaved people with plotting to massacre white people in Texas, Tennessee, Kentucky, Louisiana, Arkansas, Missouri, Mississippi, Alabama, Florida, Maryland, and Virginia. Vigilance committees killed many of the accused. A few of the plots were allegedly instigated by white men—usually natives of the North who had moved to the South and were thought to harbor

¹²⁰ For the association of the terms “Black Republican” and “Red Republican,” see Don H. Doyle, *The Cause of All Nations: An International History of the American Civil War* (New York: Basic Books, 2015), 91, 100; see also Merritt, *Masterless Men*, 268-269.

¹²¹ [John Townsend], *The South Alone Should Govern the South, and African Slavery Should Be Controlled by Those Only, Who Are Friendly to It* (Charleston: Evans & Cogswell, 1860), 10.

¹²² Quoted in Merritt, *Masterless Men*, 269.

antislavery beliefs. The accused individuals were subjected to arrest, expulsion from the South, whipping, and even lynching in some cases.¹²³

When Republicans could not be credibly accused of directly instigating slave unrest, they were still often blamed for provoking it. A former Tennessee congressman explained how he thought such provocation had played out in his state. Just weeks after the 1856 election, white leaders in Tennessee claimed to have uncovered a murderous slave plot in the state. The Republican candidate, Frémont, seemed to have had no support in Tennessee (officially, he got zero votes), but Democratic and Know-Nothing stump speakers had crossed the state denouncing Republican ties to abolitionism. The speakers had drawn enthusiastic crowds wherever they went—and this, the former congressman thought, was the problem. As he explained in a letter to a newspaper, while the white listeners in every crowd had indignantly rejected the Republicans, “a long line of sable visages upon the outskirts ... were turned eagerly toward the speaker.... They managed to comprehend one idea, and that was ... that the institution of slavery would be much less secure if Frémont was elected....” These enslaved people, the former congressman alleged, went home and talked about this “one idea ... until at length they came to entertain the belief that the inhabitants of the North were so thoroughly enlisted in their cause that they would assist them in their work of slaughter.”¹²⁴

Many white Southerners, in short, viewed the Republican Party as an existential threat. They were alarmed and outraged that some white Southerners, at least, found the Republican message or candidates appealing, and they feared that a Republican presence of any kind could incite enslaved people to resist or even rebel. For these reasons, they sought to eradicate the Republican Party from the South entirely. The following three vignettes—from Virginia, North Carolina, and Texas—suggest some of the ways that this was accomplished.

Virginia, 1856

The Republican national convention in Philadelphia in June 1856, which nominated Frémont, welcomed delegations from the slaveholding states of Delaware, Kentucky, Maryland, and Virginia. By party rules that year, Virginia,

¹²³ Harvey Wish, “The Slave Insurrection Panic of 1856,” *The Journal of Southern History* 5:2 (1939), 206-222. See also e.g. “Slave Insurrections,” *The Liberator* (Boston), December 12, 1856.

¹²⁴ “Rumored Insubordination in the South,” *Daily National Intelligencer* (Dec. 22, 1856), 3. The writer was Lucien Chase. For other contemporary observers making the same point, see Wish, “Slave Insurrection Panic,” 207.

the most populous state in the South, was entitled to a delegation of forty-five members. Only three showed up, however.¹²⁵ One of them was John C. Underwood, a native New Yorker who had married into a prominent Virginian family. Since the 1840s, he and his wife had maintained an 800-acre farm in the northern part of the state, without use of enslaved labor.¹²⁶ Underwood spoke to the convention, asking why Virginia was not represented “here to-day as in 1776,” when Virginians had been at the forefront of the American Revolution. He blamed the “blighting curse” of slavery, which had “crushed humanity” in his state. The “fate of Virginia,” he declared, “should be a warning” to the nation.¹²⁷

While Underwood was still in the North, news reports of his speech reached his white neighbors. They immediately held a public “indignation meeting,” which one Virginia newspaper praised as “large and respectable.” The meeting passed resolutions denouncing the “principles” of the Republican platform as “unjust and incendiary in their tendency,” calling Underwood’s claim to represent them “a libel upon our institutions and an insult to us as citizens.” The meeting also appointed “a committee ... to wait upon Mr. Underwood, and inform him ... that they deem it just and advisable that he should leave the State as speedily as he can find it in his power so to do.”¹²⁸ Both Underwood’s brother and his wife wrote to him, urging him not to come home because “the excitement is so great against him that he will be mobbed.” Underwood called for his wife and son to join him in temporary exile, and they stayed for the next several months in New York City.¹²⁹

In August, 500 Frémont supporters in Wheeling, in northwestern Virginia, attempted to hold a mass meeting. Hecklers interrupted the pro-Frémont speeches, and when the lead speaker, a local physician, tried to leave the hall, a mob attacked him. Anticipating that this might happen, he was carrying a knife. He tried to defend himself, but this only inflamed his attackers further. He probably would have been lynched had not the sheriff seized him and jailed him, apparently for his own protection; no member of the mob, however, was arrested.¹³⁰ Over the next few weeks, threats against “Frémont men” continued. A

¹²⁵ Richard G. Lowe, “The Republican Party in Antebellum Virginia, 1856-1860,” *The Virginia Magazine of History and Biography* 81:3 (1973), 262.

¹²⁶ Lowe, “Republican Party,” 261-262; Eaton, *Freedom-of-Thought Struggle*, 265.

¹²⁷ *Proceedings of the First Three Republican National Conventions of 1856, 1860, and 1864, Including Proceedings of the Antecedent National Convention Held at Pittsburgh, in February 1856, as Reported by Horace Greeley* (Minneapolis: C.W. Johnson, [1893]), 80.

¹²⁸ “Indignation Meeting,” *Richmond Whig* (July 1, 1856), 2.

¹²⁹ Lowe, “Republican Party,” 263-264; quotation from “A Black Republican in Virginia,” *Daily Advocate* [Baton Rouge, La.] (July 11, 1856), 2.

¹³⁰ “Republicanism in Virginia—What Freedom means at the South,” *New York Daily Times* (Aug. 26, 1856), 2. Lowe, “Republican Party,” 264.

prominent citizen of Wheeling received an anonymous letter, telling him to stay away from any “black republican” meetings, or “[n]o one knows what will happen.”¹³¹ Nonetheless, other Frémont meetings were held in northwest Virginia. In September, a Republican convention defiantly gathered in Wheeling and nominated a ticket of presidential electors.¹³²

During the fall campaign, Virginia Republicans faced continual harassment. One observer noted that many who liked Frémont did not “dare” vote for him, because anyone who tried would “hear himself held up as a black hearted villain and his cause as one of treason.” Threats of physical violence against Frémont supporters were so common that Republicans grimly joked about having to write their wills before going to the polls. In November, on election day, some Republican voters were assaulted, and one, a native of Connecticut living in Norfolk, was run out of town by a mob. In the end, according to a Wheeling newspaper, Republicans received just 291 votes in the entire state.¹³³ Official returns, however, showed Frémont to have received zero votes in Virginia. (Official returns also indicated that Frémont received zero votes in two other states represented at the 1856 Republican convention, Kentucky and Missouri.)¹³⁴

Benjamin Hedrick (North Carolina, 1856)

In September 1856, a New York newspaper backing Frémont claimed that Republicans had enough support in the South to field full slates of Frémont electors in Virginia, Kentucky, Maryland, Texas, and North Carolina. The *North Carolina Standard*, the most influential Democratic paper in the state, responded in an editorial that the claim was a “vile slander on the Southern people.” If there were any Frémont supporters in North Carolina, the editorial added, they should “be silenced or required to leave,” because “[t]he expression of black Republican opinions in our midst, is incompatible with our honor and safety as a people.”¹³⁵

The *Standard* apparently had someone specific in mind: 29-year-old Benjamin Sherwood Hedrick. Like Hinton Helper and Daniel Worth, he was a white native of the Piedmont region of North Carolina. Hedrick had graduated

¹³¹ “A Fremont Man in Virginia,” *New York Herald* (Sep. 28, 1856), 2.

¹³² Lowe, “Republican Party,” 265.

¹³³ *Ibid.*, 265, 267.

¹³⁴ *Guide to U.S. Elections*, 763. The other slaveholding state represented at the 1856 Republican convention was Maryland; according to official returns, Frémont received 285 votes there.

¹³⁵ J.G. de Roulhac Hamilton, “Benjamin Sherwood Hedrick,” *James Sprunt Historical Publications* (Chapel Hill: University of North Carolina, 1911), 10:8.

from the University of North Carolina, Chapel Hill (UNC), pursued graduate studies at Harvard University (on Sundays, going to Boston to hear antislavery preaching), and returned to Chapel Hill to take a position as professor of agricultural chemistry.¹³⁶ In August, when state elections had taken place, a student asked him whom he would vote for in the presidential race, and he responded that he wanted to vote for Frémont. Soon, rumors swirled around campus that he was an abolitionist, and students burned him in effigy. Then came the editorial response to the New York newspaper in the *North Carolina Standard*, which subsequently published an anonymous letter expressing alarm that “a professor at our State University is an open and avowed supporter of Fremont, and declares his willingness—nay, his desire—to support the black Republican ticket....”¹³⁷ The letter-writer insisted that this situation “ought and must be looked to. We must have certain security ... that at State Universities at least we will have no canker worm preying at the very vitals of Southern institutions.”¹³⁸

Hedrick wrote to the *Standard* to defend himself. In a letter that the newspaper published on October 4, he explained that he would vote for Frémont because “I like the man,” and because Republicans were right to oppose the extension of slavery. He argued that his position was not at all anti-Southern, pointing out that the “great Southern statesmen of the Revolution,” such as Jefferson, had decried the evils of slavery. Hedrick also argued that slavery had limited the economic opportunities of white North Carolinians. He denied that he had ever tried to influence the political beliefs of his students and mocked the notion that he was somehow responsible for exposing them to antislavery ideas. To stop the students from encountering criticism of slavery, he pointed out, Jefferson’s writings would have to be purged from the university library.¹³⁹

On October 6, an “indignation meeting” in Murfreesboro denounced Hedrick’s views as “subversive of and inimical to the true interests of our rights as a people....”¹⁴⁰ Every significant newspaper in the state attacked him (except one, edited by his uncle, who made no public comment but rebuked him privately for stirring up trouble).¹⁴¹ The public clamor for Hedrick’s dismissal from the university grew intense. On October 18, the Executive Committee of the UNC

¹³⁶ For a biography, see Michael Thomas Smith, *A Traitor and a Scoundrel: Benjamin Hedrick and the Cost of Dissent* (Newark: University of Delaware, 2003).

¹³⁷ Hamilton, “Benjamin Sherwood Hedrick,” 10. Note, the quoted passage uses “Fremont” rather than “Frémont.”

¹³⁸ *Ibid.* (emphasis in original).

¹³⁹ *Ibid.*, 12-15.

¹⁴⁰ *Ibid.*, 21-22.

¹⁴¹ Monty Woodall Cox, “Freedom During the Fremont Campaign: The Fate of One North Carolina Republican in 1856,” *The North Carolina Historical Review* 45:4 (1968), 378-379; Smith, *A Traitor and a Scoundrel*, 83.

Trustees voted to fire him, even though some of its members doubted that they had the legal authority to do so. As one trustee explained in a letter to the university president, "The 'outside pressure' was too great."¹⁴²

Months earlier, Hedrick had agreed to attend an educational conference in Salisbury, his hometown. Now, despite having been fired, he decided to go. The first day of the conference passed uneventfully, but when he left it for the evening, he was met by a mob. It carried an effigy of him, on which was hung a sign: "Hedrick, leave or tar and feathers." The mob burned the effigy in his presence, then followed him to the friend's house where he was staying, heckling him all the way. He left Salisbury before sunrise.¹⁴³ Days later, he and his wife left the state altogether. He would spend the remainder of his career in New York and Washington, DC.¹⁴⁴ The *Standard*, which had launched the campaign against him, expressed satisfaction with the outcome: "Our object was to rid the University and the State of an avowed Fremont man; and we have succeeded. ... [N]o man who is avowedly for John C. Fremont for President, ought to be allowed to breathe the air or to tread the soil of North Carolina."¹⁴⁵ According to official returns, Frémont received zero votes in North Carolina in the November 1856 election.

The "Texas Troubles" (1860)

In 1853, David Hoover, a white native of Indiana, moved to northern Texas, in the Dallas region. Within a few years, he owned 800 acres of land, with fifty under cultivation. Some people noticed that he neither owned enslaved people nor "hired" (rented) any to work for him, but rather employed only free white workers. Suspicious, they questioned him about his views on slavery. By his own account, he told them that he "thought [slavery] was wrong," that he opposed "the further extension of slavery," but that he "was equally opposed to meddling with it in the States where it already existed by law." Hoover later recalled that he only used "cautious and temperate ... language" when talking about slavery and had been "careful never to speak against slavery in the presence of negroes." It began to be "whispered around the neighborhood" that he was a "Black Republican."¹⁴⁶

¹⁴² Hamilton, "Benjamin Sherwood Hedrick," 32-33. Quotation p. 33.

¹⁴³ *Ibid.*, 36-37; Smith, *A Traitor and a Scoundrel*, 84-85.

¹⁴⁴ See Smith, *A Traitor and a Scoundrel*.

¹⁴⁵ Hamilton, "Benjamin Sherwood Hedrick," 39. Again, the quoted passage uses "Fremont" rather than "Frémont."

¹⁴⁶ "An Indianan Driven Out of Texas," *Worthington White River Gazette* (Nov. 8, 1860), 4. This reprints a long extract of a letter by Hoover, which appeared originally in the *Lafayette Courier*. The article gives his name only as "D. O. Hoover"; but see also Charles

The rumors were apparently correct about his party preference. Hoover later reported that in the 1856 presidential election, he and another local man had voted for Frémont (although according to official returns, Frémont received zero votes in Texas).¹⁴⁷ “The fat was then in the fire,” he recalled. “Whispers gave way to audible curses, and I was openly denounced as a ‘d-----d Abolitionist’....” Hoover’s nephew overheard a group of men plotting to tie him to a “black jack” tree, strip him, and flog him with a raw-hide whip.¹⁴⁸

Hoover must have known this was not idle talk. In September 1856, in southeast Texas, vigilantes had announced that they had stopped an alleged slave insurrection organized by Mexicans. In response, the vigilantes executed five black people, two by whipping them to death, and ordered all Mexicans to leave the county in five days or be killed. News of the alleged plot had caused alarm, with vigilance committees being formed across the state. In October 1856, one of them had seized a white migrant from Ohio for allegedly plotting a slave revolt and given him a hundred lashes.¹⁴⁹

Hoover nonetheless stood his ground, possibly because he had allies among his fellow Northern Methodists. In 1844, the Methodist Episcopal Church (MEC) – the principal white Methodist denomination – had divided over whether to enforce an old denominational rule that clergy should not own slaves.¹⁵⁰ Proslavery members had broken away to form their own denomination, the MEC, South, called the “Southern Methodists.” Those who chose not to break away came to be called “Northern Methodists.” Most of them, like Hoover, rejected abolitionism. The Northern Methodists retained many Southern members, including four thousand slaveholders. (White Methodists with abolitionist views, such as Daniel Worth, tended to belong to the Wesleyan Methodists, while black Methodists – among them, David Walker – usually belonged to an African Methodist denomination.)¹⁵¹ Northern Methodists, despite mostly opposing

Elliott, *South-Western Methodism: A History of the M.E. Church in the South-West, from 1844 to 1864* (Cincinnati: Poe & Hitchcock, 1868), 211, where his name is given as “David A. Hoover.” That his fellow Northern Methodists would know his given name seems likely, so we use the name “David.”

¹⁴⁷ “An Indianan Driven Out of Texas”; *Guide to U.S. Elections*, 763.

¹⁴⁸ “An Indianan Driven Out of Texas.”

¹⁴⁹ Donald E. Reynolds, *Texas Terror: The Slave Insurrection Panic of 1860 and the Secession of the Lower South* (Baton Rouge: Louisiana State University Press, 2007), 13-14; Wish, “Slave Insurrection Panic,” 208.

¹⁵⁰ The most important black Methodist denominations in this era were the African Methodist Episcopal Church (AME), to which Walker had apparently belonged, and the African Methodist Episcopal Zion Church, which had been founded in 1821. Walker’s involvement with black Methodism is a theme in Hinks, *To Awaken My Afflicted Brethren*.

¹⁵¹ McKivigan, *War Against Proslavery Religion*, 84-87.

abolitionism, were widely distrusted among white Texans as “unsound” on slavery.

Enough Northern Methodists had settled in northern Texas by the mid-1850s that the MEC sent missionaries to the region. The most senior of them was Rev. Anthony Bewley, a Tennessee native who had spent much of his career in Missouri. Sometime after the 1856 election, Bewley began holding religious meetings at Hoover’s house. This development led Hoover’s neighbors to escalate their threats. They told Hoover that they would “attend to” him and any Northern Methodist who preached at his house. As Hoover later explained, everyone “understood” what the threat meant: they would be tied to a tree and whipped and would have to leave Texas or be hanged “without judge or jury.”¹⁵²

Meanwhile, in March 1859, Bewley himself met with the threat of violence when he attended a Northern Methodist conference in Timber Creek, about forty miles from Dallas. The gathering alarmed some local leaders, who considered the participants to be “spies and forerunners of the invading army of abolitionism.” These anxious leaders also held a public meeting that appointed a committee to “wait upon” the conference. On Sunday, March 12, the committee, accompanied by two hundred armed, mounted vigilantes, interrupted the delegates’ worship services. The committee spokesman, a prominent local lawyer, strode to the front of the congregation and warned those present – Bewley among them – to end the meeting and stop their work in Texas. The conference quickly adjourned, and efforts to organize Northern Methodists in Texas collapsed. Bewley left the state in late 1859.¹⁵³

Fear of antislavery infiltration into Texas, however, did not subside, and strategies for how best to combat it became a topic of discussion in the state legislature. In December 1859 and January 1860, the Texas House of Representatives debated whether to ban persons from settling in Texas “who belong to any religious sect or association, political party or organization” that aimed “to abolish the institution of slavery as it now exists in this State.” The Texas House also considered whether to require every potential settler to swear under oath “that he does not belong to such sect or party, or organization, and that he is not opposed to slavery.”¹⁵⁴

¹⁵² “An Indianan Driven Out of Texas”; Reynolds, *Texas Terror*, 148-149.

¹⁵³ Reynolds, *Texas Terror*, 15-17, 149.

¹⁵⁴ *Texas House Journal, Eighth Legislature, Regular Session*, 249-250; see also, *Texas State Gazette Appendix, Containing Debates in the House of Representatives of the Eighth Legislature, of the State of Texas*, Vol. IV (Austin: State Gazette Office, 1860), 68-70. These were proposed amendments to a “pre-emption” or “donation” bill, which would grant state-owned land to settlers.

A sponsor of these proposals argued that they had become necessary because “emissaries of a certain religious sect ... infested, some months ago, the northern section of this State, and that in their boldness, sentiments were uttered upon the highways inimical to the institution of slavery.”¹⁵⁵ Some legislators objected that the proposed ban was a religious test (“Are you going to establish an Inquisition here in Texas,” one asked), but most representatives from north Texas, including a leader of the attack on the Timber Creek conference, rejected the proposed laws on proslavery grounds.¹⁵⁶ Enacting such measures would only “give the abolitionists reasons to suppose there is a sympathy for them in this State.” Even worse, the proposed legislation implied that the region was “unsound” on slavery. North Texans, one representative proudly pointed out, “have never yet allowed the utterance of sentiments antagonistic to the interests of the South to go unpunished....”¹⁵⁷ Despite these objections, the proposals won a close preliminary vote in the Texas House, though they did not ultimately become law.¹⁵⁸

In February 1860, the legislature did add a provision to the Texas penal code on the crime of “Exciting insurrection or insubordination.” In many features, it followed the example of other Southern “incendiary speech” laws. Like them, it banned writing or printing, or circulating writing or print, that was “calculated to produce in slaves a spirit of insubordination with the intent to advise or incite negroes in this State, to rebel or to make insurrection.” The penalty was prison for up to seven years. The provision also banned, under penalty of two to four years in prison, anyone from making a public statement “that masters have not right of property in their slaves.” To this, however, the law added a new element. It mandated a prison term of two to five years for any “free person” who “privately or otherwise than publicly” tried to “bring the institution of slavery (African) into dispute in the mind of any free inhabitant of this State, or of any resident for the time being therein...” In other words, a white person who criticized slavery in private conversation with other white people, as David Hoover seemed to have done, would now be guilty of a serious crime. The law also mandated that the mail be censored, perhaps aiming to stop circulation of *The Impending Crisis*. Specifically, it required that U.S. postmasters in Texas intercept incendiary

¹⁵⁵ *Texas State Gazette Appendix*, 82; see also, 66.

¹⁵⁶ Quotation, *Texas State Gazette Appendix*, 69; see also, 75. On the involvement of Rep. Robert H. Taylor of Fannin, Texas, in the Timber Creek incident, see p. 82. Taylor spoke at the “indignation” meeting the day prior to the attack; we have not yet determined whether he participated in the attack, but many of those who spoke in the meeting also participated in the attack; see Reynolds, *Texas Terror*, 15-17.

¹⁵⁷ *Texas State Gazette Appendix*, 75; see also, 66.

¹⁵⁸ *Texas House Journal, Eighth Legislature, Regular Session*, 250. The version of the preemption law as finally enacted did not have these provisions; see H.P.N. Gammel, comp., *The Laws of Texas 1822-1897*, 4:1384.

publications and turn them over to a local justice of the peace, who would be obliged to burn them.¹⁵⁹ (See Appendix.)

Hoover now had not only public opinion against him, but arguably the law as well; and with the 1860 presidential election looming, anti-Northern sentiment and fears of slave unrest could be expected to run high. Then on July 8, 1860, a fire burned much of Dallas to the ground. Over the coming days, other fires broke out in nearby north Texas communities. Phosphorous matches probably caused the blazes. Widely used at the time, these matches were known to combust in their boxes in hot weather, and the region was experiencing a heat wave. Yet prominent north Texans made an alarming announcement: the fires, they claimed, had been set by enslaved people, who had been incited to arson by a secret network of white Northern abolitionists operating throughout the state. The resulting panic produced what became known as the “Texas Troubles” (or sometimes, the “Texas Terror”). Rumors flew that one town after another had been reduced to ashes. For nearly three months, vigilance committees arrested enslaved people and whipped them until they confessed that white Northerners had supplied them with matches, guns, and poison. The vigilantes acted on the principle that, as one explained to a newspaper, “it is better for us to hang ninety-nine innocent (suspicious) men than to let one guilty one pass, for the guilty one endangers the peace of society....”¹⁶⁰ There were eyewitness and press reports of at least thirty people, black and white, being lynched; perhaps as many as a hundred were killed altogether, and many settlers from the North were forced to leave the state.¹⁶¹

David Hoover was one of those who left, having realized sometime in August that he was in imminent danger of having his life “sacrificed at the hands of a brutal mob.”¹⁶² He fled on horseback, leaving behind his family, “some of whom were sick.” Two months later, after a journey of over a thousand miles, he arrived in Illinois, penniless and ill. Yet he was more fortunate than his former

¹⁵⁹ Gammel, *Laws of Texas* 4:1461-1462 (see p. 1457 for the Act that included this law, and p. 1464 reflecting the Act’s passage). See also, “An Act, Supplementary to [and] amendatory of an act, entitled an act to adopt and establish a Penal Code for the State of Texas,” Title 19, Chapter 1, Article 653. The authors would like to thank the Texas State Library and Archives Commission for supplying us with a copy of the manuscript of this Act, which lists its title and date of passage.

¹⁶⁰ [John Townsend], *The Doom of Slavery in the Union: Its Safety Out of It* (Charleston: Evans & Cogswell, 1860), 34-37, quotation p. 36.

¹⁶¹ See “Texas Troubles,” <https://tshaonline.org/handbook/online/articles/vetbr>; David Reynolds, *Texas Terror: The Slave Insurrection Panic of 1860 and the Secession of the Lower South* (Baton Rouge: Louisiana State University Press, 2007).

¹⁶² “An Indianan Driven Out of Texas.”

minister Bewley. In Hoover's words, Bewley had been "sacrificed to the Moloch of slavery."¹⁶³

Bewley had returned to Texas in the spring of 1860, planning to move to the southern part of the state and evangelize among the large community of German immigrants there, who were thought to be indifferent if not hostile to slavery.¹⁶⁴ He had stopped in north Texas, however, probably to spend time with old parishioners such as Hoover.¹⁶⁵ He was there when the Dallas fire occurred. Bewley had been the most prominent Northern Methodist missionary in Texas and rumors began to circulate that he had been the ringleader of the alleged abolitionist conspiracy. Realizing that his life was in danger, he left Texas on July 17 in a wagon, accompanied by his wife and a young son. Vigilance committees offered a \$1000 bounty to anyone who captured him and brought him back for punishment. On September 3, a posse caught him in southwest Missouri. He was carried first to Arkansas, where he wrote a farewell letter to his family in which he protested his innocence and promised to meet them in heaven. Taken to Fort Worth late on September 13, he was immediately hanged. The next morning, his body was cut down and buried in a shallow grave. About three weeks later, his body was exhumed, his bones stripped, and his skeleton placed on display atop a Dallas warehouse. Boys would play with it, setting "the bones in a variety of attitudes by bending the joints of the arms and legs, and ... mocked [the skeleton] by crying, 'old Bewley,' 'old abolitionist,' etc."¹⁶⁶

Meanwhile, newspapers across the South spread reports of the "Abolition Plot in Texas." During the fall presidential election campaign, some white

¹⁶³ "Returning," *Centerville Indiana True Republic* (Oct. 18, 1860), 2; "An Indianan Driven Out of Texas." Moloch is a pagan god condemned in the Bible, associated with child sacrifice. See Lev. 18:21, 20:2-5.

¹⁶⁴ Most German immigrants in Texas did not own slaves and were "indifferent to the institution." See Walter L. Buenger, *Secession and the Union in Texas* (Austin: University of Texas Press, 1984), 83-84. The most prominent German critic of slavery in Texas was Adolph Douai, editor of the *San Antonio Zeitung*, who in Germany had participated in the 1848 revolutions and in Texas worked with the New York journalist and landscape architect Frederick Law Olmsted on a failed attempt to establish a free state in Western Texas. Douai found himself isolated, impoverished, and sometimes physically threatened for his views; he had left the state in 1856. See Laura Wood Roper, "Frederick Law Olmsted and the Western Texas Free-Soil Movement," *American Historical Review* 56:1 (1950), 58-64; see also, Justine Davis Randers-Pehrson, *Adolph Douai, 1819-1888: The Turbulent Life of a German Forty-Eighter in the Homeland and in the United States*, New German-American Studies, vol. 22 (New York: Peter Lang, 2000).

¹⁶⁵ Reynolds, *Texas Terror*, 149.

¹⁶⁶ *Ibid.*, 150-152, 163. Reynolds discusses a letter that was meant to implicate Bewley in the abolitionist plot, which he convincingly argues was a forgery, pp. 155-167.

Southerners, mostly self-identified “Union men,” questioned whether such a vast conspiracy could have existed, and whether Bewley had really been guilty.¹⁶⁷ Others, especially those who declared the South would have to secede if Lincoln were elected, pointed to Texas as an example of what would happen throughout the slaveholding states “if the Black Republicans were in power.”¹⁶⁸ After Lincoln’s victory, secessionists again referenced Texas to help make their case. As one prominent Georgia secessionist explained in a speech, although most slaves were loyal in his view, a few might become “the incendiary or the poisoner” when “instigated by the unscrupulous emissaries of Northern Abolitionists... What has given impulse to these fears, and aid and comfort to those outbreaks now, but the success of the Black Republicans—the election of Abraham Lincoln!”¹⁶⁹ Notably, Lincoln officially received zero votes in Texas.

From Erosion of Democracy to Secession

Constraints on free expression, public debate, and political organization during the years leading up to the Civil War inevitably distorted political decision-making in the South, including during the pivotal years of 1860 and 1861. The tendency of Southern leaders to deny or even criminalize facts that challenged their worldview may have left them less capable of reaching accurate conclusions about their economic and political strength. At the same time, by treating any challenge to slavery as an existential threat, they cultivated a political siege mentality that seemed to justify extraordinary and blatantly undemocratic measures in response to a perceived emergency.

An Exaggerated Sense of Southern Economic Power

Southern leaders had suppressed the views of those like Hinton Helper who identified weaknesses of the Southern economy and claimed that slavery was the cause. Publications that celebrated the Southern economy, meanwhile, whether written by Southerners themselves or proslavery writers from outside the South, were welcomed. Apparently as a result, many Southern leaders developed an exaggerated sense of the economic power of the slaveholding states, relative both to the North and to Great Britain, the nation that purchased most Southern-grown cotton. Indeed, this exaggerated sense of economic power seems to have

¹⁶⁷ *Ibid.*, 99-100, 155, 160-161.

¹⁶⁸ *Ibid.*, 179.

¹⁶⁹ *Ibid.*, 183.

contributed to many Southern leaders' confidence in pursuing secession in 1860-1861.¹⁷⁰

Key Southern leaders insisted, for example, that the North was economically dependent on the South—not, as Helper had indicated, the other way around—as was Britain, so that if the South declared its independence, the North would have no choice but to acquiesce without a fight and Britain to ally with the South. In a famous speech delivered to the U.S. Senate in 1858, the slaveholding Sen. James Henry Hammond of South Carolina had asserted that if any nation attempted to make war on the South, the South could “[w]ithout firing a gun ... bring the whole world to our feet.” The South, he argued, could easily go three years “without planting a seed of cotton,” but if it did so, “England would topple headlong and carry the whole civilized world with her, save the South. No, you dare not make war on cotton. No power on earth dares to make war upon it. Cotton *is* king.”¹⁷¹ He added, addressing Northerners directly, that Southerners “have sustained you in great measure. You are our factors [cotton brokers]. You fetch and carry for us. ... Suppose we were to discharge you; suppose we were to

¹⁷⁰ “In early 1860, the predominant tone among proslavery voices was present prosperity and potential for future prosperity.” See Shore, *Southern Capitalists*, 70-71 (listing several representative texts). One of the most important journals in the Lower South, *De Bow's Review*, included a number of prominent secessionist leaders among its readership, and by the late 1850s “obscured inherent weaknesses in the region’s industrial and transportation sectors” rather than reporting “candidly [on] the South’s shortcomings.” Shore, 56; Kvach, *De Bow's Review*, 91-92, 132-134. (De Bow’s biographer writes: “Caught up in the excitement of the growing secessionist movement, and feeling the pressure to justify southern independence, De Bow pandered to readers by overlooking or avoiding significant shortfalls in the South’s industrial sector.” Kvach, 91.) Once the war was underway, De Bow believed that writing critically about the Confederate economy or military effort could hurt Southern morale, and his boosterism “distorted information for unwitting readers” already “isolated by war.” Kvach, 135, 137, 142. After emancipation and the end of the war, De Bow conceded for the first time that he believed slavery “impeded industrialization,” that “his editorial vision had been clouded by Southern nationalism,” and that the South was not prepared for war. Skipper, *J. D. B. De Bow*, 216; Kvach, 133. Persky observes that, in the late 1850s, “the self-deprecatory quality of much Southern thought receded,” and was replaced by “a new perception of economic buoyancy,” “increasing optimism,” and “exaggerated notions of Southern power.” This overconfidence in Southern economic strength was, in his words, “an important social psychological event” and a “critical proposition” in the campaign for Southern independence. Persky, *Burden of Dependency*, 87-96.

¹⁷¹ James Henry Hammond, *Selections from the Letters and Speeches of the Hon. James Henry Hammond, of South Carolina* (New York: John F. Trow & Co., 1866), 316-317. Emphasis in original.

take our business out of your hands;—we should consign you to anarchy and poverty.”¹⁷²

Secessionists advanced similar points in 1860 and 1861.¹⁷³ Especially notable are the arguments of South Carolina slaveholder John Townsend, the most popular pro-secession pamphleteer, whose works together sold 165,000 copies in 1860-1861. Townsend insisted on Southern economic superiority in his pamphlet, *The South Alone Should Govern the South, and African Slavery Should Be Controlled by Those Only, Who Are Friendly to It*.¹⁷⁴ He argued that whatever apparent prosperity the North had, it was only owing to “*plunder of the South*” through federal tariffs and taxes.¹⁷⁵ Most Northerners, in his view, misunderstood the true source of their wealth:

They see this copious stream of treasure flowing in upon them, year by year; they see it lavishly expended among them, and every branch of their industry abundantly remunerated; and they innocently suppose that it springs up out of the soil, as it were, of their own section; and that they are indebted to no other people, but *themselves*, for their prosperity.¹⁷⁶

Northerners would discover the truth, Townsend believed, when the South became an independent nation, and “shall bank up this stream, and *turn back upon herself*, the fertilizing current, leaving parched and dry the hitherto luxuriant fields of Northern labor....” Townsend predicted that with Southern independence, a “scramble for *profits*” would ensue between New England and the other Northern states. The intense competition, he thought, would lead the North to split into separate, small confederacies, presumably all vying for Southern favor.¹⁷⁷

Townsend also dismissed the concern that Britain would pose a problem for an independent South, despite Britain having a reputation for “deadly hostility to *slavery* everywhere.” Britain had emancipated the enslaved people in its Caribbean colonies in 1835 and had a large, well-established antislavery movement, which had helped inspire, and was closely allied with, the American abolitionist movement. Nevertheless, Townsend quoted from conservative, proslavery British writers to argue, first, that Britons now thought their emancipation policy had been “a great *political blunder*,” and, second, that Britons

¹⁷² Ibid., 321.

¹⁷³ Hammond himself was hesitant to endorse secession in South Carolina, fearing that the state would act alone. See Freehling, *Road to Disunion*, 2:404-405, 415-418.

¹⁷⁴ Ibid., 2:391, 394; Merritt, *Masterless Men*, 298.

¹⁷⁵ [Townsend], *The South Alone*, 16. Emphasis in original.

¹⁷⁶ Ibid., 17. Emphasis in original.

¹⁷⁷ Ibid. Emphasis in original.

recognized the “*Cotton States*” exerted an “immense influence” on their economy. Southerners, Townsend concluded, “may confidently expect no hostile intermeddling with our Institution from any of the great powers of christendom; but on the contrary, if they did not extend to it an active support and protection, seeing that their own prosperity so much depends upon it, that they would at least regard it with the kindness of friendly neighbors.”¹⁷⁸

Southern opponents of secession operated at a disadvantage in trying to refute these arguments because the fundamental assumption behind them, about the strength of the slave economy, could not always be openly disputed. Among those who tried nonetheless was Sam Houston, who had been a president of the independent Republic of Texas before it became a state, in 1845, and who was serving as governor of Texas during the crisis of 1860-1861. Although a slaveholder and proslavery, he strongly opposed disunion. He argued, first, that “peaceful secession” was a delusion, and that any move for Southern independence would inevitably lead to a catastrophic civil war that “will fill our fair land with untold suffering, misfortune and disaster.”¹⁷⁹ He also ridiculed those who “gravely talk of holding treaties with Great Britain and other foreign powers....”¹⁸⁰ Here, he may have been drawing at least in part on his own experience negotiating with Britain as president of Texas.¹⁸¹ Whether he was or not, he could hardly believe what his fellow Southerners were suggesting:

“Treaties with Great Britain! Alliance with foreign powers! Have these men forgotten history? Look at Spanish America! Look at every petty State, which by alliance with Great Britain is subject to continual aggression! ... Is it reasonable to suppose that England, after starting this Abolition movement and fostering it, will form an

¹⁷⁸ [Townsend], *The South Alone*, 19-20, 57, 55, 58. Emphases original. On the British antislavery movement, see Adam Hochschild, *Bury the Chains: Prophets and Rebels in the Fight to Free an Empire’s Slaves* (New York: Houghton Mifflin, 2005). On connections between British and American abolitionists, see Sinha, *The Slave’s Cause*, 97-105.

¹⁷⁹ Sam Houston, *The Writings of Sam Houston, 1813-1863*, Amelia W. Williams and Eugene C. Barker, eds., 8 vols. (Austin: University of Texas Press, 1938-1943), 8:148, 298-299. On Houston’s life, see Randolph B. Campbell, *Sam Houston and the American Southwest*, 3rd ed., Library of American Biography (New York: Pearson Longman, 2007).

¹⁸⁰ Houston, *Writings*, 8:148.

¹⁸¹ As president of Texas, Houston had championed annexation to the United States. Many U.S. political leaders were reluctant to act, however, so he had sought to alarm them with the possibility that Texas might ally with antislavery Britain. As he explained years later in a speech, “I admit that I have recommended that treaties of reciprocity be made with England, squinting even to the future extinction of slavery in Texas. When at the same time my only object was to turn public opinion in the United States in favor of annexation.” Houston, *Writings*, 6:12.

alliance with the South to sustain slavery? No; but the stipulation to their recognition will be, *the abolition of slavery!*"¹⁸²

Houston's warnings, however, went unheeded, in Texas and in much of the South.

The experience of the South in the Civil War revealed how wrongheaded many of the leading secessionists' expectations had been. The North did not hesitate to go to war to suppress what it viewed as a "rebellion," and Southerners soon learned the limits of what came to be called "King Cotton Diplomacy."¹⁸³ In 1861, the South embargoed cotton exports with the goal of forcing Britain to intervene diplomatically or even militarily on its behalf. Faith in this strategy of economic coercion was so widespread that the Confederate government did not even have to enforce it; cotton exports were stopped instead, and very effectively, by the united action of state legislatures and vigilance committees, coupled with the almost unanimous support of the Southern press.¹⁸⁴ Yet Confederate leaders discovered that the South needed Britain more than Britain needed the South. Unable to buy cotton from America, British textile manufacturers soon switched suppliers, importing cotton from Egypt and India instead.¹⁸⁵ Moreover, British public opinion, outside of certain circles, was far more hostile to slavery than secessionists had led themselves to believe. Once Lincoln signed the Emancipation Proclamation, in 1863, and the war became clearly one of slavery versus antislavery, it became almost impossible politically for the British government to intervene on behalf of the South.¹⁸⁶ By 1865, as Southern defeat seemed increasingly inevitable, the Confederate government finally did as Houston predicted it would have to do, and offered emancipation in exchange for diplomatic recognition. The offer, however, came far too late and was refused.¹⁸⁷

Finally, despite all the bold claims of Northern economic weakness and Southern economic strength, the Union economy grew during the war. The

¹⁸² *Ibid.*, 8:148-149.

¹⁸³ A classic account is Frank Lawrence Owsley, *King Cotton Diplomacy: Foreign Relations of the Confederate States of America* (1931; 2nd ed., Chicago: University of Chicago Press, 1959).

¹⁸⁴ Owsley, *King Cotton Diplomacy*, 23-42; see also, Charles M. Hubbard, *The Burden of Confederate Diplomacy* (Knoxville: University of Tennessee Press, 1998), 26.

¹⁸⁵ Beckert, *Empire of Cotton*, 242-273.

¹⁸⁶ See Doyle, *Cause of All Nations*, 240-256.

¹⁸⁷ *Ibid.*, 275-279.

Confederate economy, by contrast, suffered severely, plagued by chronic shortages and hyperinflation.¹⁸⁸

Exaggerated Fears of “Black Republican” Rule?

After Lincoln’s election victory, on November 6, 1860, secessionists insisted that a Republican administration posed such a threat to the South that slaveholding states must leave the Union before Lincoln took office as president, on March 4, 1861. This view prevailed in the seven states of the Lower South—South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, and Texas—all of which declared secession between December and February. The Confederate States of America was established in February 1861, and over subsequent months four more states joined the Confederacy: Virginia, Arkansas, North Carolina, and Tennessee.¹⁸⁹

To be sure, Lincoln’s victory reinforced what many Southerners had long feared—that their political power was waning. Northern lawmakers had held a majority in the House of Representatives since the start of the republic, and that dominance had only increased as Northern population growth outstripped that of the South.¹⁹⁰ In the U.S. Senate, free and slaveholding states had been equally represented at the start of 1850, but the balance shifted to the free states that year with the admission of California to the Union. Over the ensuing decade, the free-state advantage in the Senate increased to three (with the admission of Minnesota and Oregon), while an intense Southern push to make Kansas a slaveholding state failed. If the Republicans’ program to halt the expansion of slavery were enacted and enforced, there would be no additional slaveholding states, and the free-state majority in the Senate would only continue to grow. Finally, Southerners had dominated the Executive Branch until 1850, with eight of the first twelve presidents being Southern slaveholders (and the four non-slaveholding presidents all having slaveholding vice presidents), but Lincoln’s election in 1860 (following

¹⁸⁸ On deliberate hyperinflation as a Southern financial policy, see Michael Brem Bonner, *Confederate Political Economy: Creating and Managing a Southern Corporatist Nation* (Baton Rouge: Louisiana State University Press, 2016), 190-191. Bonner compares Confederate monetary policy to that of Weimar Germany. *Ibid.*, 232n15.

¹⁸⁹ According to the Confederate government, Missouri and Kentucky also joined the Confederacy. They were represented in the Confederate Congress, and there are 13 stars on the Confederate battle flag. Yet because Confederates in these states never achieved political control, historians generally do not consider Missouri and Kentucky to have been Confederate states.

¹⁹⁰ John P. McIver, “Apportionment of the House of Representatives: 1787–2000” (Table Eb1–56), in Carter et al., eds., *Historical Statistics of the United States*.

those of Franklin Pierce in 1852 and James Buchanan in 1856, both non-slaveholders from Northern states) seemed to confirm that Northerners now controlled the presidency as well.¹⁹¹

Nonetheless, the secession movement struck at least some Southern leaders as politically unnecessary. Houston, for example, urged Southerners to continue advancing their interests through the existing political process, like countless Americans before them whose candidate or party had not prevailed in an election. Southerners were certainly not without conventional political resources after Lincoln's victory. Although Lincoln had won a majority of the popular vote in the North, he had won only a plurality of the national vote – just 39.8%, the lowest of any presidential candidate before (or since) to win an Electoral College majority.¹⁹² The public could therefore plausibly be rallied against the Republican agenda. As Alexander Stephens of Georgia pointed out, in opposing the secession of his state, “Mr. Lincoln has been elected ... by a minority of the people of the United States. ... [A] majority of the constitutional conservative voters of the country were against him.... Therefore let us not be hasty and rash in our action....”¹⁹³

¹⁹¹ See n.17 above. The four slaveholding vice presidents of non-slaveholding presidents before 1850 were Thomas Jefferson (Virginia, 1797-1801); John C. Calhoun (South Carolina, 1825-1829); Richard M. Johnson (Kentucky, 1837-1841); and John Tyler (Virginia, 1841). Note that Presidents Pierce and Buchanan had slaveholding vice presidents as well: respectively, William R. King (Alabama, 1853) and John C. Breckinridge (Kentucky, 1857-1861). The only other non-slaveholding president before 1860, Millard Fillmore, was himself a vice president who attained office on the death of a president (Zachary Taylor) and so had no vice president. Lincoln was therefore the first non-slaveholding president with a non-slaveholding vice president, Hannibal Hamlin (Maine). On the Southern domination of the federal government in the antebellum period, beyond the presidency and vice presidency, see Leonard L. Richards, *The Slave Power: The Free North and Southern Domination, 1780-1860* (Baton Rouge: Louisiana State University Press, 2000), 9; and Matthew Karp, *This Vast Southern Empire: Slaveholders at the Helm of American Foreign Policy* (Cambridge, MA: Harvard University Press, 2016), 4, 226-227.

¹⁹² *Guide to U.S. Elections*, 764, says 39.9%, but the correct figure (based on the underlying vote counts) is 39.8%. The only winning presidential candidate to get a lower popular vote percentage was John Quincy Adams in 1824 with 30.9%, and his was a special case. Adams had placed behind Andrew Jackson in both the popular and Electoral vote, but as no candidate had won an Electoral College majority, the presidential election was thrown to the U.S. House of Representatives, following the procedure of the Twelfth Amendment, which chose Adams.

¹⁹³ William W. Freehling and Craig M. Simpson, eds., *Secession Debated: Georgia's Showdown in 1860* (New York: Oxford University Press, 1992), 54-55. Later, after Georgia declared secession despite Stephens's objections, he would decide to support the Confederacy and agree to become the Confederate vice president.

Houston agreed that there was no need for a Southern “revolution,” observing further that the “checks and guarantees” of the Constitution—meaning, both Congress and the Supreme Court—were “in our favor.”¹⁹⁴ Although Republicans had won the Presidency in November 1860, they had not secured majorities in the House and Senate for the 37th Congress originally scheduled to convene in December 1861.¹⁹⁵ The precise balance of power that would have existed in the absence of secession cannot be known because some congressional elections in the South were not scheduled to take place until late 1861, and thus were preempted by secession. Immediately after Lincoln’s victory, however, during the first weeks of the Southern secession debate, advocates on both sides noted that Republicans would not fully control the upcoming Congress.¹⁹⁶ The Unionist Houston made this point; so did the secessionist Howell Cobb of Georgia, who reluctantly conceded that there would be a “majority in the two Houses of Congress” against Lincoln (although he insisted it would be “an uncertain and at best trembling” one).¹⁹⁷ Alexander Stephens, himself a longtime congressman and careful political observer, calculated that a majority of thirty would be against Lincoln in the House and a majority of four against him in the Senate. “The President of the United States is no emperor, no dictator,” Stephens pointed out. “He can do nothing unless he is backed by power in Congress.” With Congress against him, Stephens concluded, Lincoln would be “powerless.”¹⁹⁸ As for the Supreme Court, seven of the nine justices sitting on the Court in 1860-1861 had endorsed the *Dred Scott* ruling of 1857, which found the Republican program of banning slavery in the territories to be unconstitutional.¹⁹⁹ Any of Lincoln’s antislavery acts might therefore be subjected to successful legal challenge.

¹⁹⁴ Houston, *Writings*, 8:194-195.

¹⁹⁵ Although the 37th Congress was originally scheduled to convene in December 1861, it in fact convened beginning on July 4, 1861. See <https://history.house.gov/Institution/Session-Dates/30-39/> and <https://www.senate.gov/artandhistory/history/resources/pdf/ExtraSessions.pdf>.

¹⁹⁶ Contemporary analysis accords with this view. Most of the Northern states had held their congressional elections before secession, and the seats Republicans had secured so far (108 in the House and 31 in the Senate) were less than half of the full 238 and 68 seats in those chambers. Once the secessionists vacated their seats, the House and Senate shrank to 183 and 50 seats, respectively, affording Republicans a majority in the “Civil War” Congress. Kenneth C. Martis, *The Historical Atlas of Political Parties in the United States Congress, 1789-1989* (New York: Macmillan Publishing Company, 1989), 35-36.

¹⁹⁷ *Ibid.*, 8:194; Cobb, “Letter ... to the People of Georgia” (1860), in Jon L. Wakelyn, ed., *Southern Pamphlets on Secession, November 1860-April 1861* (Chapel Hill: University of North Carolina Press, 1996), 97.

¹⁹⁸ Freehling and Simpson, *Secession Debated*, 56-57.

¹⁹⁹ Not only were all seven of the justices who made the *Dred Scott* ruling still on the Court in 1860-1861, one of the dissenters from that case had been replaced by a justice

Southerners might also have taken comfort from Republicans' repeated statements, including from Lincoln himself, that although they opposed the spread of slavery, they would not "interfere" with it in the states where it already existed. In Lincoln's First Inaugural Address in March 1861, he took care once again to reassure Southerners: "I have no purpose, directly or indirectly to interfere with the institution of slavery in the States where it exists." He even announced that he had "no objection" to a proposed Constitutional amendment that would have barred any subsequent amendment authorizing Congress "to abolish or interfere" with slavery "within any State."²⁰⁰

By this point, however, the Southern drive to defend not only slavery but a particular vision of slavery had gone so far, requiring severe erosion of basic democratic protections and even the suppression of the Republican Party itself as seditious, that it seemed virtually impossible that enough Southern leaders and voters would tolerate a "Black Republican" president, no matter what assurances were provided. Under these circumstances, the logic of secession appeared all but inevitable, particularly across the Lower South.

The Undemocratic Secession Process

Yet even against this backdrop, secessionists apparently felt the need to cut corners. Not only did secession in many ways represent a culmination of years of democratic erosion in the South—and also a literal manifestation of democratic breakdown, involving as it did the rejection of a lawful electoral outcome—but it also exemplified a profound corruption of democratic norms and process in the very way it was achieved.

Nominally, at least, secession was cast as a democratic project. In ten of the eleven seceded states, "supralegislative" conventions had been called, understood to represent the people acting in their "sovereign capacity."²⁰¹ Delegates to these

understood to have Southern sympathies. Only one justice from this period, John McClean, was known to be sympathetic to the Republicans. See *Dred Scott v. Sandford* 60 U.S. 393 (1857), <https://www.supremecourt.gov/about/members.aspx>.

²⁰⁰ Lincoln, First Inaugural Address—Final Text, *Collected Works*, 4:263, 270. The text of the proposed amendment can be found at <https://www.usconstitution.net/constamfail.html>.

²⁰¹ We borrow the term "supralegislative" to describe these conventions from Drew Gilpin Faust, *The Creation of Confederate Nationalism: Ideology and Identity in the Civil War South* (Baton Rouge: Louisiana State University Press, 1988), 34. For convention elections in ten of the eleven seceded states, see Ralph A. Wooster, *The Secession Conventions of the South* (Princeton, NJ: Princeton University Press, 1962), 14, 26, 51, 68, 82, 103, 141, 156,

conventions, chosen by special election, proceeded to debate and vote on whether to pass an “ordinance” of secession. Five states added popular referenda to the process: three referenda on whether to hold the convention at all, and three on whether to ratify secession.²⁰² By all appearances, states that declared secession acted with overwhelming popular approval. The convention votes for the various state secession ordinances were lopsided, and in the three ratification referenda, in Texas, Virginia, and Tennessee, voters approved secession by large majorities.²⁰³

These procedures drew on various democratic precedents. Over the years, some Southern states had called special conventions to determine and declare the position of their “sovereign peoples” on notable issues of state-federal relations.²⁰⁴ More generally, seceding states self-consciously followed the process used to ratify the U.S. Constitution. In both 1787-1788 and 1860-1861, a series of popularly elected state conventions did the work. The latter conventions, of course, had a very different purpose—“deratification.”²⁰⁵ Of the eleven effective “ordinances” of secession, seven were explicitly framed in terms of repealing ratification of the Constitution.²⁰⁶ After deratifying the U.S. Constitution, the secession conventions

179, 192. In Texas, the convention elections were not called by the legislature, but by a group of secessionists in the “Austin Call,” as we discuss below.

²⁰² In February 1861, referenda on whether to call a secession convention were held in Arkansas, North Carolina, and Tennessee; a convention was approved in Arkansas and rejected in the latter two states. Wooster, *Secession Conventions*, 156-157, 179-180, 192-193. Once the Civil War began, the North Carolina legislature called a convention in spite of the earlier referendum result, and delegates, chosen by popular vote, approved secession. *Ibid.*, 195, 203. The Tennessee legislature ultimately approved an ordinance of secession without holding a convention and submitted the secession ordinance for popular approval. *Ibid.*, 182. In all, ordinances of secession were submitted for approval by referendum in Texas (in February), Virginia (in May), and Tennessee (in June). *Ibid.*, 132-133, 149, 188.

²⁰³ For the convention vote results, see *ibid.*, 22, 37, 59, 74, 91, 111, 130, 149, 165, 182, 202-203. Missouri, which although claimed by the Confederacy was never really part of it, held a convention that rejected secession 89-1. *Ibid.*, 232.

²⁰⁴ One such convention produced the influential “Georgia Platform,” endorsing the compromise of 1850. See the *Journal of the State Convention, Held in Milledgeville in December 1850* (Milledgeville: R.M. Orme, 1850).

²⁰⁵ A comparison between the secession movement and the ratification of the Constitution, with the argument that the two processes were analogous, appears in Mark Neely, Jr., *Lincoln and the Triumph of the Nation: Constitutional Conflict in the American Civil War* (Chapel Hill: The University of North Carolina Press, 2011), 241-248.

²⁰⁶ The other 4 secession ordinances declared the state had withdrawn from the Union or that its ratification of the Constitution was annulled. Note that the Confederate government recognized 13 secession ordinances; those of Kentucky and Missouri, however, were made by minority governments that never controlled their states. The 11 effective secession ordinances are collected in Albert Bushnell Hart and Edward

proceeded to ratify the Constitution of the Confederacy.²⁰⁷ Finally, the secession conventions followed the example of prior state constitutional conventions.²⁰⁸ Several of them, in fact, debated and proposed amendments to their state constitutions.²⁰⁹ Southerners could draw on abundant experience here. Between 1790 and 1851, the Southern states held at least 22 state constitutional conventions.²¹⁰ At least 9 of these, including the Texas constitutional convention of 1845 and the Virginia conventions of 1830 and 1850, had submitted their work to the voters for ratification, just as the 1861 conventions of Texas and Virginia submitted their ordinances of secession for popular approval.²¹¹

The secession process was therefore, in form, democratic. Voters participated either in the election of delegates to the secession conventions, or in secession referenda, or both. Yet the process was in fact no more “free and fair” than the presidential elections of 1856 and 1860 had been in most Southern states. Based on various “ballot tests” of the time, one historian estimates that in the weeks following Lincoln’s victory, most white Southerners, possibly over 70%,

Channing, eds., *American History Leaflets, Colonial and Constitutional, No. 12: Ordinances of Secession and Other Documents, 1860-1861* (New York: A. Lovell, 1893).

²⁰⁷ William C. Davis, *Look Away! A History of the Confederate States of America* (New York: Free Press, 2002), 107-111.

²⁰⁸ The Texas secessionist Oran Milo Roberts drew the analogy between the secession conventions and state constitutional conventions in his *Speech ... upon the “Impending Crisis”* ([Austin]: n.p., 1860), 3, which became an immense best-seller (see Freehling, *Road to Disunion*, 2:451).

²⁰⁹ Faust, *Creation of Confederate Nationalism*, 34, notes this, as does Neely, *Lincoln and the Triumph of the Nation*, 263-264.

²¹⁰ Conventions that produced new or completely revised state constitutions were held in the following places and years: Alabama, 1819; Arkansas, 1836; Delaware, 1792, 1831; Florida, 1838 (for the territory of Florida); Georgia, 1798; Kentucky, 1799, 1850; Louisiana, 1812, 1845, 1852; Maryland, 1851; Mississippi, 1817, 1832; Missouri, 1820; South Carolina, 1790; Tennessee, 1796, 1834; Texas, 1836 (for the independent Republic of Texas), 1845; Virginia, 1830, 1850. Poore, *Federal and State Constitutions*, 1:32, 101, 278n, 289n, 317, 388n, 657, 668, 700, 711n, 725n, 837n; 2:1054n, 1067n, 1104n, 1628, 1667n, 1677n, 1754n, 1767n, 1912n, 1919n.

²¹¹ The Texas Constitution of 1845 provides for its popular ratification in Art. XIII, Sec. 5; the Virginia Constitution of 1830 does so in its Preamble, and of 1850 does so under the heading Schedule, Sections 2 and 3. The others were the Florida Constitution of 1838 (Art. XVII, Sec. 5); the Louisiana Constitutions of 1845 (Title X, Arts. 150-152) and 1852 (Title XI, Art.150-152); the Mississippi Constitutions of 1817 and 1832 (see Poore, *Federal and State Constitutions*, 2:1054n, 1067n); the Tennessee Constitution of 1834 (see Poore, *Federal and State Constitutions*, 2:1677n, 1689-1690). For popular ratification of the Ordinances, see 1861, Feb 1, Texas’ Ordinance of Secession, Sec. 2 (Hart and Channing, *No. 12: Ordinances*, p. 15); 1861, April 17, Virginia’s Ordinance of Secession, penultimate paragraph (*ibid.*, p. 18).

opposed immediate secession. Some considered secession to be treason, or at least reckless and foolish. But even many of those who were open to the possibility of secession thought it could be justified only in response to some “overt act” by the new Republican administration, or only after the complete breakdown of negotiations with the North, or only if all Southern states could agree to secede at the same time.²¹² At first, those demanding immediate secession seem to have had

²¹² The 70% estimate and the reference to “ballot tests” come from Freehling, *Road to Disunion*, 2:345. Freehling does not identify these tests, but we would include the November 1860 presidential election and state votes concerning secession conventions in February 1861. The presidential election is not an exact test, because there was only a general, not strict, correlation between support for certain candidates and support for secession or Unionism. Although all four candidates declared themselves Unionists, the Southern Democrat, John C. Breckinridge of Kentucky, was a champion of “Southern Rights” and had the conspicuous support of leading advocates of secession, such as John Townsend (although he also had the support of some committed Unionists). In the South, the contest was primarily between Breckinridge and the Constitutional Unionist candidate, John Bell of Tennessee, a champion of sectional compromise favored by most Southern opponents of secession. Besides Breckinridge and Bell, Southerners could vote for the Northern Democrat, Stephen A. Douglas of Illinois, who competed in every Southern state and declared during the campaign that secession would be treason, and Lincoln, who competed in parts of five Upper South states. Bell and Douglas, generally seen as the principal anti-secessionist options, together received 53% of the total Southern vote, carried majorities in seven of the fifteen slaveholding states (Georgia, Kentucky, Louisiana, Maryland, Missouri, Tennessee, and Virginia), and fell just shy of half the vote in two others (Arkansas and North Carolina). Adding Lincoln’s constrained Southern vote share of 2% (entirely from the Upper South) brings the overall vote in the South for candidates who opposed secession (Bell, Douglas, and Lincoln) to 55%. In the eight Upper South states, where almost two-thirds of white Southerners lived, Bell, Douglas, and Lincoln together received just over 60% of the vote. On the 1860 contest between Breckinridge, Bell, and Douglas, especially in the South, see Michael F. Holt, *The Election of 1860: “A Campaign Fraught with Consequences”* (Lawrence: University Press of Kansas, 2017), 141-152; for Douglas’s declaration that secession would be treason, see *ibid.*, 151; for population data, see Ransom, “Population of the slave states, by state, race, and slave status: 1860-1870” (Table Eh1-7), in Carter et al., eds., *Historical Statistics of the United States*; for the election results, see *Guide to U.S. Elections*, 764. In February 1861, more direct electoral tests of secession occurred in the Upper South, where voters in five states cast ballots related to secession conventions. Three states held referenda on whether to hold secession conventions, along with elections for delegates to the conventions if they were held. In Tennessee (Feb. 9), the convention was voted down 69,675-57,798, and anti-secessionist candidates won by a total of 91,803-24,749; in North Carolina (Feb. 28), the convention was defeated 47,323-46,672, while anti-secessionist candidates won 78 of the 120 delegates and carried 52 of 82 counties. In Arkansas (Feb. 18), voters approved the convention, but anti-secessionists won the delegate elections with 23,626 total votes to the secessionists’ 17,927. In two other states, Virginia and Missouri, the state legislatures passed bills

majority support of the public and political leaders in only three Lower South states—South Carolina, Mississippi, and Florida—and even in these, there appears to have been significant resistance.²¹³ Nonetheless, the “immediatist” minority was able to seize control of the process in all seven Lower South states, which all declared secession in the winter of 1860-1861. Although the secessionist movement initially stalled in the eight Upper South states, the secession of the Lower South (and the Confederate firing on Fort Sumter on April 12) set the terms of political debate there, and four Upper South states eventually seceded in the spring of 1861.²¹⁴

calling for a convention, and voters then elected the convention delegates; in Virginia (Feb. 4), anti-secessionists captured between 106 and 120 of 152 seats, and in Missouri (Feb. 18), delegates opposed to secession won by a total vote of 110,000 to 30,000. See Wooster, *Secession Conventions*, 179-180, 192-193, 156-157, 141-142, 225-226. In January, meanwhile, in Georgia, the most populous state in the Lower South, opponents of secession apparently won more votes than secessionists in delegate elections to the secession convention (see the main text).

²¹³ Freehling, *Road to Disunion*, 2:345; Stephanie McCurry, *Confederate Reckoning: Power and Politics in the Civil War South* (Cambridge, MA: Harvard University Press, 2010), 53-54.

²¹⁴ Four of the fifteen slaveholding states—Delaware, Maryland, Kentucky, and Missouri—sided with the Union in the Civil War. In addition, northwestern Virginia refused to join the rest of Virginia in declaring secession in 1861, and it ultimately entered the Union as the State of West Virginia in 1863. The usual factors historians highlight to explain the loyalty of these northernmost slaveholding states, called the Border South, are that they had close social and economic ties to the North; their economies and societies were less tied to slavery than elsewhere in the South; there was a regional political tradition of favoring sectional compromise; and they did not want to become Civil War battlegrounds. (See William C. Harris, *Lincoln and the Border States: Preserving the Union* [Lawrence: University Press of Kansas, 2011], 2.) We would add that while the Border South saw significant democratic erosion before the Civil War, this erosion appears to have been less severe than in the rest of the South. Three of the four border states that existed in 1860 had enacted one or more incendiary speech laws by this time. These included Missouri (1837, 1845, and 1855), Maryland (1842), and Kentucky (1860). Yet unlike in much of the rest of the South, the legal suppression of antislavery speech was not as strongly reinforced by extralegal terror. Across most of the South, the chronic threat of lethal violence against anyone even rumored to harbor abolitionist or “Black Republican” sympathies, “encouraged silence, caution, and fear about broaching anything but unqualified praise of slavery” (David Grimsted, *American Mobbing, 1828-1861* [New York: Oxford University Press, 1998], 123). By contrast, in the border region, although it had its own history of mobbing, criticism of slavery was to an extent tolerated. Many Kentuckians, for example, followed Henry Clay’s lead in conceding that slavery was a “necessary evil,” years after proslavery (“positive good”) ideology became ascendant in other slaveholding states, especially across the Lower South. (See Tallant, *Evil Necessity*, 1-7.) Perhaps partly as a result, two notable white critics of slavery were able to have long careers in Kentucky: the newspaper editor and

politician Cassius Marcellus Clay, who like Hinton Helper denounced slavery as an economic disaster for white people (leading Helper to dedicate the *Compendium* to him), and who helped to organize the Kentucky Republican Party; and the abolitionist clergyman John G. Fee, who tried in the 1850s to establish a racially integrated school and college in Berea (which would eventually open as Berea College). Life for neither man was easy – both faced not only opposition but hostility and violent threats – but in the Lower South, they almost certainly would have been driven out sooner (as Fee ultimately was) or even killed. (Clay and Fee’s careers are described in Freehling, *Road to Disunion*, 1:462-474; 2:222-245; see also Tallant, *Evil Necessity*, 116-128, 165-219, and Grimsted, *American Mobbing*, 128-134. For Helper’s dedication of his *Compendium* to Clay, see Helper, *Compendium of the Impending Crisis*, ii.) Also, efforts to suppress the Republican Party along the border, unlike in the rest of the South, did not fully succeed: Republicans found a toehold there, and Lincoln won votes (not many, but also not zero) in all four border states that existed in 1860. Almost three-quarters of the popular votes that Lincoln received in Virginia (the only other slaveholding state where he received popular votes) were cast in the northwestern part of the state that would become West Virginia. (On breakdowns of the 1860 vote in Virginia by county, see “The 1860 Presidential Vote in Virginia,” accessed December 31, 2019, <http://www.wvculture.org/history/statehood/1860presidentialvote.html>.) To be sure, there was significant support for secession along the border – an estimated 90,000 Confederate soldiers came from there, and Kentucky and Missouri even had minority secessionist governments, recognized by the CSA – yet support for the Union and “neutrality” were also strong, and secessionists never gained political control. (For the estimate of Confederate soldiers enlisting from the Border South, see William W. Freehling, *The South vs. The South: How Anti-Confederate Southerners Shaped the Course of the Civil War* [New York: Oxford University Press, 2001], 61.) There appears to be a correlation, therefore, between less severe democratic erosion on the one hand, and less expansive support for secession on the other, both of which were evident in the Border South as compared to the rest of the South. It is also true, however, that a lower share of the population was enslaved in the Border South as compared to the rest of the South (approximately 13% versus 40%), and this could potentially help to explain *both* lower degrees of democratic erosion *and* lower support for secession there. (On shares of population enslaved, see Haines, “State Populations” (Series Aa2244–6550), and Susan B. Carter, “Black population, by state and slave/free status: 1790–1860” (Series Bb1–98), in Carter et al., eds, *Historical Statistics of the United States*; and James Morton Callahan, *Semi-Centennial History of West Virginia* [Semi-Centennial Commission of West Virginia, 1913], 56.) Complicating the analysis still further is the fact that the federal government intervened forcefully to ensure the border states stayed in the Union; President Lincoln suspended habeas corpus in many areas, for example, allowing the army to arrest suspected Confederate sympathizers without trial. The loyalty of the border to the Union, in other words, was not entirely a free choice. Still, it is notable that the Border South seems to have experienced less democratic erosion during the antebellum years and, ultimately, significantly less support for secession as compared to the rest of the South.

Secessionists triumphed in 1860-1861 in no small part because, just as they rejected the political legitimacy of the “Black Republicans,” so they rejected that of their Southern opponents. They saw anti-secessionists as “submissionists,” whose cowardly willingness to submit to Republican rule posed a dire threat to slavery. As a result, secessionists felt justified in subverting and manipulating the democratic process to override their critics. The secessionist John Townsend, in another of his best-selling pamphlets, *The Doom of Slavery in the Union: Its Safety Out of It*, forcefully expressed the secessionists’ attitude:

“In this great turning point in the destiny of the South no man can remain neutral. ... He who is not for her, in this hour of her extremity, is, without being conscious of it perhaps, against her, to the last end of her existence. Knowing, as he ought to know, the extreme dangers which are about to fall upon his country, THE “UNIONIST” OF THE SOUTH IN 1860, IS THE “SUBMISSIONIST,” NOW, AND WILL EVER BE, HENCEFORTH, AND FOREVER; AND WILL BE AN ABOLITIONIST OF THE NORTH IN 1870!”²¹⁵

Townsend’s South Carolina was the first state to declare secession, on December 20, 1860. Preceding this outcome had been the October elections for the state legislature, which would call the secession convention. Secessionism seems to have been popular with South Carolina voters, and secessionists may well have won this election without manipulation. Yet they took no chances. One recent historian has aptly described the secessionists’ election campaign as “paramilitary,” largely run by vigilance committees and militia companies, who actively and sometimes violently suppressed dissent.²¹⁶ One South Carolinian later recalled that anyone “with a public reputation for unionism ... would not have been allowed to live here.”²¹⁷ In as many as half of all districts in the October elections, secessionists made sure that only one slate of candidates was running, pledged to vote for immediate secession if Lincoln won the presidency.²¹⁸ One well-known Unionist was threatened with hanging if he stood for election.²¹⁹ A Unionist farmer in Beaufort, where the declared candidates were all secessionists, later reported that “feeling ran so high” during the campaign that he did not even dare to “abstain from voting” and so cast a blank ballot.²²⁰ Predictably, this election produced a legislature that one contemporary described as “tremendously out and

²¹⁵ [Townsend], *The Doom of Slavery*, 26-27. Emphasis in original.

²¹⁶ McCurry, *Confederate Reckoning*, 47.

²¹⁷ *Ibid.*, 49.

²¹⁸ *Ibid.*, 50-51.

²¹⁹ Sinha, *Counterrevolution of Slavery*, 202, 235.

²²⁰ McCurry, *Confederate Reckoning*, 49.

out secession.”²²¹ When it held an initial vote on whether to call a secession convention, only 14 members were opposed, and they were quickly persuaded or pressured to change their position. The final vote was 117-0.²²² When the elections for convention delegates took place, on December 6, secessionists controlled them even more tightly than they had the legislative contest; almost all of the candidates were publicly pledged to take South Carolina immediately out of the Union.²²³ At the convention, delegates endorsed secession by a vote of 169-0.²²⁴

In no other Lower South state did secessionists achieve a unanimous convention vote, but in all of them advocates employed repressive tactics like those applied in South Carolina. In the various state elections for secession convention delegates, which for the Lower South (apart from South Carolina) all took place in January 1861, voter turnout was dramatically lower, by 20% or more, compared to the presidential election in November, and the low turnout seems to have helped secessionists. As one historian has noted, the “fewer people voting, the better secession did.”²²⁵ The low turnout may have partly resulted from the collapse of regular party competition during the secession crisis (a collapse with lasting effect: there would be no organized political parties in the Confederacy).²²⁶ Yet the low turnout also apparently stemmed from intimidation of opponents of immediate secession, everywhere attacked as “submissionists” and “traitors,” and from manipulation of the voting process. When a Unionist voter in Mississippi sought a Unionist ticket, for example, he was informed that “none had been printed, and that it would be advisable to vote a secession ticket.”²²⁷

Another tactic used by secessionists was to seize federal property in the South, even before secession conventions had the chance to act, creating the perception that secession was a *fait accompli*. Several pro-secession governors, for example, ordered state militia to seize U.S. forts and arsenals (which was possible because most of them, at the time, were lightly defended).²²⁸ In Louisiana, the

²²¹ Ibid., 51.

²²² Ibid., 52.

²²³ Ibid., 51.

²²⁴ Wooster, *Secession Conventions*, 22.

²²⁵ Merritt, *Masterless Men*, 301; David Williams, *Bitterly Divided: The South's Inner Civil War* (New York: The New Press, 2008), 36.

²²⁶ A classic study on this subject is Seymour Martin Lipset, *Political Man: The Social Bases of Politics*, expanded ed. (Baltimore: The Johns Hopkins University Press, 1981 [1960]), Ch. 11 (“The Emergence of the One-Party South—the Election of 1860”).

²²⁷ Merritt, *Masterless Men*, 301.

²²⁸ *Seizure of Forts, Arsenals, Revenue Cutters, and Other Property of the United States* (U.S. House of Representatives Report no. 91, Feb. 28, 1861), 3, reports that fourteen federal forts, as well as other federal property, such as mints and post offices, had been seized as of that time. See also Silvana R. Siddali, “‘The Sport of Folly and the Prize of Treason’:

secessionist governor issued such an order just days before the election of delegates to the secession convention.²²⁹ In Alabama, Florida, and Georgia, secessionist governors each ordered the seizure of federal installations before (in the case of Alabama and Florida, just before) delegates at the respective state secession conventions were to decide whether to take their states out of the Union.²³⁰

The actions of secessionists in Georgia and Texas show the extent to which they were willing to manipulate the democratic process – and, arguably, violate the rule of law – to achieve their desired goal. In Georgia, there was considerable opposition to immediate secession. Most of the opponents were either “conditional Unionists,” who thought secession might be justified under some circumstances, but that Lincoln’s election in and of itself was not one of them, or “cooperationists,” who thought secession was only feasible if all Southern states agreed to leave the Union together. In the election for delegates to the Georgia state convention, on January 2, opponents of immediate secession apparently won a slim majority of the popular vote. The pro-secession governor, however, refused to release the result. Instead, the day after the election, he ordered the state militia to seize Fort Pulaski, the principal U.S. Army installation in the state. When the convention met, in mid-January, secessionists turned out to have secured a narrow majority of the delegates.²³¹ In one key test vote, they prevailed 164-133, and in a second, 166-130. At this point, many anti-secessionists appear to have given up, and an ordinance of secession was passed 208-89. Secessionists then passed a

Confederate Property Seizures and the Northern Home Front in the Secession Crisis,” *Civil War History* 47:4 (2001), 310-33. Some of the seized federal installations were unoccupied (troops were only stationed on island forts in wartime, for example, and the country was at peace), or guarded by a token force (in at least one case, by just a single soldier); some forts were seized despite the presence of a federal garrison, because the commanding officer lacked orders from the War Department to resist locals with force and wished to avoid needless bloodshed, and so withdrew; some commanding officers may have turned over their forts because they sympathized with the secessionists.

²²⁹ McCurry, *Confederate Reckoning*, 55.

²³⁰ Freehling, *Road to Disunion*, 2:484.

²³¹ The historian Anthony Gene Cary has concluded that because “delegates were elected by counties, even a closely divided statewide vote could, and did, translate into a controlling convention majority.” Cary, *Parties, Slavery, and the Union in Antebellum Georgia* (Athens: University of Georgia Press, 1997), 249. At the same time, the secessionist majority appears to have been augmented by several delegates, if not more, who campaigned as opponents of secession only to change position in the days after the election, perhaps partly in response to the seizure of Fort Pulaski. See Michael P. Johnson, “A New Look at the Popular Vote for Delegates to the Georgia Secession Convention,” *Georgia Historical Quarterly* 56:2 (1972), 266-267. Note that Johnson does not speculate as to why these delegates changed their position.

resolution requiring all those who had voted against secession to sign “a pledge of the unanimous determination of this Convention to sustain and defend the State ... without regard to individual approval or disapproval of its adoption.” Six days later, the convention voted for an ordinance defining as a traitor to Georgia anyone who “shall adhere to her enemies,” in particular, “the late United States of America.” The punishment for treason was death. Finally, in late April, the governor released the delegate election results from January, which showed (falsely) that secessionists had won 57% of the popular vote.²³²

Texans, owing to the “troubles” of 1860, were already operating in a climate of fear when Lincoln was elected, which seems to have worked to the advantage of secessionists. Nonetheless, Texas secessionists faced a formidable obstacle: Governor Sam Houston, who was not only a firm Unionist but also personally popular. A hero to many Texans, he had won the governorship in August 1859 with almost 57% of the vote.²³³ In the weeks after Lincoln’s victory, the Texas legislature could not call a secession convention because it was out of regular session; Houston, as governor, could have called a special session, but he initially refused. A group of leading secessionists therefore resorted to an extra-constitutional process. They issued a “citizen’s call” for a convention, “suggesting” that the people elect delegates on January 8 for a convention to meet in Austin on January 28.²³⁴ Houston rejected these elections as illegal. He later noted that a “majority of the people stood aloof” from them; only a third of all voters participated, and 30 of the 122 organized Texas counties held no elections at all.²³⁵ As in Georgia, secessionists refused to release the embarrassing official returns.²³⁶ Nonetheless, Houston now felt compelled to call a special session of the

²³² McCurry, *Confederate Reckoning*, 55-59; Freehling, *Road to Disunion*, 2:484; Michael P. Johnson, “A New Look at the Popular Vote for Delegates to the Georgia Secession Convention,” *The Georgia Historical Quarterly* 56:2 (1972), 259-275; *Journal of the Public and Secret Proceedings of the Convention of the People of Georgia, Held in Milledgeville and Savannah in 1861: Together with the Ordinances Adopted* (Milledgeville, GA: Boughton, Nisbet & Barnes, 1861), 26, 45, 382.

²³³ Guide to U.S. Elections, 1650.

²³⁴ For what is also known as the “Austin Call,” see *Journal of the Secession Convention of Texas 1861* ([Austin]: Austin Printing Co., 1912), 9-13. The move for the Call was led by Texas Supreme Court Justice Oran Milo Roberts (who referred to it as a “citizens’ call,” p. 9n); he had helped inspire it with a speech delivered on December 1, 1860, which became a best-selling pamphlet, *Speech ... upon the “Impending Crisis.”* For the impact of the speech, see Freehling, *Road to Disunion*, 2:451.

²³⁵ Houston, *Writings*, 8:280; Hart et al., “Address to the People of Texas!”; Walter L. Buenger, *Secession and the Union in Texas* (Austin: University of Texas Press, 1984), 143.

²³⁶ Houston and other Texas Unionists complained of this. See Houston, *Writings*, 8:280; Hart et al., “Address to the People of Texas!”

legislature, which opened on January 21.²³⁷ He evidently hoped the legislature would counter the convention, but it disappointed him. Lawmakers passed a resolution authorizing the Austin convention to “determine what shall be the future relations of this State to the Union.”²³⁸ Houston at this point recognized the authority of the Austin convention to consider secession. It voted to secede on February 1 and then submitted the question of secession to voters for ratification, in a referendum to be held on February 23.

Over the next few weeks, even though the people of Texas had not yet voted, secessionists acted as if their approval had already been granted. On February 4, the Austin convention chose delegates to represent Texas at the Confederate constitutional convention, then about to meet in Montgomery, Alabama. On February 18, a “Committee on Public Safety” that the Austin convention had appointed, backed by militia, negotiated the surrender of Major General David Twiggs, commander of U.S. forces in Texas.²³⁹ Twiggs (a Georgian who would later take a Confederate command) gave the secessionists control of all federal forts and arsenals in Texas and promised that the 2000-plus U.S. soldiers there, comprising more than a tenth of the total U.S. Army at the time, would soon evacuate the state.²⁴⁰ Just five days after this secessionist coup, Texas voters approved secession, 46,166 to 14,747.²⁴¹

A few weeks later, the Austin convention voted to require that all state officials take an oath to support the Confederate constitution or be removed from office. On March 16, Governor Houston refused to take the oath, and the convention declared that he was no longer governor.²⁴² He issued a statement charging the convention with “usurpation”: “I PROTEST IN THE NAME OF THE PEOPLE OF TEXAS AGAINST ALL THE ACTS AND DOINGS OF THIS CONVENTION, AND I DECLARE THEM NULL AND VOID!”²⁴³ But he

²³⁷ Houston, *Writings*, 8:220-221.

²³⁸ Freehling, *Road to Disunion*, 2:452; *Journal of the Secession Convention of Texas 1861*, 13-14.

²³⁹ *Journal of the Secession Convention of Texas 1861*, 8; Jeanne T. Heidler, “‘Embarrassing Situation’: David E. Twiggs and the Surrender of United States Forces in Texas, 1861,” in Ralph Wooster and Robert Wooster, eds., *Lone Star Blue and Gray: Essays on Texas and the Civil War*, 2nd ed. (Denton, TX: Texas State Historical Association, 2015 [1995]), 65-80.

²⁴⁰ On the size of federal forces in Texas, see J.J. Bowden, *The Exodus of Federal Forces from Texas, 1861* (Austin: Eakin Press, 1986), 3; on the size of the U.S. Army in March 1861, see Howard C. Westwood, “President Lincoln’s Overture to Sam Houston,” *The Southwestern Historical Quarterly* 88:2 (1984), 144.

²⁴¹ Joe T. Timmons, “The Referendum in Texas on the Ordinance of Secession, February 23, 1861: The Vote,” *East Texas Historical Journal* 11:2 (1973), 15-16.

²⁴² *Journal of the Secession Convention of Texas 1861*, 183-184 (March 16, 1861).

²⁴³ Houston, *Writings*, 8:275, 278.

protested in vain, and was replaced as governor of Texas by the pro-secession lieutenant governor, Edward Clark.

Notably, Texas was the only state of the Lower South to have authorized a referendum on secession. Although in South Carolina and Georgia the question of calling a referendum was never officially raised, in Mississippi, Florida, Louisiana, and Alabama opponents of immediate secession did propose that the question of secession be submitted to the voters. These proposals were consistent with the constitutions of at least three and possibly all four of these states: the Mississippi, Florida, and Louisiana constitutions had each been ratified by referendum, and the constitutions of Mississippi, Alabama, and Louisiana specifically required that any constitutional amendment had to be ratified by referendum. Nonetheless, secessionists overrode these constitutional traditions and rules, refusing to submit the question of secession or any constitutional change resulting from it to a popular vote and successfully blocking all attempts to do so.²⁴⁴

In Virginia, in May 1861, and Tennessee, in June, referenda on secession were held, and in both cases voters approved secession by landslide margins – in Virginia, 125,950 to 20,373, and in Tennessee, 104,913 to 47,238.²⁴⁵ Importantly, however, the Civil War was already underway by this point. South Carolina forces had fired on Fort Sumter on April 12, making war between North and South an established fact even before the plebiscites took place. Unionist voters in both Virginia and Tennessee, moreover, were subjected to violent intimidation and even arrest.²⁴⁶ On election day in Virginia, J.W. Butler of Loudoun County voted “no” and was immediately seized by authorities; he would still be languishing in prison in February 1863. He was one of dozens of Unionist voters known to have been arrested.²⁴⁷

Officially, neither Virginia nor Tennessee seceded until its voters spoke. One Virginia secessionist announced as much, solemnly explaining in a public letter a week before the referendum that the people of Virginia could still reject secession, in which case, “in the war now carried on by the Government of the United States against the seceded States, Virginia must immediately change

²⁴⁴ Wooster, *Secession Conventions*, 37, 58-59, 73, 110-111; Poore, *Federal and State Constitutions*, 1:44, 330, 725n, 737-738; 2:1067n, 1077-1078.

²⁴⁵ Wooster, *Secession Conventions*, 149, 188.

²⁴⁶ On Tennessee, see Daniel Crofts, *Reluctant Confederates: Upper South Unionists in the Secession Crisis* (Chapel Hill: University of North Carolina Press, 1989), 345-347.

²⁴⁷ Mark Neely, Jr., *Southern Rights: Political Prisoners and the Myth of Confederate Constitutionalism* (Charlottesville: University Press of Virginia, 1999), 120-122.

sides.”²⁴⁸ Yet in fact, secessionists in Virginia, as in Tennessee, fully anticipated the outcome and acted accordingly. On April 27, almost a month before the Virginia referendum, the Virginia secession convention invited the Confederate government to move from Montgomery to the Virginia capital, Richmond—an offer that was quickly accepted.²⁴⁹

Conclusion

Although the political breakdown associated with secession and the start of the Civil War was not the breakdown of a modern democracy, especially given the presence of slavery and severe restrictions on the franchise, it would be a mistake to ignore this example altogether. Indeed, as we have sought to show, there is much to learn from this troubling case. The decision of so many Southerners to reject the outcome of the 1860 presidential election—and to fracture their democratic institutions—did not emerge out of the blue. It followed decades of democratic erosion, in which Southern leaders had sacrificed core political freedoms of their white constituents in an effort to protect and affirm slavery at any cost. They had severely restricted rights to speech and association, and eventually demonized and effectively banned the Republican Party across most of the South, making meaningful cooperation with their political rivals all but impossible. Along the way, they had developed an exceptionally high tolerance for violating their own democratic norms (i.e., even those applicable only to white males) as well as basic rule of law in pursuit of their cause. In the end, they appear to have profoundly deceived themselves about the realities of slavery, and about the extent of their own power, after forcefully suppressing all opposition and dissent when it came to slavery over so many years. American democracy thus broke down not because of a sudden onslaught of self-consciously anti-democratic forces or thought, but because—at least in part—Americans who regularly celebrated their democratic values and institutions had gradually been willing to subordinate both to what they saw as a higher cause of sustaining a slaveholding society.

Perhaps, as supporters and beneficiaries of this slaveholding society, Southern political leaders’ democratic commitments were simply empty from the beginning, and there was nothing truly democratic for them to corrupt, erode, or break. But this perspective seems hard to reconcile with the democratic aspirations expressed by Southern slaveholders like Thomas Jefferson, who largely penned

²⁴⁸ Quoted in Edward McPherson, *The Political History of the United States of America, During the Great Rebellion* (1864; Fourth ed., Washington, DC: James Chapman, 1882), 7n.

²⁴⁹ Virginius Dabney, *Richmond: The Story of a City*, Rev. ed. (Charlottesville, VA: University Press of Virginia, 1990), 164.

the Declaration of Independence, or James Madison, who was a principal author of both the Constitution and the Bill of Rights. Paradoxically, liberal democratic values did take root alongside slavery in the South, and the erosion of these values that an increasingly aggressive defense of slavery seemed to require proved both real and consequential.²⁵⁰

The critical question for us today (and for this volume) is whether the pattern of political breakdown that took hold in the antebellum South could *only* have occurred in a slaveholding society – and thus be of little relevance to us now – or whether the process of extended erosion and ultimate breakdown could also play out in a modern democracy, even in the absence of slavery. Particularly given the resonance with other accounts in this volume, it seems to us highly problematic, even reckless, to assume the former.

²⁵⁰ A classic study of this paradox is Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: W.W. Norton & Co., 1975).

Appendix Laws in Slaveholding States Restricting Speech Related to Slavery (including antislavery speech and other speech believed to provoke or inspire resistance among enslaved people), 1804-1861

Year law enacted	State or Territory	Speech outlawed	Punishments mandated	Censorship of U.S. mail mandated
1804	Georgia	Speech "tending to incite" any slave or slaves "to sedition, tumult, or disorder"	<i>For speaking or causing to be spoken, or writing or publishing: Banishment from the state "forever"; for violation of banishment, death</i>	
1805	South Carolina	"[I]nflammatory discourse, tending to alienate the affection or seduce the fidelity of any slave or slaves"	<i>For writing or publishing, or delivering a public "discourse": "punishment, not extending to life or limb, as shall be adjudged by the judge or judges presiding in the court"</i>	
1820	South Carolina	Written or printed speech intended "to disturb the peace or security" of the state "in relation to the slaves of the people of this state"	<i>For circulating or bringing into the state: If white: fine up to 1000 dollars and prison up to 1 year If "free person of color": for first offense, fine up to 1000 dollars; for second offense, up to 50 lashes and banishment from the state; for violation of banishment, death</i>	
1824	Florida (territory)	Speech that excites or attempts to excite "an insurrection or revolt of slaves"	<i>For writing, speaking, or "otherwise": death For "accessory threats": Fine up to 1000 dollars, prison up to one year, and whipping up to 39 lashes</i>	
1829	Georgia	Speech "exciting to insurrection, conspiracy, or resistance among the slaves, negroes, or free persons of color of this State"	<i>For circulating print or writing: death</i>	
1830	Louisiana	(1) Written or printed speech "having a tendency to produce discontent among the free colored population of the state, or insubordination among the slaves"	<i>For writing, publishing, distributing (1): prison at hard labor for life, or death For (2), or for "knowingly" bringing (1) into Louisiana: prison at hard labor for 3 to 21 years, or death</i>	

Year law enacted	State or Territory	Speech outlawed	Punishments mandated	Censorship of U.S. mail mandated
		(2) Public or private speech, including "conversations ... signs or actions," having the same tendency		
1830	Mississippi	Written or printed speech "containing any sentiment, doctrine, advice or inuendoes [sic] calculated to produce a disorderly, dangerous or rebellious disaffection among the coloured population of this state, or in anywise to endanger the peace of society"	<i>For white people writing, publishing, circulating, or aiding and abetting doing so: prison for 3-12 months and fine of 100-1000 dollars For black people circulating: death</i>	
1831	North Carolina	(1) Written or printed speech having the "evident tendency ... to excite insurrection, conspiracy or resistance in the slaves or free negroes and persons of colour within the State, or which shall advise or persuade slaves or free persons of colour to insurrection, conspiracy or resistance" (2) speech that endeavors "to excite in any slave or slaves or free negro or person of colour a spirit of insurrection, conspiracy or rebellion"	<i>For publishing or circulating (1): for first offense, prison for 1 year or more and whipping at court's discretion; for second offense, death "without benefit of clergy" For (2): for first offense, prison for 1 year and whipping of 39 lashes; for second offense, death "without benefit of clergy"</i>	
1832	Alabama	Speech "tending to produce conspiracy, or insurrection, or rebellion, among the slaves or colored population"	<i>For publishing or circulating print or writing: death</i>	
1832	Florida (territory)	Speech to "attempt ... to excite an insurrection or revolt of slaves"	<i>For writing, speaking, or "otherwise": death</i>	
1832	Virginia	Speech "advising persons of colour within this state to make insurrection, or to rebel"	<i>For writing, printing, publishing, circulating print or writing: If black: for first offense, whipping up to 39 lashes; for second offense, death; if white, fine of 100 to 1000 dollars</i>	
1835	Maryland	Written or printed speech "having a tendency to	<i>For "knowingly" writing or printing, or for circulating</i>	

When Democracy Breaks

Year law enacted	State or Territory	Speech outlawed	Punishments mandated	Censorship of U.S. mail mandated
		create discontent among, and stir up to insurrection, the people of color of this State" or "of other States or Territories of the United States"	<i>within the state, or for carrying, sending or aiding in carrying or sending to another state or territory of the United States: prison for 10 to 20 years</i>	
1836	Tennessee	Speech "calculated to excite discontent, insurrection or rebellion amongst the slaves or free persons of color"	<i>For writing, printing, drawing, etc.; or aiding and abetting doing so; or for possessing with intent to circulate, or circulating, or aiding and abetting circulation; or for communicating by words, gestures, or writing to "any slave or free person of color": for first offense, "confinement at hard labor" for 5-10 years; for second offense, the same for 10-20 years.</i>	
1836	Virginia	(1) Speech of "any member of an abolition or anti-slavery society" coming to Virginia and advocating "the abolition of slavery" (2) Written or printed speech "persuading persons of colour ... to make insurrection, or to rebel, or denying the right of masters to property in their slaves, and inculcating the duty of resistance to such right"	<i>For (1): fine of 50-200 dollars and prison for 6 months to 3 years For (2): if black, whipping up to 39 lashes and deportation; if white, prison for 2 to 5 years For U.S. postmasters in Virginia who refuse to censor the mail: Fine of 50 to 200 dollars</i>	Yes
1837	Missouri	Speech intended "to excite any slave or slaves, or other persons of color, in this State, to rebellion, sedition, mutiny, insurrection, or murder"	<i>For writing, printing, or circulating writing or print: for first offense, fine up to 1000 dollars, prison up to 2 years; for second offense, prison up to 20 years; for third offense, prison for life</i>	
1841	Alabama	Speech "calculated to excite discontent, insurrection or rebellion amongst the slaves or free persons of color"	<i>For printing, writing, drawing, etc., or aiding and abetting doing so: prison for 10 or more years For circulating printing, writing, drawing, etc.: prison for 10 or more years, or death</i>	

Year law enacted	State or Territory	Speech outlawed	Punishments mandated	Censorship of U.S. mail mandated
1842	Maryland	Speech of "an inflammatory character, having a tendency to create discontent amongst or stir up to insurrection the people of color in this State"	<i>For free black people "knowingly" calling for or receiving in the mail, or possessing, print, writing, drawing, etc.: prison for 10-20 years</i>	Yes (for free black people)
1845	Missouri	Speech "tending directly to excite any slave or other colored person in this state to rebellion, insurrection, or murder"	<i>For speaking, "utter[ing]," writing, printing, or circulating: for first offense, prison for 2 years; for second offense, prison for at least 5 years. Also, for white persons imprisoned under this law: permanent disqualification from voting, holding office, or serving on a jury in Missouri</i>	
1848	Virginia	(1) Speech maintaining "that owners have not right of property in their slaves" (2) Written or printed speech "with intent to advise or incite persons of colour ... to rebel or make insurrection, or denying the rights of masters to property in their slaves, and inculcating the duty of resistance to such right"	<i>For free persons speaking or writing (1): fine up to 500 dollars, and jail up to one year For free persons writing, printing, or circulating (2): prison for 1 to 5 years For U.S. postmasters in Virginia who refuse to censor the mail: Fine up to 200 dollars</i>	Yes
1850	Arkansas	(1) Speech maintaining "that owners have not right of property in their slaves" (2) speech "with intent to advise or incite negroes in this State to rebel or make insurrection, or inculcating resistance to the right of property of masters in their slaves"	<i>For free persons: For speaking or writing (1): fine up to 500 dollars and jail up to one year For writing, printing, or circulating (2): prison for 1 to 5 years</i>	
1854	North Carolina	Same as 1831 North Carolina law	Same as 1831 North Carolina law, except the penalty of death was no longer required to be "without benefit of clergy"	
1855	Missouri	(1) Speech having "the tendency ... to excite any slave, or other colored	<i>For writing, printing, speaking (1): for first offense, prison for up to 5 years; for</i>	

When Democracy Breaks

Year law enacted	State or Territory	Speech outlawed	Punishments mandated	Censorship of U.S. mail mandated
		<p>person in this State, to insolence or insubordination towards his master or owner, or to rebellion, insurrection or murder, or to escape from his master or owner”</p> <p>(2) speech “calculated to excite insurrection, revolt, conspiracy or resistance, on the part of slaves, negroes, or free persons of color in this State ... or ... to induce or encourage slaves to escape from their owners or masters”</p>	<p>second offense, prison for at least 5 years</p> <p><i>For circulating writing or printing (2): for first offense, prison for at least 2 years; for second offense, prison for at least 10 years</i></p> <p><i>For either: permanent disqualification from voting, holding office, or serving on a jury in Missouri</i></p>	
1859	South Carolina	<p>Speech “calculated to disaffect any slave or slaves in this State, or tending to incite any insurrection or disturbance among the same”</p>	<p><i>For, “with evil intent,” writing, printing, drawing etc., circulating writing, etc., speaking, or subscribing to a publication: if white, fine and prison; if free person of color, fine, prison, and “corporal punishment”</i></p> <p><i>For officials neglecting or refusing to enforce mail censorship: Fine up to 500 dollars</i></p>	Yes
1860	Texas	<p>(1) Speech uttered in the presence of any slave that would render the “slave discontented with his state of slavery”</p> <p>(2) public speech maintaining that “masters have not right of property in their slaves”</p> <p>(3) private speech that would “bring the institution of slavery (African) into dispute in the mind of any free inhabitant of this State, or of any resident for the time being therein”</p> <p>(4) written or published speech “inculcating resistance to the right of property of masters in their slaves, or calculated to produce in slaves a</p>	<p><i>For free persons:</i></p> <p><i>For writing, speaking (1): prison for 2 to 5 years;</i></p> <p><i>For writing, printing, speaking (2): prison for 2 to 4 years</i></p> <p><i>For (3): prison for 2 to 5 years</i></p> <p><i>For writing, printing, or “knowingly” circulating (4): prison for 2 to 7 years</i></p> <p><i>For subscribing to a (4) publication: 500 dollar fine and/or jail for up to 6 months</i></p> <p><i>For officials neglecting or refusing to enforce mail censorship: Fine up to 200 dollars</i></p>	Yes

Year law enacted	State or Territory	Speech outlawed	Punishments mandated	Censorship of U.S. mail mandated
		spirit of insubordination with the intent to advise or incite negroes in this State, to rebel or to make insurrection"		
1860	Kentucky	Speech "with intent to advise or incite negroes in the state to rebel ... or inculcating resistance to the rights of property of masters in their slaves"	<i>For writing, printing, or "knowingly" circulating: prison for 1 to 5 years.</i>	
1861	North Carolina	(1) Speech in print with the "evident tendency ... to cause slaves to become discontented with the bondage in which they are held by their masters, and the laws regulating the same, and free negroes to be dissatisfied with their social condition" (2) speech endeavoring "to excite in any slave or free negro or person of color, a spirit of insurrection, conspiracy or rebellion" (3) "inflammatory language, the tendency of which would be to excite in any slave or free negro a spirit of insurrection, conspiracy or rebellion"	<i>For bringing (1) into North Carolina, publishing, circulating, or aiding and abetting doing so: death For (2): death For (3): fine or prison</i>	

Sources: **1804 Georgia:** *Acts of the General Assembly of the State of Georgia, Passed at the Sessions of May and November, 1804* (Louisville: Ambrose Day, 1805), 5-6; **1805 South Carolina:** *Acts and Resolutions of the General Assembly of the State of South-Carolina, Passed in December 1805* (Columbia: D. & J.J. Faust, 1806), 50-51; **1820 South Carolina:** *Acts and Resolutions of the General Assembly of the State of South-Carolina, Passed in December, 1820* (Columbia: D. Faust, 1821), 23-24; **1824 Florida:** *Acts of the Legislative Council of the Territory of Florida, Passed at Their Third Session, 1824* (Tallahassee: Florida Intelligencer, 1825), 208; **1829 Georgia:** *A Digest of the Laws of the State of Georgia* (2nd ed.; Athens: Oliver Prince, 1837), 804; **1830 Louisiana:** *The Louisiana Digest* (New Orleans: Benjamin Levy, 1841) 1:521; **1830 Mississippi:** *Laws of the State of Mississippi, Embracing All Acts of a Public Nature, from January Session, 1824, to January Session 1838, inclusive* (Baltimore: John D. Toy, 1838), 328-329; **1831 North Carolina:** *Acts Passed by the General Assembly of the State*

of North Carolina, at the Session of 1830-31 (Raleigh: Lawrence & Lemay, 1831), 10-11; *Journals of the Senate & House of Commons of the General Assembly of the State of North Carolina, at the Session of 1830-31* (Raleigh: Lawrence & Lemay, 1831), 281; **1832 Alabama**: *A Digest of the Laws of the State of Alabama* (2nd ed.; Tuscaloosa: D. Woodruff, 1836), 110; **1832 Florida**: *A Manual or Digest of the Statute Law of the State of Florida, of a General and Public Character* (Boston: Charles C. Little and James Brown, 1847), 490; note: this became state law in 1845, when Florida became a state, see *Ibid*; **1832 Virginia**: *Acts Passed at a General Assembly of the Commonwealth of Virginia ... 1831* (Richmond: Thomas Ritchie, 1832), 21-22; **1835 Maryland**: *Laws Made and Passed by the General Assembly of Maryland* (Annapolis: Jeremiah Hughes, 1836), [558-559]; **1836 Tennessee**: *Public Acts Passed at the First Session of the Twenty-first General Assembly of the State of Tennessee 1835-6* (Nashville: B. Nye, 1836), 145-146; **1836 Virginia**: *Acts of the General Assembly of Virginia, Passed at the Session of 1835-36* (Richmond: Thomas Ritchie, 1836), 44-45; **1837 Missouri**: *Laws of the State of Missouri passed at the First Session of the Ninth General Assembly ... [1836-1837]* (Jefferson: Calvin Gunn, 1837), 3; **1841 Alabama**: *Acts Passed at the Annual Session of the General Assembly of the State of Alabama ... 1840* (Tuscaloosa: Hale & Phelan, 1841), 121; **1842 Maryland**: *Laws Made and Passed by the General Assembly of the State of Maryland [1841-1842]* (Annapolis: William McNeir, 1842), 232-233; **1845 Missouri**: *The Revised Statutes of the State of Missouri ...* (St. Louis: J.W. Dougherty, 1845), 342-343; **1848 Virginia**: *Acts of the General Assembly of Virginia, Passed at the Session ... 1847[-]48* (Richmond: Samuel Sheperd, 1848), 117, 125; **1850 Arkansas**: *Acts Passed at the Eighth Session of the General Assembly of the State of Arkansas* (Little Rock: Lambert A. Whiteley, 1851), 22-23; **1854 North Carolina**: *Revised Code of North Carolina, Enacted by the General Assembly at the Session of 1854 ...* (Boston: Little, Brown and Company, 1855), 63, 205-206; **1855 Missouri**: *The Revised Statutes of the State of Missouri, Revised and Digested by the Eighteenth General Assembly* (Jefferson: J. Lusk, 1856), 1:556-557; **1859 South Carolina**: *Acts of the General Assembly of the State of South Carolina, Passed in December 1859* (Columbia: R.W. Gibbes, 1859), 768-769; **1860 Texas**: *General Laws of the Eighth Legislature of the State of Texas* (Austin: John Marshall & Co., 1860), 99-100; "An Act, Supplementary to [and] amendatory of an act, entitled an act to adopt and establish a Penal Code for the State of Texas," Title 19, Chapter 1, Article 653, Texas State Library and Archives; **1860 Kentucky**: Harvey Myers, comp., *A Digest of the General Laws of Kentucky ...* (Cincinnati: Robert Clarke & Co., 1866), 381; **1861 North Carolina**: *Public Laws of the State of North Carolina, Passed by the General Assembly, at its Session of 1860-'61* (Raleigh: John Spelman, 1861), 39-40.