Slavery Was the Main Cause of the Civil War

By Eric V. Snow

Was Slavery the main cause of the Civil War? How did Lincoln's election threaten the South? Why did the South's states vote to leave the union after his election? All he officially wanted to do was prohibit in the territories the further extension of slavery and prevent more slave states from being admitted to the Union. And that minimalistic political platform was totally, utterly intolerable to the South's political leadership. (Evidence for that assertion can be found in the extended quotes from the ordinances of succession of Texas, South Carolina, and Mississippi, as found below). Lincoln wasn't even proposing as he took office to force through Congress a gradual emancipation plan on the states where the "peculiar institution" already existed.

So then, what was the "right" that the Southerners were rebelling to keep? The right to enslave others? What's so "libertarian" about that? For fundamentally, when it comes from white Southerners, all this states' rights clap-trap over the decades and even centuries, has been fundamentally motivated by their desire to keep the black man down. Sure, good theoretical and philosophical arguments can be run in favor of decentralized governmental structures. But here we have to consider the Southern whites' obviously self-interested motives for their arguments as well. The fundamental problem with the libertarian perspective on the Civil War and Lincoln is that it doesn't reckon with the **real** reasons why white Southerners wanted secession in 1860. All this political philosophy in favor of decentralization is a mere smokescreen for racial oppression. And for some reason libertarians from the North are willing to accept at face value the Southern revisionist view of the Civil War and its causes, rather than probe deeper.

True, Lincoln's main goal at the outbreak of the war was to preserve the union, not to free the slaves. His war aims, and thus the North's in general, progressed steadily towards abolition as the conflict continued. When he stood for re-election in 1864, Lincoln had two conditions for peace with the South: Restoration of the Union and the abolition of slavery. But the South's chief war aims were to preserve slavery and to remain independent. Only at the very end of the war, when all was lost, did the South start making concessions, such as being willing to grant freedom to slaves who would fight in the Confederate Army. The actual text of the Confederate Constitution, as its text existed before Sherman burned Atlanta and marched to the sea, should be quoted from a reliable source before making any claim that it desired to abolish slavery eventually. Concessions made in 1865 are meaningless as to explaining the South's war aims in 1861. (The South's war aims, not just the North's, evolved as well during the Civil War!) At the February 1865 Hampton Roads Peace Conference, when the South was about to give up

the ghost, Stephens and others still rejected emancipation as a condition for ending the war in conjunction with Lincoln's other demands.

Slavery was still a very profitable institution in 1860, and it easily could have continued to be for decades to come, so long as industrial Europe and the North wanted to buy Southern cotton for their textile mills. Planters wouldn't have paid around $1000 per adult male slave in good health at auctions if they weren't making money on their plantations. Unlike in Europe and the North, which had been moving in the opposite direction, public opinion in the South on the eve of the Civil War was actually much more pro-slavery than it had been several decades earlier, when Virginia's legislature voted down a gradual emancipation bill in 1832: It became dangerous to publicly question the "peculiar institution" by 1860.

Libertarians and others should keep in mind that even the actors during the Civil War on the South would engage in revisionism even about what their own goals had been. Alexander Stephens, the Confederate Vice President, said slavery was the cornerstone of the Confederacy when the war began, but after the war said the war was about states' rights, not slavery. The primary documents quoted from below, which show that the legislators of Texas, Mississippi, and South Carolina, were mainly motivated by a desire to preserve and expand the institution of slavery, demonstrates Stephen's fundamental dishonesty and historical revisionism. So, from a proper historiographical view, what matters is what the South's leaders were saying about preserving slavery as a war aim in 1861 in primary sources of the time, not necessarily what they were saying about slavery after 1865 in their memoirs, public speeches, etc.

The historian William C. Davis noted inconsistencies in the arguments Southerners made for states' rights. The Confederate Constitution, which protected slavery at the national level, was ironically inconsistent with "States' rights."
"To the old Union they had said that the Federal power had no authority to interfere with slavery issues in a state. To their new nation they would declare that the state had no power to interfere with a federal protection of slavery. Of all the many testimonials to the fact that slavery, and not states rights, really lay at the heart of their movement, this was the most eloquent of all." (as in Wikipedia)
This inconsistency shows their real goal was to continue an abominable system of harsh racial oppression, not to set up some theoretically superior system of decentralized government. To protect slavery at the national level in its Constitution also shows the Confederacy didn't want to slowly phase it out either.

In 1860, Congressman Laurence Keitt of South Carolina proclaimed, "The anti-slavery party contend that slavery is wrong in itself, and the Government is a consolidated national democracy. We of the South contend that slavery is right, and that this is a confederate Republic of sovereign States." Someone who says slavery is morally right isn't likely to favor any kind of emancipation, gradual or immediate. A number of Southern politicians before the Civil War also attempted to re-legalize the importation from Africa of slaves and wanted to make all free black men and women choose a master

or mistress. This doesn't speak of a sentiment that would favor gradual emancipation either.

In the list of justifying reasons given by Mississippi to justify their ordinance of secession in 1861, their reasons given focused heavily upon the need to protect slavery legally from Washington's attempts to curtail it: "It has grown until it denies the right of property in slaves, and refuses protection to that right on the high seas, in the Territories, and wherever the government of the United States had jurisdiction. It refuses the admission of new slave States into the Union, and seeks to extinguish it by confining it within its present limits, denying the power of expansion. … It has nullified the Fugitive Slave Law in almost every free State in the Union, and has utterly broken the compact, which our fathers pledged their faith to maintain. . . . It advocates negro equality, socially and politically, and promotes insurrection and incendiarism in our midst. It has made combinations and formed associations to carry out its schemes of emancipation in the States and wherever else slavery exists. It seeks not to elevate or to support the slave, but to destroy his present condition without providing a better. . . . Utter subjugation awaits us in the Union, if we should consent longer to remain in it. It is not a matter of choice, but of necessity. We must either submit to degradation, and to the loss of property worth four billions of money, or we must secede from the Union framed by our fathers, to secure this as well as every other species of property." The legislators in Mississippi, who actually passed the ordinance of succession, made it clear that slavery was the mainspring of their reasons for leaving the Union.
In South Carolina's set of reasons given for their ordinance of secession, they stated in part why they wanted to protect slavery as an institution as well against Lincoln's and the Republican Party's hostility to it: "The right of property in slaves was recognized by giving to free persons distinct political rights, by giving them the right to represent, and burthening them with direct taxes for three-fifths of their slaves; by authorizing the importation of slaves for twenty years; and by stipulating for the rendition of fugitives from labor.

"We affirm that these ends for which this Government was instituted have been defeated, and the Government itself has been made destructive of them by the action of the non-slaveholding States. Those States have assume the right of deciding upon the propriety of our domestic institutions; and have denied the rights of property established in fifteen of the States and recognized by the Constitution; they have denounced as sinful the institution of slavery; they have permitted open establishment among them of societies, whose avowed object is to disturb the peace and to eloign the property of the citizens of other States. They have encouraged and assisted thousands of our slaves to leave their homes; and those who remain, have been incited by emissaries, books and pictures to servile insurrection.

"For twenty-five years this agitation has been steadily increasing, until it has now secured to its aid the power of the common Government. Observing the forms of the Constitution, a sectional party has found within that Article establishing the Executive Department, the means of subverting the Constitution itself. A geographical line has been drawn across the Union, and all the States north of that line have united in the election of a man to the

high office of President of the United States, whose opinions and purposes are hostile to slavery. He is to be entrusted with the administration of the common Government, because he has declared that that "Government cannot endure permanently half slave, half free," and that the public mind must rest in the belief that slavery is in the course of ultimate extinction.

. . . On the 4th day of March next [1861, when Lincoln takes office as president], this party will take possession of the Government. It has announced that the South shall be excluded from the common territory, that the judicial tribunals shall be made sectional, and that a war must be waged against slavery until it shall cease throughout the United States." Clearly South Carolina's legislature, which passed the first ordinance of secession, was mainly motivated by the desire to protect slavery as an institution, much like Mississppi's.

Georgia's explanation of why they passed an ordinance of secession begins with their view that slavery as an institution had to the protected against Washington's perceived hostility to it: "The people of Georgia having dissolved their political connection with the Government of the United States of America, present to their confederates and the world the causes which have led to the separation. For the last ten years we have had numerous and serious causes of complaint against our non-slaveholding confederate States with reference to the subject of African slavery. They have endeavored to weaken our security, to disturb our domestic peace and tranquility, and persistently refused to comply with their express constitutional obligations to us in reference to that property, and by the use of their power in the Federal Government have striven to deprive us of an equal enjoyment of the common Territories of the Republic. This hostile policy of our confederates has been pursued with every circumstance of aggravation which could arouse the passions and excite the hatred of our people, and has placed the two sections of the Union for many years past in the condition of virtual civil war. Our people, still attached to the Union from habit and national traditions, and averse to change, hoped that time, reason, and argument would bring, if not redress, at least exemption from further insults, injuries, and dangers. Recent events have fully dissipated all such hopes and demonstrated the necessity of separation. Our Northern confederates, after a full and calm hearing of all the facts, after a fair warning of our purpose not to submit to the rule of the authors of all these wrongs and injuries, have by a large majority committed the Government of the United States into their hands. The people of Georgia, after an equally full and fair and deliberate hearing of the case, have declared with equal firmness that they shall not rule over them. A brief history of the rise, progress, and policy of anti-slavery and the political organization into whose hands the administration of the Federal Government has been committed will fully justify the pronounced verdict of the people of Georgia. The party of Lincoln, called the Republican party, under its present name and organization, is of recent origin. It is admitted to be an anti-slavery party. While it attracts to itself by its creed the scattered advocates of exploded political heresies, of condemned theories in political economy, the advocates of commercial restrictions, of protection, of special privileges, of waste and corruption in the administration of Government, anti-slavery is its mission and its purpose. By anti-slavery it is made a power in the state. The question of slavery was the great difficulty in the way of the formation of the

Constitution. While the subordination and the political and social inequality of the African race was fully conceded by all, it was plainly apparent that slavery would soon disappear from what are now the non-slave-holding States of the original thirteen. The opposition to slavery was then, as now, general in those States and the Constitution was made with direct reference to that fact. But a distinct abolition party was not formed in the United States for more than half a century after the Government went into operation. The main reason was that the North, even if united, could not control both branches of the Legislature during any portion of that time."

The same legislators in Georgia made it clear that the Republican Party's desire to prevent slavery from expanding into new territories was their motivation for secession: "The North demanded the application of the principle of prohibition of slavery to all of the territory acquired from Mexico and all other parts of the public domain then and in all future time. It was the announcement of her purpose to appropriate to herself all the public domain then owned and thereafter to be acquired by the United States. The claim itself was less arrogant and insulting than the reason with which she supported it. That reason was her fixed purpose to limit, restrain, and finally abolish slavery in the States where it exists. The South with great unanimity declared her purpose to resist the principle of prohibition to the last extremity. This particular question, in connection with a series of questions affecting the same subject, was finally disposed of by the defeat of prohibitory legislation.

"The Presidential election of 1852 resulted in the total overthrow of the advocates of restriction and their party friends. Immediately after this result the anti-slavery portion of the defeated party resolved to unite all the elements in the North opposed to slavery and to stake their future political fortunes upon their hostility to slavery everywhere. This is the party two whom the people of the North have committed the Government. They raised their standard in 1856 and were barely defeated. They entered the Presidential contest again in 1860 and succeeded.

"The prohibition of slavery in the Territories, hostility to it everywhere, the equality of the black and white races, disregard of all constitutional guarantees in its favor, were boldly proclaimed by its leaders and applauded by its followers. With these principles on their banners and these utterances on their lips the majority of the people of the North demand that we shall receive them as our rulers. The prohibition of slavery in the Territories is the cardinal principle of this organization.

"For forty years this question has been considered and debated in the halls of Congress, before the people, by the press, and before the tribunals of justice. The majority of the people of the North in 1860 decided it in their own favor. We refuse to submit to that judgment, and in vindication of our refusal we offer the Constitution of our country and point to the total absence of any express power to exclude us. We offer the practice of our Government for the first thirty years of its existence in complete refutation of the position that any such power is either necessary or proper to the execution of any other power in relation to the Territories. We offer the judgment of a large minority of the people of the North, amounting to more than one-third, who united with the unanimous voice of the South against this usurpation; and, finally, we offer the judgment of the Supreme Court of

the United States, the highest judicial tribunal of our country, in our favor. This evidence ought to be conclusive that we have never surrendered this right. The conduct of our adversaries admonishes us that if we had surrendered it, it is time to resume it."
Notice how the cumulating, overkill rhetoric of the Georgian legislatures starts with a detailed description of the need to defend slavery before they discuss their need to protect their homes, families, and religious freedom, as if the Republican Party were really a threat to that as well: "Because by their declared principles and policy they have outlawed $3,000,000,000 of our property in the common territories of the Union; put it under the ban of the Republic in the States where it exists and out of the protection of Federal law everywhere; because they give sanctuary to thieves and incendiaries who assail it to the whole extent of their power, in spite of their most solemn obligations and covenants; because their avowed purpose is to subvert our society and subject us not only to the loss of our property but the destruction of ourselves, our wives, and our children, and the desolation of our homes, our altars, and our firesides. To avoid these evils we resume the powers which our fathers delegated to the Government of the United States, and henceforth will seek new safeguards for our liberty, equality, security, and tranquility."

When the legislators of Texas justified their ordinance of secession, the reasons given included yet another declaration that slavery needed to be defended as an institution: "Texas abandoned her separate national existence and consented to become one of the Confederated Union to promote her welfare, insure domestic tranquility and secure more substantially the blessings of peace and liberty to her people. She was received into the confederacy with her own constitution, under the guarantee of the federal constitution and the compact of annexation, that she should enjoy these blessings. She was received as a commonwealth holding, maintaining and protecting the institution known as negro slavery - the servitude of the African to the white race within her limits - a relation that had existed from the first settlement of her wilderness by the white race, and which her people intended should exist in all future time. Her institutions and geographical position established the strongest ties between her and other slaveholding States of the confederacy. Those ties have been strengthened by association. But what has been the course of the government of the United States, and of the people and authorities of the non-slave-holding States, since our connection with them?"
The legislators in Texas also objected to Lincoln's policy of not wanting slavery to expand into new territories to the west: "The controlling majority of the Federal Government, under various pretences and disguises, has so administered the same as to exclude the citizens of the Southern States, unless under odious and unconstitutional restrictions, from all the immense territory owned in common by all the States on the Pacific Ocean, for the avowed purpose of acquiring sufficient power in the common government to use it as a means of destroying the institutions of Texas and her sister slaveholding States.

"By the disloyalty of the Northern States and their citizens and the imbecility of the Federal Government, infamous combinations of incendiaries and outlaws have been permitted in those States and the common territory of Kansas to trample upon the federal laws, to war upon the lives and property of Southern citizens in that territory, and finally,

by violence and mob law, to usurp the possession of the same as exclusively the property of the Northern States."

The legislators of Texas complained that some of the Northern states refused to enforce the federal laws for returning fugitive slaves: "The States of Maine, Vermont, New Hampshire, Connecticut, Rhode Island, Massachusetts, New York, Pennsylvania, Ohio, Wisconsin, Michigan and Iowa, by solemn legislative enactments, have deliberately, directly or indirectly violated the 3rd clause of the 2nd section of the 4th article [the fugitive slave clause] of the federal constitution, and laws passed in pursuance thereof; thereby annulling a material provision of the compact, designed by its framers to perpetuate the amity between the members of the confederacy and to secure the rights of the slave-holding States in their domestic institutions - a provision founded in justice and wisdom, and without the enforcement of which the compact fails to accomplish the object of its creation. Some of those States have imposed high fines and degrading penalties upon any of their citizens or officers who may carry out in good faith that provision of the compact, or the federal laws enacted in accordance therewith.

These same legislators also objected any doctrine of equality between the races: "In all the non-slave-holding States, in violation of that good faith and comity which should exist between entirely distinct nations, the people have formed themselves into a great sectional party, now strong enough in numbers to control the affairs of each of those States, based upon an unnatural feeling of hostility to these Southern States and their beneficent and patriarchal system of African slavery, proclaiming the debasing doctrine of equality of all men, irrespective of race or color - a doctrine at war with nature, in opposition to the experience of mankind, and in violation of the plainest revelations of Divine Law. They demand the abolition of negro slavery throughout the confederacy, the recognition of political equality between the white and negro races, and avow their determination to press on their crusade against us, so long as a negro slave remains in these States."

These legislators in Texas declared, when beginning to summarize why they voted to secede from the union, that their views of slavery and the inequality of the races was a paramount justification: "In view of these and many other facts, it is meet that our own views should be distinctly proclaimed.

"We hold as undeniable truths that the governments of the various States, and of the confederacy itself, were established exclusively by the white race, for themselves and their posterity; that the African race had no agency in their establishment; that they were rightfully held and regarded as an inferior and dependent race, and in that condition only could their existence in this country be rendered beneficial or tolerable.

"That in this free government all white men are and of right ought to be entitled to equal civil and political rights; that the servitude of the African race, as existing in these States, is mutually beneficial to both bond and free, and is abundantly authorized and justified by the experience of mankind, and the revealed will of the Almighty Creator, as recognized by all Christian nations; while the destruction of the existing relations between the two

races, as advocated by our sectional enemies, would bring inevitable calamities upon both and desolation upon the fifteen slave-holding states." Clearly the legislators of Texas wished to defend slavery above all for their reason for leaving the union.
Notice how these primary sources at the time, as the legislators of Texas, South Carolina, and Mississippi, record the motivations of the South's leaders at the time. It's easy after the fact to deny such motivations, but the record of primary sources shows that they sought to defend slavery above all, which was the key institution that made their states, as part of a region, distinctive from the North.

Because the South had chosen to rebel violently against Washington, gradual emancipation was no longer an option for Washington. That wasn't a decision by the abolitionists, but by the Southerners who wanted to preserve their "right" to racially oppress others. Because the South's public opinion in favor of slavery had become so hardened by 1860, it's hard to believe sentiment in a theoretically successfully independent Confederacy would have changed any time soon.

If one wants to run the cost-benefit argument, the greatest good for the greatest number, and say 600,000 deaths was too much to pay to free 4 million slaves a generation or two earlier than they otherwise would have been, that's reasonable, even from a secular, non-Christian viewpoint. But then again, the bloodshed of the American War of Independence was for a far more trivial reason, the desire to avoid paying some relatively light taxes (compared to what people in Britain itself were paying). So therefore, by this same kind of reasoning, Samuel Adams and company, when they seized and tossed into Boston Harbor the tea of the British East India Company because it had been given a monopoly for its import and it had a small tax on it, were far less justified in the bloodshed they ultimately caused than Lincoln was, who ended the sales of children from their parents and wives from their husbands, the routine whippings of slaves as a means to enforce work discipline, nightly visits by some overseers and masters to their slave women's quarters, etc. For my M.A. thesis, I studied and wrote in great detail how slavery operated in the American South before the Civil War, so I'm acutely aware of how generally oppressive (with occasional exceptions) the system was. If a libertarian (while ignoring the Bible's plain teachings) agrees with Patrick Henry's individual cry against the British government, "Give me liberty or give me death!," how can he object to others self-sacrificially dying to free others?

I've long held that individual rights are more important than the autonomy of local governments, that laws that restrict the latter in favor of the former are fundamentally moral and just. For example, if Congress passed a law prohibiting all rent control laws throughout the length and breadth of the USA, I would consider that a good law to pass, since individual property rights are more important than the "rights" of local units of governments to mistreat their subjects, no, excuse me, "citizens." Often local municipalities have all sorts of micro-managing laws which would be fine for a state government or Washington to set aside in the name of personal freedom. Likewise, Southerners once argued that the 10th Amendment to the Constitution prohibited the Federal government from keeping slaves out of the territories. Well, I think it's fine for the Federal government to abolish slavery and violate the purported "rights" (really,

"powers") of the states to let some of their citizens violate the rights of other citizens. Likewise, in the decision to end the legal segregation of public schools, Brown vs. the Board of Education, the U.S. Supreme Court was right to interfere in local cities' systems of apartheid in their government schools. (Whether we should have government schools, of course, is a separate issue; if we have them, they shouldn't discriminate among citizens based on race, ethnicity, or skin color). In 1957, the folks resisting the integration of Central High in Little Rock got what they deserved from President Eisenhower when he sent in the101st Airborne with fixed bayonets to surround the school and federalized the Arkansas national guard in order to enforce the district federal court order enforcing desegregation.

Federalism and Secession's Potential Constitutionality Examined Briefly

The standard conservative Southern interpretation of the Constitution says it was an agreement of the "states" as opposed to the "people" of the states to join the union. But that's opposed to the way the preamble reads. It doesn't say, "the States of Pennsylvania, New Jersey, Virginia, South Carolina, Delaware, . . . establish and ordain," etc. The John Calhoun interpretation of the Constitution was hardly uncontested historically before the Civil War, and shouldn't continue to go unchallenged today. That's why it shouldn't be interpreted as a "treaty" that members states could withdraw from at will. Of course, there are no provisions in its text to authorize secession or withdrawals from the union or other legal means to end it. One would need to cite primary sources, such as from the Federalist papers or elsewhere during the ratification process that the proponents of the Constitution (not its anti-Federalist opponents) that conceded that states could withdraw from the Union at will later on for me to believe this is true historically.

Furthermore, the "right to revolution," speaking from a secular viewpoint that ignores Romans 13, should only be resorted to in grave situations in which personal freedom and/or the right to property are seriously threatened. Arguably, that actually wasn't the case even in 1775, since the actual causes of the war against Britain concerned relatively trivial impositions that could be objectively justified. (That is, as part of the British Empire, the colonies could be expected to pay more for their military defense in direct taxation than they were paying, which was just about nothing). So when compared with the English Civil War and the "Glorious Revolution" of 1688-89, we had a far less dangerous threat from the throne of England than the British themselves faced in the prior century, when Charles I (at least theoretically and even functionally) really wanted to be an absolute monarch like his contemporary Louis XIV, and James II shared the same autocratic, pro-Catholic tendencies.

During this debate, let's consider how the U.S. Constitution's meaning was interpreted by its advocates when trying to win its ratification by the legislation of the state of New York. The Federalist Papers are a crucial "text" for seeking explanations and interpretations of the bare text of the Constitution at the time of its writing by men who were involved in its writing at the Constitutional Convention. Therefore, what Hamilton,

Jay, and Madison thought about its meaning is much more important than what its opponents believed who hadn't been at the Convention. For example, Jefferson was in France at the time, so what he thought it means simply isn't as important.

The doctrine of judicial review wasn't a pure invention of John Marshall in the Marbury vs. Madison case, as the extensive discussion in the federalist paper 78 demonstrates. Hamilton wrote: "The complete independence of the courts of justice is a peculiarly essential in a limited constitution. By a limited constitution I understand one which contains certain specified exceptions to the legislative authority; such for instance as that it shall pass no bills to attainder, no *ex post facto laws*, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice; whose duty it must be to declare all acts contrary to the manifest tenor of the constitution void. Without this, all the reservations of particular rights or privilege would amount to nothing. Some perplexity respecting the right of the courts to pronounce legislative acts void, because contrary to the constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power." He goes on to discuss this issue extensively in this public declaration. The U.S. Supreme Court, as part of the government set up by the U.S. Constitution, was meant from the beginning to have the power of overruling unconstitutional federal laws, for the reasons Hamilton explains in this very essay: "There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act therefore contrary to the constitution can be valid." True, one could argue that the direct reach of the Bill of Rights was mistakenly imposed on the States through the "incorporation clause" interpretation of the 14th Amendment. But that's a separate discussion from whether judicial review was intended to be part of the government created by U.S. Constitution.

In Federalist 44, Madison discusses the Supremacy clause and the attacks made on it by its critics at the time. After directly quoting it, he comments: "The indiscreet zeal of the adversaries to the Constitution, has betrayed them into an attack on this part of it also, without which it would have been evidently and radically defective. To be fully sensible of this we need only suppose for a moment, that the supremacy of the State Constitutions had been left compleat by a saving clause in their favor." He points out that if the state legislatures had retained their "absolute sovereignty" that the new Congress established by the Constitution would have been reduced to the same level of impotence as the current one created by the Articles of Confederation. As he noted: "In the next place, as the Constitutions of some of the States do not even expressly and fully recognize the existing powers of the confederacy, an express saving of the supremacy of the former, would in such States have brought into question, every power contained in the proposed Constitution." He then concludes this section by rather colorfully commenting that if a clause protecting the supremacy of the state constitutions had been left in place, that "the world would have seen for the first time, a system of government founded on an inversion of the fundamental principles of government; it would have seen the authority of the whole society every where subordinate to the authority of the parts; it would have seen a monster in which the head was under the direction of the members."

In the same essay, Madison extensively discussed the reasoning behind why there was an express but generic elastic clause in the Constitution, and why it was so important: "Without the *substance* of this power, the whole Constitution would be a dead letter." He then enumerated the difference approaches that the Convention could have handled this matter, such as by enumerating the specific powers, but notes the problems involved. One problem of doing that, besides the problem of creating an intolerably long list of every possible theoretical contingency that could come up in the future, would be to imply that "every defect in the enumeration, would have been equivalent to a positive grant of authority."

In the Federalist 39, Madison explains the system of concurrent powers, in which the states and the national government share certain powers. It's true that the federal government wouldn't have the powers granted to a state legislature to abolish municipal governments within its boundaries, "since its jurisdiction extends to certain enumerate objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects." This initially sounds like a good basis for thinking state legislatures could nullify acts of the federal government. But then notice the next section, which is crucial (in my thinking at least), in establishing who decides such disputes (my emphasis in this case added): "It is true that in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide, is to be established under the general government. But this does not change the principle of the case. The decision is to be impartially made, according to the rules of the Constitution; and all the usual and most effectual precautions are taken to secure this impartiality. **Some such tribunal is clearly essential to prevent an appeal to the sword, and a dissolution of the compact; and that it ought to be established under the general, rather than under the local Governments;** or to speak more properly, that it could be safely established under the first alone, is a position not likely to be combated." Madison certainly didn't believe or intend the federal governments' laws overruled by the state legislatures; that was the job for the "tribunal" that we now call the U.S. Supreme Court. Furthermore, this procedure was necessary to avoid civil war and what later was called secession of the states.

Furthermore, it's still a valid to appeal to the opening clause of the constitution about "We, the people" as showing the federal government isn't only creation of the states. Madison also explained in Federalist 39 that the Constitution sets up a system of government that is neither wholly national nor wholly federal, as shown by the proposed process for how amendments are made: "Were it wholly national, the supreme and ultimate authority would reside in the *majority* of the people of the Union; and this authority would be competent at all times, like that of a majority of every national society, to alter or abolish its established Government. Were it wholly federal on the other hand, the concurrence of each State in the Union would be essential to every alteration that would be binding on all. The mode provided by the plan of the Convention is not founded on either of these principles."

How often were slaves murdered by their masters?

Finally, let’s review some of the standard apologetic defenses made for slavery as not being so bad. Although some slaves were indeed treated well, especially in border areas near the North because ill-treated slaves could run away easily, those cases shouldn’t be seen as the experience of a sold majority of slaves. In particular, it should be noted a good number of slaves did die at their masters' hands under slavery in the South, even if conditions there weren't as harsh as (say) Jamaica or Brazil. True, the rate of the black slave population in the South was much higher than in those two countries. But Southern masters often weren't careful profit maximizing businessmen when dealing with their "troublesome property." They often let their passions get the best of them when faced with recalcitrant slaves, and would kill or injure them even when that was irrational from a self-interested, profit-making viewpoint. And, of course, it has to be admitted, we have no good statistics on this issue to know how many masters actually killed their slaves, despite all of their paternalistic rhetoric about protecting them, caring for them, blah, blah, blah.
The following section comes from the research I did for my M.A. thesis:

A more drastic punishment existed, although its cost were very high, and by inflicting it on some individual it could only change the behavior of other slaves: death. Sometimes the slave was killed by a master or overseer, sometimes by a lynch mob, sometimes by the judicial system after receiving the full measure of due process that a slave (and his or her financially self-interested owner) could expect. Regardless of source, they all combined to remind the bondsmen that a fate worse than corporal punishment awaited those who committed the worst crimes. Furthermore, unpredictably, for petty offenses, a master in the heat of passion or in the throws of insanity could also inflict it. In some cases slaves were killed or executed by burning them alive. One slave in Tennessee who killed his master was executed thus, with many a fellow slave witness of his dreadful end: He was roasted, at a slow fire, on the spot of the murder, in the presence of many thousand slaves, driven to the ground from all the adjoining counties, and when, at length, his life went out, the fire was intensified until his body was in ashes, which were scattered to the winds and trampled under foot. Then 'magistrates and clergymen' addressed appropriate warnings to the assembled subjects.

This extreme case, stoutly justified in the local press, was not unique, as Olmsted indicated in a footnote that one judge had gathered evidence of slave burnings "every year in the last twenty" (c. 1840-60). Barrow strongly approved of the burning alive of two runaways who killed two white men and raped two white women. A "great many [were brought] to witness it & several hundred negros &c. Burning was even too good for them." Executions by burning were also "authorized" by lynch mob, such as the hardly singular case of a Alabama justice of the peace who, being intimidated by a crowd of seventy or eighty men, allowed them to vote to burn alive the slave who killed a white man.

Being whipped or shot to death by one's owner was a much more likely fate than being burned at the stake. While clearly uncommon, it occurred enough that slaves knew it could happen to them, especially when so much arbitrary and absolute power had been committed into the hands of their owners. Since the slaveholders by regional character

were passionate, emotional men who placed perceived points of honor above cold-blooded financial calculations, the slaves had something more to fear. Sometimes, they killed in arguable cases of self-defense: "One day he [a slave named Joe] turn on Marse Jim with a fence rail, and Marse Jim had to pull his gun and kill him." Much more likely, a slave was killed for violating some rule or otherwise violating his or her owner's expectations. Mary Younger told Drew she knew of a mistress who lived nearby who whipped no less than three of her slave women to death. Younger also helped one badly whipped man by greasing his back--who still soon died. One slave girl was hanged by her master and mistress for revealing to Union soldiers where they had buried the family's silver, money, and jewelry after they had left. Douglass described several cases of slaves being killed--nay, murdered--by their owners without punishment, such as one for trespassing on another master's property and another for being slow to assist with a crying baby because she had fallen asleep.

The Danger of Corporal Punishment Backfiring, Requiring "Massive Retaliation"

One especially dangerous flash point was when a slave challenged his master's authority by refusing some (lesser) punishment. Then, his owner just might up the ante and kill him. The reasoning was that if one slave could get away with refusing to obey his master, then others would soon follow suit, and the whole system of involuntary labor would collapse. Austin Gore, an overseer in Maryland Douglass served under, shot a slave to death who had been whipped some by him, but had briefly escaped to the temporary sanctuary of a nearby creek before being permanently dispatched by a musket. He explained to Colonel Lloyd, the slave's owner, why he killed him:

His reply was, (as well as I can remember,) that Demby had become unmanageable. He was setting a dangerous example to the other slaves,--one which, if suffered to pass without some such demonstration on his part, would finally lead to the total subversion of all rule and order upon the plantation. He argued that if one slave refused to be corrected, and escaped with his life, the other slaves would soon copy the example; the result of which would be, the freedom of the slaves, and the enslavement of the whites.

Singling out Demby as an example was evidently effective, because a "thrill of horror flashed through every soul upon the plantation" excepting the overseer himself when the deed was done. Mother Anne Clark described how her father suffered a similar fate for refusing a whipping:

He never had a licking in his life. . . . one day the master says, "Si, you got to have a whopping," and my poppa says, "I never had a whopping and you can't whop me." And the master says, "But I can kill you," and he shot my papa down.[402]

The policy of sacrificing some slaves' lives to frighten the rest into submission was time and again judged a cost-effective tactic by slaveholders.

Freedman Cato of Alabama described this approach to discipline thus:

When they [the slaves] was real 'corrigible, the white folks said they was like mad dogs and didn't mind to kill them so much as killing a sheep. They'd take 'em to the graveyard and shoot 'em down and bury 'em face downard, with their shoes on. I never seed it done, but they made some the niggers go for a lesson to them that they could git the same.

The well-attended hanging of a slave woman who set her master's barn afire and killed thirteen horses and mules was evidently such an exercise. While these acts of terrorism were rare, they did not have to be common to usefully promote social control and work

discipline from the slaveholders' viewpoint. Similarly, the calculation that "only" 127 blacks out of 6 million (0.003 percent) were lynched in 1889 implicitly greatly understates the deterrent effects that the mere known existence of this practice had in keeping the black man in line. Just hearing about the death of a slave at the hands of his master was enough to keep many in line, and when push did come to shove, a master's threats to kill a recalcitrant slave often were enough to get him to fall into line, since the worst possible result was known to happen in these situations. So when Mary Grayson's mother saw her master waving a shotgun from his buggy, loudly threatening her to "git them children together and git up to my house before I beat you and all of them to death!," they knew "he acted like he was going to shoot sure enough, so well all ran to Mammy and started for Mr. Mose's house as fast as we could trot."[403] In these cases, the deterrent value of prior terrorism, exercised on a few individuals sacrificed for the greater good (?) of maintaining the overall system paid off, whether done by masters individually, a lynch mob, or the court system, making the mere threat of using deadly force enough to make most slaves fall into line.

How Even Good Masters Could Suddenly Kill a Slave in the Heat of Passion

Southern masters professing paternalism might have denied pursuing this policy, or at least would have disavowed killing slaves except for major crimes such as murder. Barrow, who clearly was quick to punish his own slaves, condemned a neighboring planter named A.G. Howell for (it was said) castrating three slaves, and killing others, including leaving some in the stocks until they were dead. He also judged him for ironing up one slave boy up his leg and thigh, creating a nearly solid scab in the process, after which he chained him around the neck. Concerning another man who whipped a black to death, Barrow wrote: "Man tried for Whipping a negro to Death. trial will continue till to morrow--deserves death--Cleared!" Masters such as Barrow did not believe in killing slaves except for major offenses. Nevertheless, the mere fact a number of masters were not so paternalistic--or predictable when losing their temper--meant death always remained a possible penalty for bondsmen with all but the kindest masters. After all, Barrow himself, who condemned Howell's cruelty, one time was mad enough to write that he "would give 'freely' $100 to get a shot" at one runaway slave who he had actually shot at and hit four years before. At that time, Barrow said he would shoot him if he ran away, soon following through with his threat after making it.[404] Hence, even a fairly typical large planter such as Barrow, who was neither especially cruel nor kind, could kill one of his own slaves under the right circumstances, an outcome his slaves undoubtedly weighed when calculating whether and when they should disobey him.

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