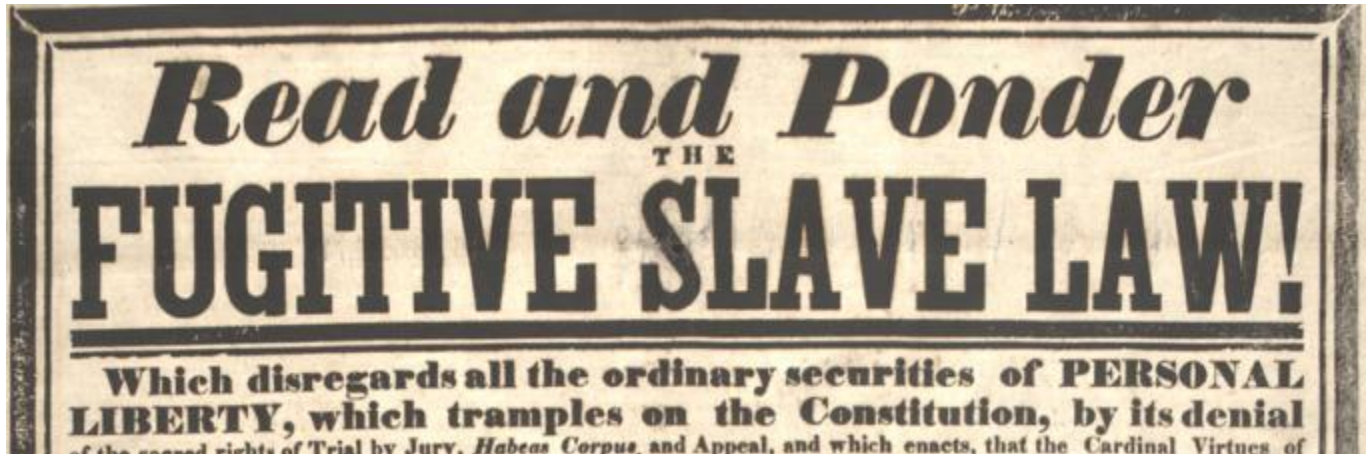# The Failure of Compromise

by Bruce Levine

Detail from an anti-Fugitive Slave Law broadside, published in Boston in 1850. (Gilder Lehrman Collection)

In the spring of 1861, the United States of America split into two hostile countries—the United States and the new Confederate States of America. The two opposing heads of state agreed about what was causing the rupture—the long-running dispute concerning slavery and especially its status in the federal territories. "One section of our country believes slavery is right, and ought to be extended," noted Abraham Lincoln in his First Inaugural Address, "while the other believes it is wrong, and ought not to be extended. This is the only substantial dispute."[1] In a message to his own congress the following month, the Confederate president implicitly affirmed that interpretation. He and his colleagues had left the Union, Jefferson Davis explained, because Lincoln's party had pledged to exclude "the labor of African slaves" from "the public domain" of the territories.

As Davis emphasized in the same message, slavery "was and is indispensable" to the South's kind of society.[2] Of the more than twelve million souls who resided in the southern states in 1860, nearly one out of every three was enslaved. As commodities that could be (and were) freely bought and sold, their bodies were worth something like three billion dollars. That was a sum greater than the value of all the farmland in all of the South and fully three times as great as the construction costs of all the railroads then running throughout all the United States. But even more important was the labor that those four million people performed. Slave labor yielded more than half of all the South's tobacco; almost all of its sugar, rice, and hemp; and 90 percent of its cotton. Only slave laborers, southern leaders were sure, would work hard enough and cheaply enough to yield the immense profits that slaveholders expected.

But the slaveholders' attachment to slavery went even deeper than those considerations. Slavery, it seemed to them, was the only firm foundation for republican government. More generally still, their "peculiar institution" was the unique basis of the particular outlook, assumptions, norms, habits, and relationships that defined their world and to which they had become deeply and reflexively attached.

In the North, just as in the South, meanwhile, economic and social development shaped the population's cultural, intellectual, and political lives and values. Northerners who embraced an economy based on

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free labor came to view the ownership of one human being by another as economically backward, morally repugnant, and politically antidemocratic.

This basic difference gave rise to a protracted conflict that waxed and waned in intensity between the Revolution and the Civil War. Various aspects of that issue became the foci of that conflict at various times—including the way to apportion representation in Congress, the right to petition Congress, the right of states to nullify federal laws, and the recapture of runaway slaves. But the most persistent and explosive of issue was that of slavery's geographical expansion.

Supporters and opponents of slavery both believed that the institution needed to spread in order to survive. Slave-based agriculture was intensive and exhausted the soil quickly. It therefore constantly required additional lands. As large portions of the US population moved westward, only the creation of new slave states could sustain the slaveholders' political power in Congress and the Electoral College. And conversely, allowing the territories, and the states carved out of them, to banish slavery would provide slaves contemplating escape new sanctuaries toward which to flee.

Opponents of slavery thought it equally urgent to bar that institution from the West. Many northern farmers and urban dwellers wanted to be able to migrate into the West without dwelling among slaves, competing with cheap slave labor, or being governed locally by slave-owning politicians. Nor did they relish the idea of increasing the slaveholders' already outsized political power in the federal government. By preventing slavery from expanding, finally, many of its opponents hoped to see it choke to death where it already existed.

This dispute repeatedly erupted into major political crises. Those who prized national harmony above the rights or wrongs of slavery tried to defuse these crises with legislative deals that offered something to both sides. The two most important of these deals became known as the Missouri Compromise and the Compromise of 1850.

In 1819, the Missouri Territory—a piece of the Louisiana Purchase—applied for statehood. By that time there were some 10,000 slaves living in the territory. In order to prevent the spread of slavery, a group of northern congressmen led by James Tallmadge Jr. of New York proposed granting statehood to Missouri on condition that it gradually abolish of slavery. This would be accomplished by preventing any additional slaves from entering Missouri and emancipating all slave children born in Missouri following statehood once those children reached the age of twenty-five.

The House of Representatives, where the more populous North enjoyed greater strength than the South, passed the Tallmadge plan. The Senate, however, where slave and free states had the same representation regardless of the size of their populations, voted to admit Missouri as a state without imposing any restrictions on slavery there.

A legislative compromise finally broke this stalemate. Congress granted statehood to Missouri without barring slavery from it, and Maine, whose application for statehood had in the interim been blocked by southern senators, would now enter the Union as a free state. But in another measure Congress declared slavery illegal in all remaining territories that had been purchased in 1803 and lay north of Missouri's southern border (at 36° 30′ latitude).

A war with Mexico between 1846 and 1848 led to a second great compromise over slavery. By the terms of the treaty that ended that war, the United States acquired more than half a million square miles of Mexican land. Anticipating such an outcome, Rep. David Wilmot, a Pennsylvania Democrat, introduced a measure in the summer of 1846 declaring that "neither slavery nor involuntary servitude shall ever exist in any part" of any land seized during the war. After a heated debate, the House of Representatives

passed the "Wilmot proviso," but in the Senate, once again, proslavery forces mustered the votes needed to block the measure.

This conflict, too, ended in a compromise embodied in a number of congressional resolutions. One accepted the province of California into the Union as a state with the right to decide for itself whether or not to legalize slavery within its borders; it soon outlawed slavery. A second measure organized the rest of the lands taken from Mexico into two territories—New Mexico and Utah—without addressing the status of slavery there. In a process dubbed "popular sovereignty," the white residents of each territory would be permitted to decide that question on their own; both territorial governments later legalized slavery. To placate anti-slavery sentiment, a third measure forbade using the District of Columbia any longer as a regional slave market, making it a crime to bring any additional slaves into the District for the purpose of selling and delivering them elsewhere. And to mollify slaveholders, a fourth measure was adopted. Designed to put additional teeth into the fugitive slave clause of the US Constitution, it empowered federal marshals to pursue people accused of being runaways into free states and to force citizens of those states to join their posses. It also established a body of special federal commissioners (instead of northern judges) to preside over all such cases and denied jury trials to the accused. A final part of the compromise package settled a boundary dispute between Texas and the New Mexico territory.

Many political leaders cheered both the 1820 and 1850 compromises as resolutions of the slavery conflict. Each did, for a time, formally decide the specific questions then in contention. But neither testified to the existence of an overriding, nationwide spirit of conciliation among the population—and neither resolved the fundamental, underlying dispute over slavery, its merits, and its future in the United States.

In both 1820 and 1850, compromise advocates had found it impossible to pass the measures they offered in a single bill. Too many northern congressmen objected to the concessions being made to the South (such as admitting Missouri as a slave state or strengthening the fugitive slave bill), and too many southern congressmen felt the same way about concessions offered to the North (such as outlawing slavery in much of the Louisiana Purchase or admitting California effectively as a free state). Therefore, single "omnibus" compromise bills were broken up into separate measures so that each could be voted upon and passed by distinct, shifting majorities.

In both the North and the South, many who disliked all or part of the compromise packages agreed to abide by them for the sake of maintaining national peace. But the opposing sentiments that made both the 1820 and 1850 compromises so difficult to enact ultimately undermined each of them.

Chafing at the new fugitive slave law, anti-slavery forces tried to render it unenforceable. Southerners who liked the new "popular sovereignty" doctrine used it to overturn the Missouri Compromise. In 1854, Democratic Senator Stephen A. Douglas of Illinois introduced a bill into Congress to facilitate the political organization of the Nebraska territory, a vast region composed of lands obtained in the Louisiana Purchase but not yet formed into states. Over the years, southern leaders had come more and more to resent the 1820 exclusion of slavery from that part of the continent. As a result of their pressure, Douglas's bill declared the Missouri Compromise null and void. It divided Nebraska into two territories, a Nebraska to the north and a Kansas to the south. White settlers would decide the legal status of slavery in each via "popular sovereignty."

The repeal of the Missouri Compromise triggered a huge political backlash in the free states that ultimately gave rise to a new political party, the Republican Party, that pledged to exclude slavery from all federal territories. In the Kansas territory, meanwhile, a guerrilla war known as "Bleeding Kansas" erupted between pro- and anti-slavery settlers, who received support from others in the North and South.

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In 1857, a Supreme Court dominated by southerners and pro-southern Democrats sought once again to resolve the conflict over slavery in the territories with a two-pronged ruling in the now-famous *Dred Scott* case. The Court declared that a slaveholder could carry human property into free territories and even free states and hold such people there for an unspecified period of time without losing claim to them. The Court also ruled that neither Congress nor territorial governments had the constitutional power to outlaw slavery in any federal territory.

This decision only further inflamed anti-slavery opinion in the North and brought additional support to the Republican Party. In the most dramatic expression of the escalating tensions, the abolitionist John Brown and about two dozen men, white and black, mounted a raid in 1859 against a federal armory in Harpers Ferry, Virginia. They hoped to encourage a massive slave revolt that would eventually spread further. Although the attempt failed, it did much to stoke the flames of the North-South conflict.

By 1860, most northern voters had manifestly lost confidence in legislative compromises over slavery. They therefore cast their ballots for presidential candidate Abraham Lincoln, who pledged to outlaw slavery throughout the territories and who hoped this would accelerate that system's "ultimate extinction."[3] Convinced that Lincoln's election proved that slavery had no future in the United States, South Carolina's leaders voted that state out of the United States in December 1860. As it departed, it exhorted the rest of the slave states to follow suit.

Once again the call went up for a compromise that would turn back the secession tide. Political leaders advanced a variety of solutions designed to do so. They varied in detail, but all called for mollifying the South by allowing slavery to expand into some of the federal territories. The most popular of these was a plan devised by Senator John J. Crittenden of Kentucky. It would amend the US Constitution to prohibit Congress from ever abolishing slavery in the District of Columbia or interfering with the slave trade between states and would provide compensation for any master unable to recover slaves who had escaped into the North.

But the plan's centerpiece was a decision to divide the territories between North and South by extending the old Missouri Compromise line (of 36° 30′) westward, outlawing slavery above that line while recognizing and permanently protecting it south of that line in all territories that were "now held, or hereafter acquired." All these amendments were to be permanently in force and un-repealable once ratified.

Lincoln was prepared to make some concessions to avert disunion, but he refused to abandon the core of the Republican platform. "We have just carried an election on principles fairly stated to the people. Now we are told in advance, the government shall be broken up, unless we surrender to those we have beaten. . . . If we surrender, it is the end of us." Crittenden's proposal to legalize slavery in all southerly territories "now held, or hereafter acquired" testified to a continuing intention to annex additional parts of Mexico and the Caribbean to the United States for the purpose of expanding slavery within it. If the North gave in to blackmail, Lincoln warned, the South would "repeat the experiment upon us" whenever they wish, soon no doubt demanding that Cuba be absorbed as a slave state "as a condition upon which they will stay in the Union."[4]

The Republican Party's rank and file agreed with Lincoln's stand, and the Crittenden plan failed to win congressional approval. And in short order the rest of the states of the lower South cotton kingdom (Georgia, Mississippi, Alabama, Texas, Louisiana, and Florida) declared themselves out of the Union, too.

The departure of the lower South and the Republicans' refusal to back away from their program strengthened secession sentiment in four of the eight slave states still in the Union—Virginia, North Carolina, Tennessee, and Arkansas. The major Virginia planter Robert E. Scott, once a unionist, now warned that the secession of seven slave states had "given to the non-slaveholding States such a

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preponderance in the Federal Government over the remaining slaveholding States as to make it incompatible with the safety of the latter to remain permanently associated with them under the present constitution." Now "the free States would control the Government" while the remaining slave states will "be reduced to the condition of humble subordination."[5] Leaders of all four of those slave states in the upper South again demanded that Lincoln repudiate his party's program or risk additional withdrawals from the Union. They also warned that any use of force by the federal government to prevent the Union's dissolution would propel them into the arms of their sister slaveholding states in the Confederacy.

Lincoln rejected these ultimatums. When the Confederacy fired upon and forced the surrender of Fort Sumter in Charleston harbor in April 1861, Lincoln called on the states to send volunteers to put down this armed rebellion against the government. Virginia, Arkansas, Tennessee, and North Carolina refused and made good on their threat to join the Confederacy. The era of compromise had ended; the era of civil war had begun.

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[1] In *Collected Works of Abraham Lincoln*, ed. Roy P. Basler et al (1953), 4:268–269.

[2] Dunbar F. Rowland, ed., *Jefferson Davis, Constitutionalist: His Letters, Papers and Speeches*(1923), 5:72–73.

[3] Lincoln made this point numerous times. For just one example, see *Collected Works of Abraham Lincoln*, 2:461.

[4] Abraham Lincoln to James T. Hale, Jan. 11, 1861, in *Collected Works of Abraham Lincoln*, 4:172.

[5] *Proceedings of the Virginia State Convention of 1861*, ed. George H. Reese (1965), 3:61–62.

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