



Victorian Engravings, The Victoria and Albert Museum 1973

The Political Significance of Slave Resistance *by James Oakes*

When W.E.B. DuBois wrote that it was 'the black worker. . . who brought civil war in America,' historians had yet to undertake the extraordinary studies of slavery that would eventually transform our understanding of all American history. Since then, scholars have discovered among the slaves a pattern of 'day-to-day resistance' which promises to give meaning and substance to DuBois's characteristically astute observation. Slaves engaged in a variety of acts designed to ease their burdens and frustrate the masters' wills. They broke tools, feigned illness, deliberately malingered, 'stole' food, and manipulated the tensions between master and overseer. When pressed, the slaves took up more active forms of resistance: they became 'saucy', ran away, struck the overseer or even the master, and on rare occasions committed arson or joined in organized rebellions. And throughout the slave community a tradition of solidarity sustained and justified individual and collective acts of resistance.¹

What has yet to be demonstrated is the political significance of slave resistance, and there are several reasons for this. Despite the methodological and theoretical sophistication of the field, the ways in which social tensions were translated into political issues are still not well understood. Indeed, few historians have even attempted to trace the connections between everyday resistance and politics. Many scholars remain fixated on an artificial separation of morality from expediency in political analysis, as if 'morality' itself were not grounded in specific historical circumstances. But perhaps the most serious obstacle to further understanding has been the systematic disregard for the institutional political context of slavery and the sectional crisis.

It hardly needs to be said that slaves did not influence American politics with their votes, petitions, speeches, and editorials. Slaves could affect the political system only by intruding themselves into it as outsiders. But this simple observation points up some of the fundamental paradoxes of western slavery – paradoxes that reveal how and under what circumstances slave resistance could become politically significant. That slaves were social ‘outsiders’ in the Old South is no surprise; on the contrary, it places them squarely within a long tradition in western history extending back at least to Ancient Greece. The degree to which slaves were socially and political outcast varied enormously from one slave society to another, as did the consequences of their status. But their fundamental status as outsiders has been one of the few constants in the history of western slavery. (Moslem and African slavery did not always conform to this pattern, and were distinct in several other ways as well.) To be a slave was to be socially and politically ostracized. This was true no matter how important slave labor was to the political and social system, and regardless of the fact that slaves often claimed an ancient ancestry in the land of their bondage. As M. I. Finely writes: ‘In principle the slave is an outsider, a “barbarian”, and that sets him apart from all the other forms of involuntary labour known to history.’²

For all their variety, therefore, slave societies have consistently tended to produce dehumanizing cultural stereotypes that justified the slaves’ exclusion from the social mainstream. In the minds of virtually every master class in history, slaves were somehow different ‘by nature,’ and often sub-human or animal-like. In a notorious passage in *The Politics*, Aristotle declared that ‘a slave is a sort of living piece of property. . . . The use made of slaves hardly differs at all from that of tame animals: they both help with their bodies to supply our essential needs. It is nature’s purpose therefore to make the bodies of free men to differ from those of slaves. . . .’³

The American South was no exception. Southern masters went to extraordinary lengths to define the slaves as social outcasts in their very midst. At their disposal in this effort was a powerful cultural construct commonly known as ‘race’. A peculiar congeries of prejudices and stereotypes, ‘race’ eventually became the most important ideological weapon in the struggle to distinguish free Southerners, most of whom traced their ancestry to western Europe, from enslaved Southerners who virtually always traced their origins to sub-saharan Africa. The slaveholders at once inherited, refined, and finally helped transform these prejudices into an ideology of pseudo-scientific racism that served as the primary justification for the enslavement of four million ‘outsiders’. In the nineteenth century racism provided an artificial but nonetheless effective cultural barrier between masters and slaves who by that time were speaking the same language and praying to the same God.⁴

In the South, as in the ancient world, there was an underlying political

purpose to the racist ideology. Though slavery historians are quite familiar with Aristotle's thinking, few have recognized that the philosopher's assertion of a natural physical distinction between slaves and free men served chiefly to introduce a proposition about the nature of citizenship and the polity. While the bodies of slaves were 'strong enough to be used for necessary tasks,' he argued, the bodies of free men were 'well suited for the life of a citizen of a state, a life which is in turn divided between the requirements of war and peace.' What was true of classical Athens was true of antebellum Mississippi: citizenship and slavery were incompatible. The difference was the specific racial gloss white men gave to their arguments about the basis of American democracy. As one Virginian declared in 1850, 'this Anglo-Saxon race of people in the United States of America are the only people ever formed by the hand of God, that are capable of self-government.' If such remarks were commonplace, that is precisely why they were significant. By defining slaves according to 'race' and simultaneously espousing a 'racial' criterion for political self-government, the slaveholders simply fitted themselves into a long-established western tradition.⁵

The implications of this political tradition have scarcely been appreciated. Because slaves were defined as outsiders, slave societies have been marked by a formal separation of the political institutions from the social structure. Accordingly, the political structures of slave societies have not reflexively mirrored the intrinsic tyranny of the master-slave relationship but have been shaped instead by the institutional inheritance and social relations of the non-slave populations – the 'insiders'. This is why slave societies have flourished in a variety of political formations: the autocracy of the Roman Empire, the royal bureaucracies of Spanish-America, and the representative democracies of Periclean Athens and the Old South. One of the few political systems with which slavery was generally incompatible was feudalism, and the reasons for this are instructive. In medieval Europe, the social and political hierarchies were fused into a single structure, and the prevailing ideology reflected that fusion. In theory, seigneurialism incorporated the lowliest serf into an explicitly hierarchical but 'organically' unified society. By contrast, slaves were culturally and politically ostracised, and slavery was formally separated from the political structures. Thus the famous paradox of 'slavery and freedom' rested less on what slavery did to the political structure than on what it did not do.⁶

This does not mean that slavery had no effect on politics. On the contrary, the formal separation of slavery from the polity was simply the institutional context for the actual relationship between politics and society in the Old South. But that context was critical, for it defined the points at which slave resistance was likely to intrude into politics and the specific mechanisms through which the larger society reacted to those intrusions. In short, the relationship between slavery and the institutional political

arrangements determined the limits as well as the potential consequences of slave resistance.

Any analysis of the political significance of slave resistance in the United States must therefore begin from the recognition that the political structures within which slavery was embedded were not determined by slavery itself. Rather, 'slave law' in the United States was but one part of a much larger and more powerful body of Anglo-American law. As a legal entity, the master-slave relationship was defined by slave codes passed in representative legislatures, protected by state constitutions, and interpreted by local and national judiciaries. Yet not one of those political structures was determined by or dependent upon slavery. Quite the reverse: the slaveholders' legal survival depended on political institutions that slavery did not create, and in the end this put the master class at a fatal disadvantage.⁷

The slaveholders' domination of the liberal political institutions of the Old South had the paradoxical effect of legitimizing the very political structures that would ultimately be used to destroy slavery. Rather than repudiate the principle of 'checks and balances', the tradition of mass-based representative government, or the concept of judicial review, the slaveholders clung to them as the source of their political authority. *Within* the liberal structures, slaveholders assumed different tactical positions on such issues as property qualifications or legislative reapportionment. But when the political system which had long preserved their power instead became a threat to their power, no one seriously considered the establishment of a titled nobility or the reintroduction of primogeniture and entail, much less the abolition of representative assemblies. Thus, having exercised its authority through the liberal polity, the Old South's ruling class was forced to endure the fatal consequences of the contradiction between slavery and freedom.

Where slave law began from the premise that the slave had no political, civil, or legal rights whatsoever, Anglo-American law began from the premise that certain basic rights were universal and inalienable. The totality of the master-slave relationship notwithstanding, some slaves would always engage in acts of resistance that were beyond the master's control, and often beyond the master's purview. When that happened – when slaves disturbed the lives of the 'insiders' – they found themselves in a political universe whose assumptions were antithetical to those of slavery. At that point slave resistance began to influence American politics.

It should not be assumed that the 'conflict of laws' was entirely sectional in nature. Even within the southern states slave resistance pushed beyond the boundaries of the master-slave relationship and created troublesome legal problems for slaveholders, lawmakers, and judges. By the late antebellum decades, for example, every southern state had outlawed the murder of an unresisting slave. But the enforcement of such laws inevitably

raised excruciating questions: Who would determine whether a slave was or was not resisting? If slaves were the only witnesses, as was often the case, could they testify against their master or any other white man? If murder was illegal, did slaves have any rights of self-defense? And how were such questions to be decided when a free man other than the master was one of the parties to a dispute? Slave law alone had no answers to such questions. And so in such cases the determination was made in courts whose rules of procedure rested on principles that were antagonistic to the very nature of slavery: the right to trial by jury of one's peers, the right of self-defense, the right to swear on oath, to bear witness, or to face one's accusers. At the very least, this represented a theoretical threat to the master's authority. Over time, acts of resistance that brought slaves into southern courts began to transform a theoretical possibility into a legal reality.⁸

In most cases, however, the relationship between politics and slave resistance was less straightforward, though no less significant. Consider the politically explosive issue of slavery's expansionism. To what extent was the dramatic westward movement of the slave economy spurred on by the economic consequences of unmotivated and resistant slave labor, or by the need for borders that denied a safe haven to fugitive slaves? Viewed from this perspective, many of the central events of nineteenth-century American history – the Seminole War, the annexation of Florida, the Mexican War, and ultimately the Civil War itself – cannot be fully understood without reference to slave resistance. Yet because slaves influenced the polity indirectly, as outsiders, the debate over slavery rarely centered on slave resistance as such. Instead, most Northerners focused their rhetorical gaze on the most visible consequences of slave resistance: the South's relative economic underdevelopment (which many abolitionists interpreted as the product of resentful labor) and slavery's dangerously expansionistic tendencies. But it does not follow that slavery itself, and the resistance that was part of it, were not the 'real' issue. The question was how and where slavery and slave resistance intruded, given the specific relationship between slavery and the polity that had developed in the United States.

Once we recognize that the political influence of slave resistance was manifested indirectly and through the specific governmental institutions of nineteenth-century America, we can begin to appreciate the slaves' capacity to slowly undermine the essential political component of the masters' authority. To examine this pattern in a preliminary way, the remainder of this essay is deliberately confined to a single subject: fugitive slaves and their impact on the sectional crisis. As slave resistance went, running away was a modest but consequential act. Its political significance could be direct – as in the fugitive slave crisis – or indirect, as when abolitionists used escapes for propaganda purposes. And in some contexts, as we shall see, the political significance of running away could reach

revolutionary proportions. The larger point, however, is that slave resistance contributed in substantive ways to the crisis that severed the United States and eventually brought slavery to an end in America.

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Resistance was essential to abolitionist propaganda, even though the slaves themselves were often far removed from the immediate circumstances. Thus Theodore Dwight Weld's famous anti-slavery tract, *American Slavery as it Is*, could hardly have been written had the slaves been a compliant and tractable workforce. Weld's polemical effect was achieved by his documentary style: a deceptively straightforward litany of fugitive slave advertisements, many of them gruesome in the details of physical abuse and mutilation. Since slaveholders were not a particularly barbaric people, it is safe to assume that the brutality Weld exposed was less a function of sadistic masters than of resisting slaves. Nor was Weld's polemical effect diminished by arguments that his evidence was selective. The point is that he could never have made his selections had there been no fugitive slaves with their identifying scars.⁹

Propagandists used slave resistance in more subtle ways to make their political points. One need not have been an abolitionist to sympathize with Harriet Beecher Stowe's Eliza as she crossed the perilously icy waters of the Ohio River in a desperate effort to keep her child from being sold away. Yet how many readers who held their breath until Eliza's escape was secure could temper their sympathies with the knowledge that in crossing that river Eliza was committing a crime for which she could legally be killed, or that those who assisted the slave mother in her effort to save her child were liable to federal prosecution under the terms of the Fugitive Slave Act of 1850? Stowe's genius lay precisely in her ability to evoke a sympathetic response to criminal acts of resistance.¹⁰

Stowe's point was made all the more effective by the fact that Eliza was clearly not a habitually rebellious slave, that she was motivated by no overpowering desire for freedom nor by a festering hatred of her master. Instead, Stowe demonstrated that the master-slave relationship inescapably pitted Eliza against her owner in spite of the warm feelings each had for the other. Eliza's motives did not change the fact that her behaviour directly thwarted her master's will, violated state and federal law, and still won the sympathies of hundreds of thousands of Northern readers. When Abraham Lincoln greeted Stowe as 'the little lady who made this big war,' he might just as easily have blamed the Civil War on the author's sympathetic character, the slave Eliza.

Clearly the abolitionists were quintessential pragmatists in the use they made of slave resistance, and this alone should give historians pause before they distinguish the 'moral' from the 'pragmatic' arguments against slavery. All moral crusades, including abolitionism, are grounded in the

specific social and political conflicts that define an entire society. Slave resistance exposed those conflicts, and the abolitionists' crusade played on them constantly. At the same time arguments that were ostensibly based on 'expediency' were inescapably moral in their assumptions. To attack the South for its economic backwardness or its undue political influence was to assume a moral preference for a society in which labor was free and in which slaveholders, as slaveholders, had little or no political clout. As the political influence of slave resistance became more consequential, the North/South conflict showed up in public discourse in a variety of forms: as materialistic defenses of Northern economic superiority, as moralistic attacks on Southern sinfulness, and even as racist fears of the spread of black slaves. But in an important sense such distinctions are largely moot. For to define the sectional conflict by its rhetorical manifestations is to miss the fundamental social tensions that provoked the rhetoric to begin with.

Runaways themselves contributed immeasurably to the propaganda war throughout the decades that preceded secession. Fugitive slave narratives are well known – and sometimes criticized – for their formulaic quality: the slave too often seethes under the weight of his or her oppression. Gradually, the slave's determination to be free becomes all consuming. There are unsuccessful escapes, but recapture only strengthens the determination. And finally, often unexpectedly, an opportunity arises, and the dramatic climax is reached. The slave escapes and, once secure, works tirelessly to advance the cause of freedom for all slaves – beginning with a published autobiography. Such narratives were indeed formulaic, which is precisely why they were so effective. By pressing the issue in the most categorical terms of slavery and freedom, runaways helped transform the simple act of escape into a politically explosive fugitive slave controversy.¹¹

But even if their exploitation of slave resistance made more enemies than friends for the abolitionists, some kind of fugitive slave crisis would have been difficult to avoid. At the heart of the controversy rested a 'conflict of laws' that could have political significance only if slaves actually ran away. Where northern law presumed that black people were free and so granted them certain basic civil rights, southern law presumed them slaves. To protect northern free blacks from kidnapping by fugitive slave catchers, northern states established legal procedures for determining whether or not a slaveholders' claim of ownership was valid. These 'Personal Liberty Laws' necessarily extended the presumption of freedom to fugitive slaves, flatly contradicting southern law. They thereby created a potential for sectional conflict every time a slave set foot on northern soil. Nor could such conflicts be confined to relations between individual states, for the United States Constitution and the Fugitive Slave Act of 1793 together guaranteed slaveholders the right of 'recaption'.¹²

So long as no slave ever set foot in a free state, this conflict of laws was a matter of mere theoretical interest. Indeed, the Personal Liberty Laws

posed no direct threat to slavery, for while they may have discouraged some masters from claiming their runaways, the laws never prevented a single fugitive slave from being returned to the South once a master's claim was validated. By the 1850s runaways had become a major source of sectional antagonism *solely* because of the political conflict they both exposed and provoked. Far more directly than abolitionist propaganda, fugitive slaves forced both the North and South into ever hardening defenses of their conflicting social structures.¹³

The North's extension of the Somerset principle posed a more direct threat to slavery than did the legal protection of fugitives. As originally enunciated in England by Lord Mansfield in 1772, the Somerset principle extended to slaves certain protections against arbitrary seizure by masters. But as interpreted by many contemporaries, the Somerset principle held that in the absence of positive laws establishing slavery, all persons standing on English – and perhaps American – soil were presumed to be free. Massachusetts jurists invoked this interpretation of the principle a few years after it was declared, and it was subsequently adopted by other northern states as sectional tensions increased. The Somerset principle held out the prospect of freedom to anyone who set foot in the North, including slaves who were merely in transit with their owners. By contrast, the Personal Liberty Laws simply established procedures regulating the capture of fugitive slaves, but they could do little more than delay the eventual return of runaways. Like the Personal Liberty Laws, however, the Somerset principle was more significant for its political consequences than for the number of slaves it could possibly free. When Dred and Harriet Scott rested their famed lawsuit on the claim that they had once resided on free soil with their master, the political threat proved far more consequential than the prospect of two slaves being emancipated. Yet for all the outrage that the Supreme Court's decision provoked in the North, Chief Justice Taney's opinion rested on a fairly straightforward assertion of Aristotelian principles: black people were slaves by nature and as such could not be citizens.¹⁴

Dred Scott's case was only one of a climactic series of incidents that had politicized the issue of slavery to the point where sectional animosities gave way to Civil War. And in many of those cases the precipitating action was taken by slaves who claimed their freedom, sometimes without militant intentions. Margaret Morgan simply assumed her freedom to move from Maryland to York County, Pennsylvania. This put her putative owners in a precarious legal position after they recaptured the slave and returned her to the South. For in so doing they violated Pennsylvania laws against kidnapping and found themselves tied up in a lawsuit that went all the way to the Supreme Court. And while the captors won their case in *Prigg v. Pennsylvania*, the precedent they established subsequently proved more useful to abolitionists than to slaveholders. By contrast, George Latimer ran away claiming a former master had promised him freedom but with full

knowledge that his claim was in dispute. Regardless of his motives, however, the controversy generated by Latimer's escape led directly to the passage of the Massachusetts Personal Liberty Law of 1843.¹⁵

As numerous historians have argued, the consequences of slave resistance intensified whenever the divisions in white society were most severe. But the lines of influence ran in two directions. Political controversy gave heightened significance to slave resistance, but slave resistance often generated political controversy to begin with. There may be no way to tell whether the insurrection panics of the 1850s were based on a rising level of slave resistance or a rising tide of white paranoia. But we can say with certainty that as the conflict between North and South intensified, acts of slave resistance had increasingly disruptive effects. This was also true within the South, where the class conflict between slaveholders and nonslaveholders was always subtly but powerfully influenced by the pervasive fear of servile insurrection. Simply keeping the slaves outside the polity entailed strenuous efforts to maintain the unity of those on the inside. In practical terms, this meant that slaveholders were repeatedly forced to accede to the non-slaveholders' demands for democratic reform. And on more than a few occasions, reformers explicitly invoked the spectre of servile insurrection to press their cause. When class tensions reached new heights in the 1850s, so did the fear of slave revolt. And where political tensions gave way to armed conflict, as they did during the War for Independence and the Civil War, there was a very real upsurge of resistance. This pattern of slaves taking advantage of disunity among whites constitutes one of the most important themes in the history of slave resistance.

Perhaps even more important, though certainly less appreciated, was the subtle but powerful way in which slave resistance redefined the issues in the sectional crisis. The racism of white Northerners and their widespread animosity toward abolitionists are well established. But slaves who ran away or sued for freedom did not compel Northerners to repudiate their racism, to support abolition, or even to interfere in the Southern slave system. Rather, such cases required Northerners to decide whether they were willing to jeopardize their own liberties by re-enslaving those who claimed their freedom without observing the minimal rights of due process. Many Northerners who were perfectly prepared to defend the masters' right to own slaves were increasingly unprepared to let the slaveholders exercise their privileges as masters at the expense of northern liberties and safeguards.

This is not to say that acts of resistance were the precipitating cause of every major controversy in the sectional crisis. It is to say that slave resistance played a powerful role in shaping the general climate in which such controversies took place. Over the long run the political consequences of slave resistance were cumulative, and they were greatest during the Civil War itself.

All of the generalizations drawn from the discussion of the prewar significance of slave resistance were confirmed by the wartime experience. Once again, acts of resistance mattered more than individual motives. The significance of those acts was derived in large measure from the intensity of the divisions in white society, and those divisions were in turn intensified by the acts themselves. And more clearly than ever, the most significant political consequence of slave resistance was that it shifted the terms of the debate in a way that ultimately served the interests of the slaves over their masters.

And yet the situation after 1860 was without precedent. White society in the South was only tenuously united in defense of the Confederacy, while northern and southern whites had literally come to arms. Wars of this sort make for strange bedfellows, and a significant number of slaves appear to have understood this situation from the start. With so many hostile groups vying for supremacy, a tacit coalition formed between the Union Army, the Lincoln administration, and the slaves. No one ever signed a treaty or announced a pact. But within months of Lincoln's inauguration, almost as soon as the fighting began, slave resistance was forcing the North to establish a policy to deal with the 'problem' of fugitive slaves. And as that policy developed, always pushed along by further evidence of the slaves' willingness to resist, the Lincoln administration backed into a pro-emancipation stance.

'I have no purpose, directly or indirectly, to interfere with slavery in the states where it exists,' Lincoln insisted in his inaugural address in the spring of 1861. 'I believe I have no lawful right to do so, and I have no inclination to do so.' Yet within two years Lincoln issued his famous Emancipation Proclamation, and at the time of his death two years later Lincoln was lobbying for the thirteenth amendment abolishing slavery. It is important to understand that Abraham Lincoln was prepared to back into this position. His roots in the Republican Party and his often-stated conviction that slavery was a political, economic, and moral evil made him more responsive than most Democrats and many Republicans to the pressure to adopt a pro-emancipation policy. But Lincoln was quite sincere in his inaugural address. All the evidence suggests that when he assumed the presidency Lincoln really had no intention of advocating emancipation. What caused him to change his mind?¹⁶

Clearly there were pressures emanating from within the North, particularly from the abolitionists whose moral stock rose to record levels after the South seceded. And there was concern about which way Europe would go if the North could produce no better justification for its crusade than the sanctity of the Union. But the most direct and irresistible pressure came from the slaves who behaved pretty much as they always had. They ran away. Only now the circumstances were different and so the consequences were different also. Indeed, if running away had significant political consequences before the Civil War, it would not be exaggerating

to say that during the war escapes took on revolutionary significance. The slaves did not organize guerrilla bands, slink into the homes of their former masters and slit their throats. They formed no 'Sons of Liberty'; no revolutionary cells. But if slave resistance contributed in important ways to emancipation – as the evidence suggests it did – and if emancipation was a revolutionary transformation – as it clearly was – then slave resistance, under the conditions of Civil War, had not only political but revolutionary significance.

Not every slave struck out for freedom. Some actually protected their masters in wartime. But such behaviour is common to revolutionary situations. Neither the Loyalists in the War for Independence, the white Russians during the Bolshevik Revolution, nor the Nationalists of the Chinese Revolution, diminish the reality of those revolutions any more than did faithful slaves diminish the consequences of resistance. When the war was over the faithful slaves were free along with all the others. Clearly, enough slaves had acted so that by 1865 a war that Confederates fought to save slavery and that the North entered only to preserve the Union nevertheless ended with emancipation.

This was in many ways the logical outcome of 'day-to-day resistance', for it was accomplished in large part by thousands of small acts of defiance whose cumulative consequences were immense. From the moment the secession crisis erupted, slaves across the South began to 'talk' of their freedom and showed extraordinary interest in the course of the war. House servants listened in on white conversations and reported the news to field hands in the slave quarters. Slaves hid under beds listening to whites read newspapers aloud; they climbed trees to overhear dinner party conversations. One illiterate slave memorized the letters her master spelled out in her presence hoping she would not understand, but she later had the letters translated in the quarters. Every neighbourhood had one or two literate slaves who got hold of a newspaper to spread reports of the war effort along what slaves called the 'grapevine telegraph'.¹⁷

Early on southern whites learned that the approach of the Union Army meant more than occupation or physical devastation. As Union troops moved through the South, tens of thousands of slaves left their farms and plantations – long before there was any emancipation policy. Runaways were rarely organized and were therefore difficult to control. Slaves often knew the swamps and forests better than their owners, and so defections were both unpredictable and often impossible to stop.¹⁸

As early as May of 1861, within weeks of Lincoln's inauguration, the problem of runaway slaves was already occupying the attention of Union commanders. From eastern Virginia, General Benjamin Butler wrote his superiors on May 27 that 'the question in regard to slave property is becoming one of very serious magnitude.' Slaves were running to Butler's encampments from Confederate lines, and they were arriving in whole families. Since the Confederates were using slaves to fortify their own

positions, Butler obviously could not send the fugitives back. 'As a military question it would seem to be a measure of necessity' to deprive 'the masters of their services', Butler explained. Would it not be better to put willing slaves to work for the Union Army? But this posed another dilemma. 'As a political question and a question of humanity, can I receive the services of a father and a mother and not take the children?' Thus within weeks of the war's outbreak slaves running to Union lines had presented the military with an unprecedented choice: either send able-bodied men and women back to the enemy, or make a conscious decision to harbor fugitive slaves. What would have been unconstitutional six months earlier had already become what Butler labelled a 'measure of necessity'.¹⁹

By midsummer of the first year of war, when the problem of fugitives was already overwhelming, the United States Congress responded to the Confederacy's use of slave labor by enacting the first Confiscation Act. In it, the Congress declared that any master who allowed the use of his slave property to support the Confederacy would forfeit the right to that property. By itself, however, the Confiscation Act had a paradoxical quality that would later provoke criticism of the Emancipation Proclamation: Since the Act applied only to those areas under Confederate control, the Union was in no position to enforce it.²⁰ Nevertheless, the law's revolutionary implications outraged its opponents. 'Are we in a condition now', Senator John J. Crittenden asked, 'to hazard this momentous, irritating, agitating, revolutionary question?' What gave the Confiscation Act its 'revolutionary' character was the fact that, implicitly but inescapably, it depended for its effect on the actions of the slaves themselves. Most of the slaves actually freed by its provisions were those who ran away.²¹

This had become clear only a few days before Congress passed the law. By late July thousands of slaves had fled to Union lines, and Butler — who had declared in May that fugitives should be held as 'contrabands' of war — was now compelled to apply his decision to huge numbers of runaways. But drawing the line at fugitives who had worked on Confederate defenses was impractical, Butler pointed out. That would not solve the problem of what to do about women and children. Moreover, all fugitives by definition had deprived the masters of at least some of the subsistence necessary to sustain their rebellion. Butler would therefore draw a wider net: 'In a loyal state I would put down a servile insurrection', he said. 'In a state of rebellion I would confiscate that which was used to oppose my arms'. With those words Butler made it clear why men such as Crittenden saw the Confiscation Act as intrinsically revolutionary. For a policy of 'confiscation' was close to what Butler implied it was: the refusal to suppress a servile insurrection.²²

This far the Lincoln administration was still unwilling to go. The property rights of loyal masters had to be protected, wrote Simon Cameron, Lincoln's Secretary of War. But because it was logistically

impossible and militarily undesirable to return any fugitives, Cameron instructed Butler to keep a careful record so that '(a)fter tranquility shall have been restored,' Congress could provide 'a just compensation to loyal masters'. Lincoln's own qualms surfaced a few weeks later. On August 30, 1861, General John C. Fremont declared martial law in the area around St. Louis, Missouri, and included in his order a provision that the slaves of rebel masters 'are hereby declared free men'. Lincoln insisted that this provision went well beyond the language and intent of the Confiscation Act, and he required the general to modify his order accordingly. Lincoln subsequently fired Secretary of War Cameron for, among other things, circulating in December, 1861, a proposal to emancipate and arm the slaves. The following May another Union commander in lowcountry South Carolina, General David Hunter, began issuing certificates of freedom to the thousands of fugitive slaves who were fleeing into Union held territories. Once again President Lincoln countermanded the order.²³

Determined to press further than the President, Congress again took the initiative in early 1862. After a bitter debate the legislators passed a law abolishing slavery in the District of Columbia. Lincoln made no secret of his misgivings about the law, and only after intense pressure from northern blacks did he finally sign it. The slaves in surrounding Maryland had far fewer qualms; they immediately abandoned their owners in huge numbers, flocking into Washington, D.C., to gain their freedom.²⁴

Responding to the willingness of thousands of slave to run for freedom if given the opportunity, and to Lincoln's repeated frustration of the actions of Union officers, Congress enacted a second Confiscation Act in July, 1862. In effect, the statute resolved the fugitive slave problem along the lines established by Generals Fremont and Hunter by promising freedom to all slaves held by rebel masters.²⁵

Thus, well before the preliminary Emancipation Proclamation was issued, runaway slaves had created political crises for whites in both the North and South. Once behind Union lines the slaves' mere presence edged the Union closer toward an emancipation policy. The fact that so many fugitives were already separated from their masters and were under the purview of the Union Army meant that Northerners had to decide not whether to free the southern slaves but what to do with those who had already escaped. The choice was no longer emancipation or not, but re-enslavement or not. For Northerners, these were two very different issues, reminiscent of the situation in the 1850's when whites who were unprepared to interfere with slavery were nevertheless unwilling to allow slave catchers to interfere with northern civil rights laws. Ten years later slave runaways pushed the North toward an emancipationist policy by once again changing the terms of the debate. If most whites were unprepared to accept a general emancipation, neither were they prepared to re-enslave fugitives, especially those who labored for Union victory. Thus a bill passed by Congress on the same day as the second Confiscation Act

promised freedom to slaves who served in the militia, as well as to their wives and children. By actively pursuing their own freedom, slaves made it easier for northern whites to support such policies.

Lincoln acknowledged all of this in strikingly explicit language. Having signed the second Confiscation Act, Lincoln returned it to Congress along with reservations he had put in writing before the bill's passage. He argued that while Congress had no legal right to emancipate slaves, it did have the right to transfer ownership of the slaves to the federal government. At that point, Lincoln noted, 'the question for Congress in regard to them is, "shall they be made free or sold to new masters?"' But having forced that question onto Congress, the 'forfeited slaves' also limited the answers available to the government. 'Indeed', Lincoln added, 'I do not believe it will be physically possible for the General Government to return persons so circumstanced to actual slavery. I believe there would be physical resistance to it which could neither be turned aside by argument nor driven away by force.'²⁶

Southern whites were no less aware of the problems created by runaway slaves. They understood that the mobilization of a huge proportion of whites in the military was possible only because black slaves were doing the work at home. Thus runaways clearly threatened the Confederate war effort. To halt the flight of slaves, the Confederate government exempted from the draft one able-bodied male on all plantations with twenty slaves or more, so long as they hired a replacement draftee. But the cure proved worse than the disease. For while it did little or nothing to halt the flood of fugitives and refugees, it provoked enormous resentment among southern whites, many of whom saw the planters' exemption as class bias pure and simple. Thus the problem of slave resistance further weakened the Confederacy by reinforcing the resentment of slaveless whites.²⁷

Lincoln finally accepted the military necessity of emancipation once he recognized that tens of thousands of fugitives could simultaneously strengthen the Northern war effort and weaken the Confederacy internally. Yet even Lincoln's final Emancipation Proclamation of 1 January, 1863, depended on the slaves for its full effect. The Proclamation has been criticized by historians, as it was by contemporaries, for freeing only those slaves who were beyond the control of the Union Army. Indeed, Lincoln was attacked for tacitly rewarding loyal masters by allowing them to keep their slaves.

But this criticism hardly diminishes the Proclamation's importance. At the point it was issued it must have been clear to everyone that fugitives *would* give the proclamation real meaning by running to Union lines, or that slaves would enthusiastically accept their freedom as the Union Army advanced through the South. When the British made a similar offer to slaves in the South during the American Revolution, King George III was roundly assailed – even by Thomas Jefferson in the Declaration of Independence – for having 'excited domestic insurrections against us'.

While no one in the Lincoln administration was prepared to say as much, the Emancipation Proclamation did almost exactly the same thing.²⁸

Indeed, Frederick Douglass's memoirs suggest that Lincoln fully understood that the force of the Emancipation Proclamation rested on its ability to encourage the massive desertion of the slaves. In a meeting with Douglass shortly after the Proclamation was issued, Lincoln inquired 'as to the means most desirable to be employed outside the army to induce the slaves in the rebel states to come within the federal lines'. The spectacle of an American president encouraging domestic insurrection is sufficiently rare to justify extended quotation from Douglass's account of the event:²⁹

The increasing opposition to the war, in the North, and the mad cry against it, because it was being made an abolition war, alarmed Mr. Lincoln, and made him apprehensive that a peace might be forced upon him which would leave still in slavery all who had not come within our lines. What he wanted was to make the proclamation as effective as possible in the event of such a peace. He said, in a regretful tone, 'The slaves are not coming so rapidly and so numerous to us as I had hoped.' I replied that the slaveholders knew how to keep such things from their slaves, and probably very few knew of his proclamation. 'Well', he said, 'I want you to set about devising some means of making them acquainted with it, and for bringing them into our lines.'

Eventually, large numbers of slaves did learn of the Proclamation and did use it as a pretext for claiming their freedom, regardless of its geographic limitations. Even in areas exempted by the document slaves took advantage of the presence of the Union Army and simply assumed their freedom on the day the proclamation was issued. Despite the fact that Norfolk, Virginia, was exempted, for example, 4,000 slaves celebrated their freedom with a parade and a festival when the Proclamation was issued. Much the same thing happened in New Orleans, which was also under Union control and as such technically untouched by the Proclamation. In lowcountry South Carolina thousands of contrabands had lived as if free ever since General Hunter had acted two years earlier, despite Lincoln's revocation of the general's order. With the Proclamation, they celebrated what they interpreted as official recognition of their status as free people.³⁰

In countless areas outside Union control slaves got word of the Proclamation and assumed their freedom as soon as it was safe to do so. More and more slaves ran to Union lines as soon as the Army approached. Slaveholders reported widespread insolence and intransigence among their slaves. As historian Bell Wiley concluded, 'disorder and unfaithfulness on the part of the Negroes were far more common than post-war commentators have usually admitted.'³¹

From disorder and running away, slave resistance escalated into

organized and disciplined attacks on the Confederacy under the auspices of the Union Army. Northerners initially resisted the idea of black troops, and white Southerners were naturally horrified by it. But many blacks were clearly anxious to fight, and pressured for the right to do so. Northern acquiescence required no diminution of white racism. On the contrary, blacks who wanted to fight actually benefitted from the argument that black soldiers might as well replace white ones. And the miserable conditions fugitives sometimes experienced in contraband camps only enhanced the determination of many slaves to join the Union Army. And join they did, for while the Emancipation Proclamation finally allowed blacks to enlist, they were never drafted. Within a year 50,000 blacks had served and by war's end 179,000 had enlisted, nearly three-fourths of them from the South. They made up nine percent of the Union Army. Another 9,000 blacks enlisted in the Union navy.³²

With the enlistment of freed slaves into the Union Army the line between resistance and revolution all but faded into irrelevance. We may never know how many slaveholders died, directly or indirectly, because of the 134,111 southern blacks who put on blue uniforms and joined the war against their former masters. If black troops were too often relegated to garrison duty, how many white troops were thereby freed for battle service? One thing is clear: the combined effects of fugitive slaves and black troops proved devastating to the slaveholders' cause. Numbers alone suggest the dimensions of the upheaval. Rough estimates put the proportion of slaves liberated by the war – either by running away or by assuming their freedom with the arrival of the Union Army – at twenty percent, or between 800,000 and 900,000 blacks. Yet when historians tabulate their balance sheets comparing the relative strengths and weaknesses of the Union and the Confederacy, they rarely consider this internal collapse of the southern social structure. The most intense resistance to the war effort in the North did not begin to match the social revolution that was destroying the Confederacy from within: yeomen deserted in increasing numbers as the war dragged on; the slaveholders themselves resisted the sacrifices demanded by their wartime governments; and when 'the moment of truth' arrived the slaves reduced to bitter ashes every prewar declaration of their unswerving loyalty.

But sheer numbers do not establish the significance of slave resistance, nor do they account for the slaves' success. Two important circumstances contributed to the outcome. First, the intrinsic contradictions between the law of slavery and the law of freedom gave the slaves an exploitable opportunity that might not have existed in a different political system. In a theoretically perfect slave society, there was no law beyond the master's whip. But the slaves were human beings, no matter what the law said, and this alone precluded the possibility that a 'perfect' society based on chattel slavery could ever exist. Every time an act of human resistance brought a piece of property before the law, the anomaly of slavery in a free society

was exposed. Repeated exposure, even in small doses, weakened the system until legal contradiction gave way to military conflict.

Second, no law of history required the North to assume the pro-emancipationist stance it finally adopted. When Roman bondsmen took advantage of civil war during the last years of the Republic, Augustus suppressed the rebellion by crucifying 6,000 slaves and putting 20,000 more to work in his own navy. In addition, as he later boasted, 'I captured about 30,000 slaves who had escaped from their masters and taken up arms against the republic, and I handed them over to their masters for punishment.' Clearly it matters that the Republican Party would not do the same thing after 1861, just as it matters that the Lincoln administration acted as it did in response to the problem of fugitive slaves. The 'alliance' between the Union forces and the slaves may have been tacit and the circumstances unique, but the pattern was by no means historically anomalous. The American revolutionaries had once taken advantage of indispensable French support and the Bolsheviks would later take advantage of the immense disruption of the Great War. So too did the slaves take advantage of the crisis of the Union, a crisis they had helped provoke. In so doing they demonstrated the political significance of their long and courageous tradition of day-to-day resistance.³³

NOTES

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1 W. E. Burghardt DuBois, *Black Reconstruction in America*, New York, 1935, p. 15. The literature on slave resistance is immense, but among the most important studies are: Raymond A. Bauer and Alice H. Bauer, 'Day to Day Resistance to Slavery', *Journal of Negro History* 27, 1942, pp. 388–419; Herbert Aptheker, *American Negro Slave Revolts*, New York, 1943; Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South*, New York, 1956; Sterling Stuckey, 'Through the Prism of Folklore', *Massachusetts Review* vol. 9, 1968; John Blassingame, *The Slave Community*, New York, 1972; Gerald W. Mullin, *Flight and Rebellion: Slave Resistance in Eighteenth-Century Virginia*, New York, 1972; Peter Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 through the Stono Rebellion*, New York, 1974; George P. Rawick, *From Sunup to Sundown: The Making of the Black Community*, Westport, Conn., 1972; Leslie Howard Owens, *This Species of Property: Slave Life and Culture in the Old South*, New York, 1976; Albert J. Raboteau, *Slave Religion. The 'Invisible Institution' in the Antebellum South*, New York, 1978; Paul Escott, *Slavery Remembered: A Record of Twentieth-Century Slave Narratives*, Chapel Hill, N.C., 1979; Deborah Gray White, *Ar'n't I A Woman: Female Slaves in the Plantation South*, New York, 1985.

Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made*, New York, 1974, pp. 597–598, argues that 'day-to-day resistance to slavery' generally implied accommodation and that it was 'at best prepolitical and at worst apolitical'. Lawrence W. Levine, *Black Culture and Black Consciousness*, New York, 1977, p. 54, disputes the legitimacy of the political standard.

2 The quotation is from M. I. Finley, *Aspects of Antiquity. Discoveries and Controversies*, New York, 1968, p. 157. See also, M. I. Finley, *Ancient Slavery and Modern Ideology*, New York, 1980, pp. 93–122; Orlando Patterson, *Slavery and Social Death: A*

Comprehensive Study, Cambridge, Mass., 1982; William D. Phillips, Jr., *Slavery from Roman Times to the Early Transatlantic Trade*, Minneapolis, 1985, p. 6.

3 Aristotle, *The Politics*, translated by T. A. Sinclair, revised by Trevor J. Saunders New York, 1981, pp. 64–5, 69.

4 Winthrop D. Jordan, *White Over Black: American Attitudes Toward the Negro, 1550–1812*, Chapel Hill, 1968, traces the transformation of hostile prejudices into racism. George Fredrickson, *The Black Image in the White Mind*, New York, 1972, sees a later dating for the transformation.

5 Finley, *Ancient Slavery*, 118; Aristotle, *The Politics*, 69.

6 On the relation between slavery and the state in Ancient Rome see Chris Wickham, 'The Other Transition: From the Ancient World to Feudalism', *Past and Present*, vol. 103, May, 1984, pp. 3–36. For the structure of government in colonial Spanish-America, the classic study by C. H. Haring, *The Spanish Empire in America*, New York, 1947, is still useful.

On the feudal state, see Joseph Strayer's elegant introduction to *Feudalism*, New York, 1965. On the social relations and ideology of feudalism, the starting point is Marc Bloch, *Feudal Society* trans. by L. A. Manyon Chicago, 1961. A new view of the relationship between politics and society emerged out of the 'internalist' interpretation of feudalism's decline, beginning with Maurice Dobb, *Studies in the Development of Capitalism*, New York, 1947, pp. 33–82, which was followed by a major exchange in *Science and Society*, subsequently published as Paul M. Sweezy, et al., *The Transition from Feudalism to Capitalism. A Symposium*, New York, third printing, 1967. For an insightful critique by a scholar sympathetic to the internalist position, see Robert Brenner, 'Dobb on the transition from feudalism to capitalism,' *Cambridge Journal of Economics*, vol. 2, 1978, pp. 121–140. Brenner's own important reformulation of the internalist argument, and the equally important exchange it provoked, has been published as Brenner, et al., *The Brenner Debate*, Cambridge, 1985. But the most important case studies include those by Rodney Hilton, cited extensively by Brenner, along with Guy Bois, *The Crisis of Feudalism. Economy and Society in Eastern Normandy c. 1300–1500*, Cambridge, 1984, and Witold Kula's brilliant, *Economic Theory of the Feudal System. Toward a Model of the Polish Economy, 1500–1800*, London, 1976, trans. Lawrence Garnier.

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7 For a different but perceptive view of slave law, see Mark Tushnet, *The American Law of Slavery, 1810–1860. Considerations of Humanity and Interest*, Princeton, 1981.

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10 Harriet Beecher Stowe, *Uncle Tom's Cabin*, 1852.

11 On the value of slave autobiographies, see Blassingame, *Slave Community*, revised and enlarged ed., 1979, pp. 367–382.

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21 *Congressional Globe*, 37th Cong., 1st sess., (1861) 222–223

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30 Franklin, *Emancipation Proclamation*, pp. 100–103, pp. 108–112.

31 *Ibid.*, pp. 120–123, pp. 132–133; Quarles, *Negro in the Civil War*, pp. 163–82; Bell Irvin Wiley, *Southern Negroes, 1861–1865*, New Haven, 1938, p. 83.

32 For a different view of the significance of northern racism, see Louis S. Gerteis, *From Contraband to Freedman. Federal Policy Toward Southern Blacks, 1861–1861*, Westport, Conn., 1973. On black troops, see Dudley Taylor Cornish, *The Sable Arm Negro Troops in the Union Army, 1861–1865*, 1956. New York, 1966; Litwack, *Been In the Storm So Long*, 65–103. See also the major documentary collections on the black military experience and emancipation published under the general editorship of Ira Berlin, *Freedom. A Documentary History* 2 vols., New York, 1983, 1985

33 Finley, *Ancient Slavery and Modern Ideology*, 110; Finley, *Economy and Society in Ancient Greece*, pp. 104–111.