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ABRAHAM LINCOLN AND THE CORWIN AMENDMENT - THE INFAMOUS 'GHOST VERSION' OF THE 13TH AMENDMENT

Abstract:

Most people would find it hard to believe how far Abraham Lincoln was prepared to go in political compromise in order to save the Union from secession. It is still hardly known or discussed that while Lincoln was preparing to assume office in the early weeks of 1861 he gave his active support to a piece of legislation that would have given permanent protection to slavery in the United States of America. That piece of legislation was the first version of the 13th Amendment to the U.S. Constitution, also known as the Corwin Amendment. In fact, the last piece of legislation that out-going Democrat President James Buchanan endorsed, and the first one that the new Republican President, Abraham Lincoln endorsed was one and the same: the Corwin Amendment. This information is certainly not compatible with the picture we have of Abraham Lincoln today. How could the Great Liberator, the Emancipator of slaves have ever backed such a depraved statute? So should we cancel Abraham Lincoln and the slaveholding founding fathers as demanded by many social justice activists these days, or can we change the way we choose to remember them by including their dark sides, by striving to understand the historical context and moral framework these men lived in and held; thus revisit our national narratives?

Keywords:

The original 13th Amendment, permanent protection to slavery, revisiting heroes and public memorials, national narratives, cancel culture

JEL Classification: I21, Z00

American historians have consistently rated Abraham Lincoln and George Washington as the top 2 greatest presidents.¹ Anyone visiting Washington D.C. is inadvertently overwhelmed by the sheer size and prominence of the Washington and Lincoln memorials towering high in the very center of the capital city, located by the US Capitol Building and the White House. These two presidents have clearly been perceived far more significant than any other of the 43 US presidents in the past for leading their country through two of the most defining wars in American history (the War of Independence and the US Civil War). Washington and Lincoln have both managed to carve out a permanent image of the greatest leader of the American nation – that is until recently when under the scrutiny of the new cancel culture their legacy appears to be falling fast from their former, centuries-old, uncontested glory.



SURVEY LINKS		HISTORIANS SURVEY RESULTS CATEGORY			
<ul style="list-style-type: none"> ■ All Presidents ■ Total Scores/Overall Rankings ■ Survey Participants ■ Survey Advisors ■ Methodology ■ Press Room 	TOTAL SCORES/OVERALL RANKINGS				
President's Name	2017 Final Scores	Overall Rankings			
		2017	2009	2000	
Abraham Lincoln	907	1	1	1	
George Washington	868	2	2	3	
Franklin D. Roosevelt	855	3	3	2	
Theodore Roosevelt	807	4	4	4	
Dwight D. Eisenhower	745	5	8	9	
Harry S. Truman	737	6	5	5	

Social justice activists first demanded the removal of Confederate statues and street names in an effort to rid America of her last vestiges of racist white men memorialized on pedestals. Then, they began to call out some of the most prominent and revered founding fathers, George Washington, Benjamin Franklin, Thomas Jefferson, James Madison, and Texas founding father Sam Houston, etc.; not for their high ideals of a republic, or freedom of religion, of speech and of the press, but because of their hypocrisy as slaveholders, living off of the hard work, the suffering and chains of other human beings. George Washington, the man who led the Americans in their struggle for freedom independence from the oppressive British regime of George III would deny that same freedom and independence of his 300 slaves back home on his Mount Vernon plantation. Stories of Thomas Jefferson's slave lover, Sally Hemings, and his six children with her, whom he never liberated from slavery, began to make it into the high school history classrooms –

¹ <https://www.c-span.org/presidentsurvey2017/?page=overall>

alongside his famous lines from the Declaration of Independence professing the equality and unalienable rights of all men.

These great statesmen's words and ideals which are generously covered in classrooms and reinforced by public memorials, **and the great inconsistencies between their private lives and morals demand that we revisit our national narratives.** We should never pretend to approach the past without a moral framework, there are no neutral observers of history. "What we choose to memorialize reflects what we actually value, (...) while what we choose to forget often reveals the limits of justice in our collective imaginations."²

We might think that with the diminishing glory of these founding fathers Abraham Lincoln would shine even brighter. At last a truly self-made man! Instead of being born into a wealthy and well-connected family, like most of his predecessors, Lincoln went from abject poverty as a boy, with only a single year of formal schooling, to becoming a lawyer and eventually the president of the United States. Yet the legacy of Abraham Lincoln, the man who successfully led the country through the Civil War and painstakingly raised the necessary 2/3 support for the 13th Amendment in both Houses of Congress in 1864-5 in order to abolish slavery in the United States, has also come under some scrutiny and criticism lately.

The criticism obviously cannot be leveled at Lincoln for anything akin to Washington's, Franklin's or Jefferson's slaveholding since Lincoln never had any slaves and was anti-slavery all his life. However, upon closer inspection of Lincoln's speeches and politics we find some disturbing details that provide a far more nuanced picture of Lincoln than the official canonized depiction of the great emancipator found in history textbooks, paintings, statues, or movies. Lincoln, who certainly held high moral ideals, and in fact ultimately achieved the abolition of slavery in the entire country, turns out to have been a political realist who knew that gradualism was the only possible way forward if the country, which was so divided over key issues of the day, was to be kept together. With that said, most people would find it hard to believe how far Lincoln was prepared to go in political compromise in order to save the Union from secession.

Lincoln was a moderate on slavery from a legal vantage point, but he had made it no secret that he was anti-slavery on moral and political grounds.

Slavery is founded in the selfishness of man's nature - opposition to it, is his love of justice. These principles are an eternal antagonism; and when brought into collision so fiercely, as slavery extension brings them, shocks, and throes, and convulsions must ceaselessly follow.³ I think slavery is wrong, morally, and politically. I desire that it should

² Glaude, Eddie, Jr. *The storm around America's statues isn't about history*. Aug. 19, 2017. The Guardian.

³ *The Collected Works of Abraham Lincoln* edited by Roy P. Basler, Volume II, "Speech at Peoria, Illinois" (October 16, 1854), p. 271.

be no further spread in these United States, and I should not object if it should gradually terminate in the whole Union.⁴

Abraham Lincoln had high ideals, but he was a political realist. As he was trying desperately to hold the Union together, balancing the political tightrope between moderate Northerners and anti-secessionist Southerners, he would regularly ramp up the racist comments in his own speeches and debates to reassure the majority of his countrymen living in the South that if he were to be elected the President in 1860 they had no reason to fear his anti-slavery policies.⁵ He would work hard to abate fears of both Northerners and Southerners alike which were conjured up by the idea of millions of liberated angry slaves looking for work and a new place to live by proposing (and then seriously conducting negotiations for) their mass transportation off to somewhere in Africa, “their own native land”, or Haiti, or even possibly Central America.

It is still hardly known or discussed that while Abraham Lincoln was preparing to assume office in the early weeks of 1861 he gave his active support to a piece of legislation that would have given **permanent protection to slavery in the United States of America**. That piece of legislation was the first version of the 13th Amendment to the U.S. Constitution, also known as the Corwin Amendment⁶. In fact, the last piece of legislation that out-going Democrat President James Buchanan endorsed (in the unprecedented way of signing it, though he knew that it was completely unnecessary)⁷, and the first one that the new Republican President, Abraham Lincoln endorsed was one and the same: the Corwin Amendment. This information is certainly not compatible with the picture we have of Abraham Lincoln today. How could the Great Liberator, the Emancipator of slaves have ever backed such a depraved statute?

The Corwin Amendment was drafted in December 1860 by Senator William Seward of New York (Lincoln's future Secretary of State) as the 13th Amendment to the U.S. Constitution, and was passed by both Houses of Congress the week before Abraham Lincoln took office as President. It had been the fruit of a desperate cross-party effort by the ad-hoc legislative committee, the Committee of Thirty-three (one member from each of the 33 states), chaired by

⁴ *The Collected Works of Abraham Lincoln* edited by Roy P. Basler, Volume III, "Speech at Cincinnati, Ohio" (September 17, 1859), p. 440.

⁵ <https://thehistoricpresent.wordpress.com/lincoln-slavery-and-racism/>

⁶ Corwin Amendment co-sponsor Charles Francis Adams, affirms this, noting that the amendment's adoption by the narrowest of two-thirds majorities came only because of "some careful manipulation, as well as the direct influence of the new President." As R. Alton Lee, for the Ohio Historical Society, thoroughly documents how Lincoln actively lobbied behind the scenes to drum up support for the amendment after he arrived in Washington in late February. Source: Philip W. Magness. Abraham Lincoln and the Corwin Amendment. http://philmagness.com/?page_id=398

⁷ Tsesis, Alexander. (2004). *The Thirteenth Amendment and American Freedom: A Legal History*. New York University Press. (In 1798, the Supreme Court ruled that the President played no official role in the constitutional amendment process.)

Rep. Thomas Corwin of Ohio⁸ to resolve some of the gravest conflicts of interest between the North and the South before those would reach a point of no return.⁹ The Corwin Amendment reads as follows:

No amendment shall be made to the Constitution which will authorize or give to Congress power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State.¹⁰

The House approved Corwin's Amendment by the required 2/3 majority (a vote of 133 to 65) on Feb. 28, 1861 and the Senate followed suit (supporting it by a vote of 24 to 12) on March 2, 1861, just 2 days before Lincoln's inauguration.¹¹ That is astounding for at least three reasons. One, the Corwin Amendment would have made slavery a legal institution in any one of the 34 states¹² as well as in the territories petitioning to join the U.S. as a new state (if they chose to become a slave-holding state), by permanently keeping slavery entirely a states' right issue. Two, it would have stripped Congress of the legislative power to interfere with or abolish slavery anywhere within the U.S. – by “shielding domestic institutions of the states (aka slavery) from the constitutional amendment process”¹³, thereby potentially making slavery perpetual in the U.S. Three, this pro-slavery piece of legislation actually received two-thirds support in both Houses of Congress *without* the support of the 7 Southern states which had seceded by February 28, 1861! Both Houses of Congress were, in fact, controlled by Northern states, all of which had long abolished slavery in their respective states, and yet at this momentous time in history they were willing to keep slavery legal for the sake of salvaging the Union. The ‘end’ of keeping the country together under one government justified the horrible ‘means’ of making the institution of slavery perpetual in any state that chose to do so.

In his first inaugural address on March 4, 1861, Abraham Lincoln made reference to the Corwin Amendment defending the right of the individual states to hold on to their “domestic institutions”, which at the time was a widely used euphemistic term for slavery:

⁸ Thomas Corwin, of Hungarian-Armenian descent was born and raised in Kentucky (the same as Abraham Lincoln). He started his political career as a member of the Ohio House of Representatives, became member of the U.S. House of Representatives, then the Governor of Ohio, followed by his appointment as U.S. Senator for Ohio (and famous for opposing the Mexican-American War). Corwin was Secretary of Treasury under President Fillmore (a supporter of the protective tariff, just as Lincoln was). In 1860, he was chairman of the House “Committee of Thirty-three,” consisting of one member from each state, and appointed to consider the condition of the nation and, if possible, to devise some scheme for reconciling the North and the South.¹⁰—He resigned only a few days into the 37th Congress after being appointed by the newly inaugurated President Abraham Lincoln to become Minister to Mexico. Source: Chisholm, Hugh, ed. (1911). "Corwin, Thomas". *Encyclopædia Britannica* (11th ed.). Cambridge University Press.

⁹ Ibid.

¹⁰ <https://web.archive.org/web/20120702135703/http://www.house.gov/house/Amendnotrat.shtml> 20, April 2021.

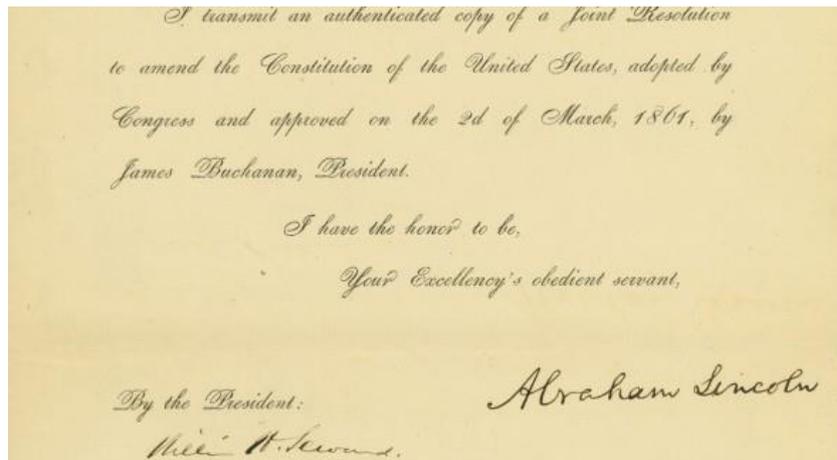
¹¹ 132 votes were required in the House to ensure the 2/3s, and 24 votes in the Senate!

¹² Kansas was accepted into the Union in January 29, 1861 as the 34th state.

¹³ Foner, Eric (2010). *The Fiery Trial: Abraham Lincoln and American Slavery*. W. W. Norton. ISBN 978-0-393-06618-0. Jan. 2021.

I understand that a proposed amendment to the Constitution (..) has passed Congress, to the effect that **the Federal Government shall never interfere with the domestic institutions of the States**, including that of persons held to service....holding such a provision to now be implied constitutional law, **I have no objection to its being made express and irrevocable.**¹⁴

The Corwin Amendment, having previously received the required two-thirds in both houses of Congress, was then sent out by Abraham Lincoln, the new president just taking office, to the individual states for ratification, accompanied by the following lines:



The above handwritten letter by Lincoln reads as follows: “I transmit an authenticated copy of a Joint Resolution to amend the Constitution of the United States, adopted by Congress and approved on the 2nd of March, 1861, by the President: James Buchanan. I have the honor to be Your Excellency’s obedient servant, Abraham Lincoln”

Lincoln’s position on the institution of slavery prior to his election in 1860 was a moderate one from a legal perspective - especially from the vantage point of Northern abolitionists of the time. He repeatedly acknowledged the constitutional right of slave-states to continue as such, consequently, legally he could not, so he would not touch slavery in the Southern states.

I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so.¹⁵

Lincoln often made a distinction, however, between allowing Southern slave states to continue as such and the question of whether to let slavery be established in the future states (in the Western Territories) requesting admission into the USA. He was vehemently against the spread of slavery into the new territories of the U.S. for reasons beyond those of right and wrong.

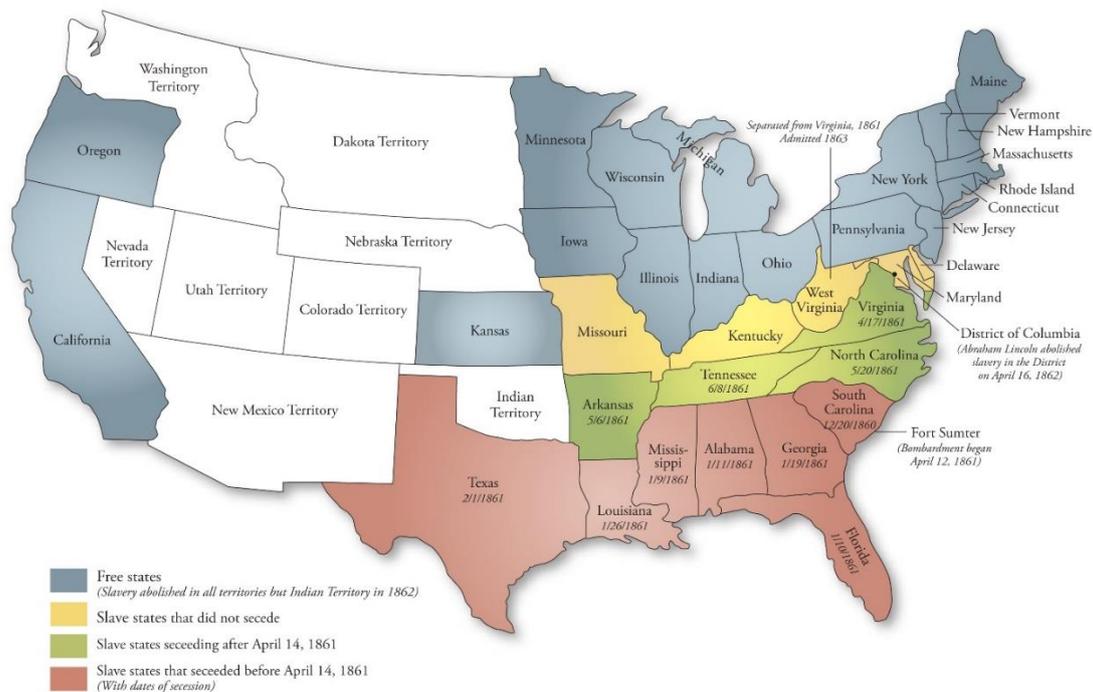
¹⁴ <https://www.loc.gov/resource/ma1.0773800/?st=text> April 20, 2021.

¹⁵ *First Lincoln – Douglas Debate*. August 21, 1858. <https://www.nps.gov/liho/learn/historyculture/debate1.htm> April 21, 2021.

I suppose slavery may long exist, and perhaps the best way for it to come to an end peaceably is for it to exist for a length of time. But I say that the spread and strengthening and perpetuation of it is an entirely different proposition. There we should in every way resist it as a wrong, treating it as a wrong, with the fixed idea that it must and will come to an end.¹⁶

The all-too-obvious political rationale behind Lincoln's stance was the fact that since the 'balance' of power in Congress (the control over the Federal Government) between slaveholding states and non-slaveholding states very much depended on whether the future states admitted into the U.S. would join and vote with the Northern lobby or the Southern lobby on vitally important economic policy issues, such as whether to introduce new and higher protective tariffs on imported manufactured goods or on raw materials, or where the route of the first transcontinental railway should be, or if to open the new territories to homesteaders or to big plantations instead. It was a matter of 'life and death' for both factions in Congress to gain the support of the future states for their own faction.

The United States on the Eve of the Civil War



17

Given that the wealth produced in the North, as well as the population of the Northern states were growing at a much faster pace than those of the slaveholding states, from the perspective of the Southern political elite it was absolutely decisive that the western territories –

¹⁶ Lincoln's speech on March 1, 1859 in Chicago, Illinois. *The Collected Works of Abraham Lincoln*. p. 370. <https://quod.lib.umich.edu/lincoln/lincoln3/1:90?rgn=div1;view=fulltext>

¹⁷ Map: <https://www.timetoast.com/timelines/steps-to-the-civil-war-99267d2a-bbfc-497a-945d-cf435f4c05f2>

as they would organize into new states - would have the freedom (states' right) to declare themselves slaveholding. The principle of states' rights, also called the principle of popular sovereignty, was clearly the heart of the issue and the Corwin Amendment was going to secure that very right of every new and old state, to decide their status as slaveholders or "free-soilers" themselves. Consequently, for Lincoln to support the Corwin Amendment was a significant move away from his otherwise widely held antagonism towards the spread of slavery into the Western Territories.

Even though Abraham Lincoln was consistently and openly anti-slavery on moral grounds, on the 'campaign trail' (1858, 1860) he was a political pragmatist. During the Secession Crisis, strictly for the sake of keeping the country together, he compromised on the idea of the potential spread of slavery. This position proved highly inconsistent with Lincoln's earlier statements on the injustice and monstrosity of slavery and it was only the outbreak of the Civil War that prevented the Corwin Amendment from being ratified by the states and thus slavery becoming enshrined in the US Constitution!

Lincoln's priority in the Civil War and in issuing the Emancipation Proclamation was to restore the Union between the North and the South. Lincoln realized that he could only save the Union if he issued an Emancipation Proclamation. He drafted the Proclamation in the summer of 1862 and issued it on January 1, 1863 actually freeing very few slaves as it did not apply to the slaves within the jurisdiction of the North, i.e. the 4 neutral border states of Delaware, Maryland, Kentucky and Missouri, all slaveholding states that never broke away from the Union to join the Confederacy. Critics of the Proclamation see it as a document meant as a military measure or a legal illusion rather than an honest push for the abolition of slavery. Allen Guelzo, a Lincoln expert, however argues that Lincoln did not have constitutional (federal) authority over state jurisdiction to free slaves and thus to take away the property of American citizens not at war with the Union.¹⁸ With a stroke of a pen Lincoln, acting in his capacity of Commander in Chief, on paper freed 3.5 million slaves living in the Confederacy, but also since most of the Confederacy was territory yet to be taken by the Union forces, as of January 1st 1863 he essentially freed none.

While in our day and age Lincoln is criticized for not going far enough in 1863, his contemporaries in the North (!) thought that Lincoln had "exceeded his boundaries, completely disregarded the constitution and was likely attempting to foment slave insurrection in the south"¹⁹! The blowback from North and South was immediate. The Governor of New Jersey, but also the Governor of New York "denounced the Emancipation Proclamation as a usurpation of presidential

¹⁸ Guelzo, Allen C. *Lincoln's Emancipation Proclamation: The End of Slavery in America*. 2006:55

¹⁹ Guelzo, 2006:56

authority, with no legal standing even if it was coming from a president exercising his war powers!"²⁰ The black community of Richmond, on the other hand, gave Lincoln a hero's welcome when he visited the capital of the Confederacy two days after the Confederate troops evacuated the city. They clearly hailed him as the emancipator, the man we have become used to portraying Lincoln to be.

In due course Abraham Lincoln's moral conviction would win over his legal conservatism regarding states' rights and the institution of slavery. He would scrape the 1860 text of the Corwin Amendment and propose the exact opposite of its intent with the final version of the 13th Amendment abolishing slavery and involuntary servitude in all of the United States, passed by the required 2/3 of the Senate on April 8, 1864, followed by the 2/3 of the House on January 31, 1865, and ratified by the required 27 of the 36 states on December 6, 1865.

Memorials to great statesmen are made to honor their achievements and sacrifices for their nation. Yet all too often we have chosen to present national heroes to our citizens and foreign visitors, to our children and our students, and even to ourselves in a hypocritical manner. We have been complicit in covering up their moral shortcomings, imperfections and failures, portraying them instead in a superhuman light, all in the hopes of forging a national narrative and role models that are glorious enough to match our dreams and aspirations. Others, in the meantime, have erred by disregarding the complexities of the historical context these men lived in and had to forge political compromises in and without any honest debate just readily cancelled them. Instead, it is time to come clean by researching and sharing the full stories of these men behind the statues in order to stimulate critical thinking, honest debates and truthful narratives, conducive to a more informed, better equipped, and more just society.

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²⁰ Ibid.

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Map: The United States on the Eve of the Civil War.

<https://www.timetoast.com/timelines/steps-to-the-civil-war-99267d2a-bbfc-497a-945d-cf435f4c05f2>