

THE EMANCIPATION
PROCLAMATION:
A NECESSARY MILITARY
MEASURE

By Katherine Dang

PRESUPPOSITIONS

- There would not have been an American Civil War unless America had *let go of the principles of representative government* for the principles of a democratic republic, let go of exercising the powers of local self government for gaining the prize of national power in the competition between political factions, let go of political principles for the arbitrary, collective will of the majority of society.
 - Reason referring to and guided by divine revelation let go for reason guided by self revelation and self realization.
 - Self government let go for self reliance. Local self government let go for nationalization of local matters.
 - Individual liberty of conscience let go for social conscience and the collective sharing of guilt.
 - The idea that civil government using its powers specifically for the protection of the individual life, liberty and property is let go for the idea that civil government using its powers specifically for the enforcement of a democratic, social good and morality.
- From beginning to end, Lincoln’s concern—as President of the United States— was for the preservation of the Nation and its body of laws, *The Constitution of The United States of America*
 - The Civil War between North and South was fought by the North to prevent the secession of the Southern states and preserve the Union.
 - Lincoln gave the citizens in rebellion against the United States as much protection of the Constitution as he could afford without aiding and abetting the rebellion against the Constitution
 - “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, ***nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.***”

— *Fifth Amendment*
 - Lincoln steadfastly *denied* the notion that the Confederacy was a separate nation under international law, the people of the Confederacy were not foreign enemies, but citizens in rebellion, who still owed obedience to the government of The Constitution and are rightfully subject to it.
 - Certain inflictions of punishment, *calculated to repel the violence and rebellion*, were lawful.

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- ***Lincoln issued Emancipation Proclamation as an Executive Order by his authority as “Commander in Chief of the Army and Navy” under Article II, section 2 of the United States Constitution.***
 - Clause 1: The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.
 - The Proclamation was an outcome of ***a war power*** and not a criminal measure for the punishment of a crime
 - Slaves had been part of the “engine of war” for the Confederacy. They produced and prepared food; sewed uniforms; repaired railways; worked on farms and in factories, shipping yards, and mines; built fortifications; and served as hospital workers and common laborers. News of the Proclamation spread rapidly by word of mouth, arousing hopes of freedom, creating general confusion, and encouraging thousands to escape to Union lines.
 - The Emancipation Proclamation was simply a war powers action by he, the commander in chief of the armies, in which he attempted to ***remove all the slaves from the southern peoples “in rebellion against the United States***
 - It applied only to states that had seceded from the Union, leaving slavery untouched in the loyal border states. It also expressly exempted parts of the Confederacy that had already come under Union control.
 - William Seward, Lincoln's secretary of state, commented, “We show our sympathy with slavery by emancipating slaves where we cannot reach them and holding them in bondage where we can set them free.” Lincoln was fully aware of the irony, but he did not want to antagonize the slave states loyal to the Union by setting their slaves free.
 - Lincoln was very anxious about the legality of his actions. He worded the document very carefully, in legal terms, in his attempt to make it legally binding in future courts of law. Furthermore, the Court argued that the United States ***retained the powers of both a “belligerent and a sovereign, and had the rights of both”*** allowing the government to treat the rebels as if they were enemies.
 - Lincoln had declared ***in peacetime*** that ***he had no constitutional authority to free the slaves***.
 - Since ***the proclamation was a war measure***, it had not permanently ended slavery; ***New England abolitionists “looked glum and grumbled . . . that the proclamation was only given on account of military necessity.”***
 - The basis of slavery, ***the dehumanization of an individual and the belief in the natural inequality and the inferiority of one race of mankind to another cannot be politically or legally resolved.***
 - Ending slavery was not an original goal of the war ***until*** the Emancipation Proclamation, January 1, 1863
 - The Emancipation Proclamation is America’s first attempt at forcibly liberating captives and slaves whereby the freedom it promised depended upon Union military victory. As northern armies marched through the south, which General Sherman and his army soon began doing, thousands of slaves followed in their wake—and were never again under the ***legal authority*** of their former masters.
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Civil War Time Line of Major Military Events

1860

November 6 Lincoln elected President

1861

March 4 Lincoln inaugurated

April 12 Firing on Fort Sumter, S.C., initiated the Civil War

July 21 1st Battle of Bull Run

August 6 The last day of this short first session, Congress passed and Lincoln signed the **First Confiscation Act.**

1862

June-September 2nd Bull Run Campaign

July 13 Lincoln read initial draft of the Emancipation Proclamation to Secretaries Seward and Welles

The Second Confiscation Act, approved by Congress 16 July 1862, contained **the first definite provisions for emancipating slaves in the rebellious states.**

July 22 Lincoln discussed Draft of the Emancipation Proclamation at a Cabinet Meeting.

September Antietam Campaign

September 22 Cabinet discussion of Emancipation First printing of preliminary version of Emancipation Proclamation

1863

January 1 Lincoln signed the Final Draft of the Emancipation Proclamation

April-May Chancellorsville Campaign

July 1-3 Gettysburg Campaign

November 19 The Gettysburg Address

1864

April 4 Lincoln explained his choices related to emancipation

May-December The March Toward Richmond

May 5-7 Grant's Wilderness Campaign

May 7-20 Battle of Spotsylvania

June '64-May '65 Petersburg Campaign

September 1 Fall of Atlanta

November 8 Lincoln Re-Elected

1865

April 9 General Lee surrendered

April 14 Lincoln assassinated.

Preservation of *Private* Property: An Inalienable, God-given Right

- *The Fugitive Slave Law of 1850 required individuals to return fugitive slaves to their owners.* Initially this did not occur in areas of war because some Union generals declared slaves in occupied areas were contraband of war. This decision was controversial because it implied recognition of the Confederacy as a separate nation under international law, a notion which Lincoln steadfastly denied. As a result, he did not promote the contraband designation. On March 13, 1862, *Lincoln forbade Union Army officers from returning fugitive slaves.*
- Some generals also declared the slaves under their jurisdiction to be free and were replaced when they refused to rescind such declarations.
- On April 10, 1862, Congress declared that the federal government would *compensate slave owners who freed their slaves.*
- Slaves in the District of Columbia were freed on April 16, 1862 and *their owners compensated.*
- In January 1862, Thaddeus Stevens, the Republican leader in the House, called for total *war against the rebellion to include emancipation of slaves*, arguing that emancipation, by *forcing the loss of enslaved labor*, would ruin the rebel economy.
- On June 19, 1862, Congress prohibited slavery in United States territories. By this act, they opposed the 1857 ruling of the Supreme Court of the United States in the Dred Scott Case that *Congress* was powerless *to regulate slavery in U.S. territories.*
- In July 1862, Congress passed and Lincoln signed the “Second Confiscation Act.” It *liberated slaves held by “rebels”.*

First Confiscation Act of Congress. 1861

- authorized the federal government to seize the property of all those participating directly in rebellion.
- essentially a restatement of internationally recognized laws of war and authorized the seizure of any property, **including slave property, used by the Confederacy to directly aid the war**

Second Confiscation Act of Congress, 1862

SEC. 5. *And be it further enacted*, That, to insure the speedy termination of the present rebellion, it shall be *the duty of the President of the United States to cause the seizure of all the estate and property, money, stocks, credits, and effects* of the persons hereinafter named in this section, and to apply and use the same and the proceeds thereof for the support of the army of the United States, that is to say:

SEC. 9. *And be it further enacted*, That *all slaves of persons who shall hereafter be engaged in rebellion against the government of the United States*, or who shall in any way give aid or comfort thereto, escaping from such persons and taking refuge within the lines of the army; and all slaves captured from such persons or deserted by them and coming under the control of the government of the United States; and all slaves of such person found on [*or*] being within any place occupied by rebel forces and afterwards occupied by the forces of the United States, *shall be deemed captives of war, and shall be forever free of their servitude, and not again held as slaves.*

First Confiscation Act of Congress. 1861

After the passage of the first act in August 1861, U.S. attorneys were given wide discretion to instigate proceedings and began to seize Confederate property located in the North. For proponents of confiscation the prospects for enforcement were made considerably worse when Andrew Johnson became president in April 1865.

- The Johnson administration began to radically **restrict the enforcement** of the Confiscation Acts, as part of his administration's drive to placate white Southerners and **restore the Union**.
- In the summer and fall of 1865 Johnson began to issue special **pardons that restored the property rights of former rebels**.
- Johnson's attorney general, James Speed, took a narrow view of confiscation and by June of 1866 he ordered *a halt to any more seizures*.
- President Johnson ordered that **land seized by the federal government under the Confiscation Acts**, land to which the United States had title, **should be returned to its owners, unless it had already been sold to a third party**. All told, total proceeds from confiscation by 1867 amounted to roughly \$300,000.

Second Confiscation Act of Congress, 1862

- Under the act, **Confederates who did not surrender within 60 days of the acts passage were to be punished by having their slaves freed**.
- The act also dealt with a problem that plagued field commanders occupying Southern territory. As troops advanced, slaves sought refuge in Union camps, and Federal commanders were confused over their obligations to the refugees. Some freed the slaves, others sent them back to their masters for **lack of means to care for them**. **The Confiscation Act of 1862 declared all slaves taking refuge behind Union lines captives of war who were to be set free**.
- **A clause requiring the consent of the freedmen to be colonized was approved after much controversy in Congress**.
- Republicans, who envisioned distributing confiscated lands to former slaves succeeded in passing the bill only after agreeing to **President Lincoln's demand to limit seizure of Confederate estates to the lifetime of the offender**.
- Lincoln's limited emancipation gesture **applied only to states in open rebellion**. The same act granting freedom to Confederate slaves **guaranteed the return of fugitives from the border states to any owner who could prove loyalty to the Union**. Lincoln could not risk alienating these states, and he hoped that **one part of the bill, calling for gradual, compensated emancipation, would draw Virginia and Tennessee back into the Union**.

First Draft

“In pursuance of the sixth section of the Act of Congress entitled: “an act to suppress insurrection and to punish treason and rebellion, to seize and confiscate property of rebels, and for other purposes” approved July 17, 1862, and which act, and the Joint Resolution explanatory thereof, and herewith published, I, Abraham Lincoln, President of the United States, do hereby proclaim to, and warn all persons within the confederation of said south section to cease participating in, aiding, countenancing, or abetting the existing rebellion, or any rebellion against the government of the United States, and to return to their proper allegiance to the United States, on pain of its forfeitures, and seizures, or within and by said south section provided.

And I hereby make known that it is *my purpose*, upon the next meeting of Congress, to again *recommend the adoption of a practical measure for tendering pecuniary aid to the free choice or rejection, of any and all States, which may then be recognizing and practicing the authority of the United States*, and which may then have voluntarily adopted, or thereafter may voluntarily adopt, *gradual abolishment of slavery within such States or States*—that the object is *to practically restore, thenceforward and to be maintain[ed] the constitutional relation between the general government and each, and all the States, wherein their relation is now suspended, or disturbed;* and that, *for this object, the war, as it has been, will be, prosecuted.* And, as *a fit and necessary military measure for effecting this object*, I, as Commander-in-Chief of the Army and Navy of the United States, do order and declare that *on the first day of January* in the year of our Lord one thousand eight hundred and sixtythree, *all persons held as slaves within any state or states, wherein the constitutional authority of the United States, shall not then be practically recognized, submitted to, and maintained, shall then, thenceforward, and forever, be free.*

In September of 1862, after the Union's victory at Antietam, Lincoln issued *a preliminary decree stating that, unless the rebellious states returned to the Union by January 1, freedom would be granted to slaves within those states.* The decree also *left room for a plan of compensated emancipation. No Confederate states took the offer, and on January 1 Lincoln presented the Emancipation Proclamation.*

The Emancipation Proclamation January 1, 1863

Whereas, on the twenty-second day of September, in the year of our Lord one thousand eight hundred and sixty-two, a proclamation was issued by the President of the United States, containing, among other things, the following, to wit: “That on the first day of January, in the year of our Lord one thousand eight hundred and sixty-three, *all persons held as slaves within any State or designated part of a State, the people whereof shall then be in rebellion against the United States, shall be then, thenceforward, and forever free*; and the Executive Government of the United States, including the military and naval authority thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their actual freedom.

“That *the Executive* will, on the first day of January aforesaid, by proclamation, designate the States and parts of States, if any, in which the people thereof, respectively, shall then be in rebellion against the United States; and the fact that any State, or the people thereof, shall on that day be, in good faith, represented in the Congress of the United States by members chosen thereto at elections wherein a majority of the qualified voters of such State shall have participated, shall, in the absence of strong countervailing testimony, be deemed conclusive evidence that such State, and the people thereof, are not then in rebellion against the United States.”

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Now, therefore *I, Abraham Lincoln, President of the United States, by virtue of the power in me vested as Commander-in-Chief, of the Army and Navy of the United States in time of actual armed rebellion against the authority and government of the United States, and as a fit and necessary war measure for suppressing said rebellion*, do, on this first day of January, in the year of our Lord one thousand eight hundred and sixty-three, and in accordance with my purpose so to do publicly proclaimed *for the full period of one hundred days*, from the day first above mentioned, **order and designate as the States and parts of States wherein the people thereof respectively, are this day in rebellion against the United States, the following**, to wit:

Arkansas, Texas, Louisiana, (except the Parishes of St. Bernard, Plaquemines, Jefferson, St. John, St. Charles, St. James Ascension, Assumption, Terrebonne, Lafourche, St. Mary, St. Martin, and Orleans, including the City of New Orleans) Mississippi, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia, (except the forty-eight counties designated as West Virginia, and also the counties of Berkley, Accomac, Northampton, Elizabeth City, York, Princess Ann, and Norfolk, including the cities of Norfolk and Portsmouth[]), and which excepted parts, are for the present, left precisely as if this proclamation were not issued.

And by virtue of the power, and for the purpose aforesaid, *I do order and declare that all persons held as slaves within said designated States, and parts of States, are, and henceforward shall be free; and that the Executive government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.*

And I hereby *enjoin upon the people so declared to be free to abstain from all violence, unless in necessary self-defence; and I recommend to them that, in all cases when allowed, they labor faithfully for reasonable wages.*

And I further declare and make known, that *such persons of suitable condition, will be received into the armed service of the United States to garrison forts, positions, stations, and other places, and to man vessels of all sorts in said service.*

And upon this act, sincerely believed to be *an act of justice, warranted by the Constitution, upon military necessity*, I invoke the considerate judgment of mankind, and the gracious favor of Almighty God.

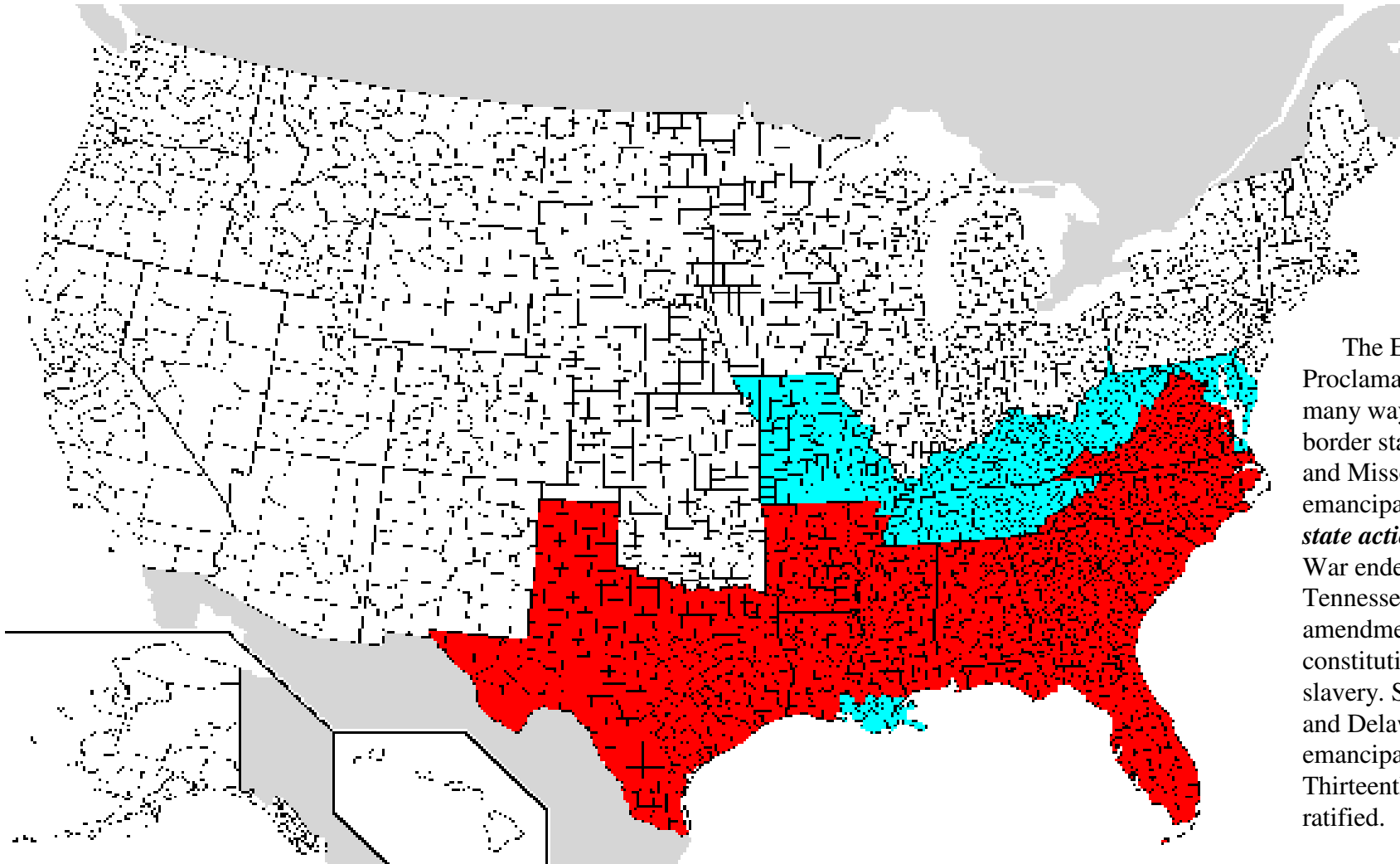
In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington, this first day of January, in the year of our Lord one thousand eight hundred and sixty three, and of the Independence of the United States of America the eighty-seventh. By the President: ABRAHAM LINCOLN , WILLIAM H. SEWARD, Secretary of State.

THE EMANCIPATION PROCLAMATION

January 1, 1863

Areas covered by the Emancipation Proclamation are in grey. Slaveholding areas not covered are in charcoal.



The Emancipation Proclamation was limited in many ways. Slaves in the border states of Maryland and Missouri were also emancipated by *separate state action* before the Civil War ended. In early 1865, Tennessee adopted an amendment to its constitution prohibiting slavery. Slaves in Kentucky and Delaware were not emancipated until the Thirteenth Amendment was ratified.

Lincoln Explains His Choices Related to Emancipation

- ***“I am naturally antislavery.*** If slavery is not wrong, nothing is wrong. I can not remember where I did not so think when I did not so think, and feel. And yet I have never understood that the Presidency conferred upon me an unrestricted right to act officially upon this judgment and feeling. It was in the oath I took that I would, to the best of my ability, preserve, protect, and defend the Constitution of the United States. I could not take the office without taking the oath. ***Nor was it my view that I might take an oath to get power, and break the oath in using the power. I understood, too, that in ordinary civil administration this oath ever forbear me to practically indulge my primary abstract judgment on the moral question of slavery.*** I have publicly declared this, many times, and in many ways. And I aver that, to this day, I have done no official act in mere deference to my abstract judgment and feeling on slavery.
- I did understand however, that ***my oath to preserve the Constitution to the best of my ability, imposed upon me the duty of preserving, by every indispensable means, that government—that nation—of which that Constitution was the organic law.*** Was it possible to lose the nation, and yet, preserve the Constitution? By general law life and limb must be protected; yet often a limb must be amputated to save a life; but a life is never wisely given to save a limb. ***I felt that measures, otherwise so unconstitutional, might become lawful by becoming indispensable to the preservation of the Constitution, through the preservation of the nation.*** Right or wrong I assumed the ground. . . . I could not feel that to the best of my ability, I had even tried to preserve the Constitution, ***if, to save slavery, or any minor matter, I should permit the wreck of government, country, and Constitution all together.***
- When, early in the war, Gen. Fremont attempted military emancipation, I forbade it, because ***I did not then think it an indispensable necessity.*** When a little later, Gen. Cameron then Secretary of War, suggested the arming of the blacks, I objected, because I did not yet think it an indispensable necessity.
- When, still later, Gen. Hunter attempted military emancipation, I again forbade it, because ***I did not yet think the indispensable necessity*** had come. When, in March, and May, and July 1862 I made earnest and successive appeals to the border states to favor compensative emancipation, I believed that indispensable necessity for military emancipation, and arming the blacks would come, unless averted by that measure. They declined the proposition; and I was, in my best judgment, ***driven to the alternative of either surrendering the Union, and with it, the Constitution, or of laying strong hand upon the ? element. I chose the latter.*** In choosing it, I hoped for greater gain than loss; but of this, I was not entirely confident. More than a year of trial now shows ***no loss*** of it in our foreign relations, none in our home popular sentiment, none in our white military force,—no loss to it by any how, or any where. On the contrary, it shows ***a gain of a hundred and thirty thousand soldiers***, seamen, and laborers. These are palpable facts, about which, as facts, there can be no cavilling. ***We have the men; and we could not have had them without the measure.***
- And now let any Union men who complain of the measure, test himself by writing down in one line that he is for subduing the rebellion by force of arms; and in the next, that he is for taking these hundred and thirty thousand men from the Union side, and placing them where they would be but for the measures he condemns. If he can not face his case so stated, it is only because he can not face the truth.
- I add a word which was not in the verbal conversation. In telling this later, I attempt no compliment to my own sagacity. I claim not to have controlled events, but confess plainly that ***events have controlled me.*** Now, at the end of three years struggle the nation’s constitution is not what either party, or any man devised, or expected. God alone can claim it. . . . If God now will, the removal of a great wrong, and wills also, that we of the North as well as you of the South, shall pay fairly for our complicity in that wrong, impartial history will find therein new cause to — and revere the justice and goodness of God.

CONCLUSIONS

- The Emancipation Proclamation is America's first attempt at *forcibly* liberating captives and slaves

- The freedom it promised depended upon Union military victory. After January 1, 1863, every advance of federal troops expanded the domain of freedom, assuring the slave only the freedom of the his body.
- Although, the Proclamation made clear that it did not set the slaves free, romantic notions of freedom of the New England abolitionists have mistakenly characterized and misrepresented the purpose for America's Civil War, as the freeing of the slaves rather than of preserving the Constitution .
- Abolitionists did not always perceive the potential harm done to the slave who is set free and is not prepared to be on his own, once the victim of the cruel indignities of Southern slavery, now the victim of the impractical zeal of Northern intellectualism
“For some minutes there was great rejoicing, and thanksgiving, and wild scenes of ecstasy. But there was no feeling of bitterness. In fact, there was pity among the slaves for our former owners. The wild rejoicing on the part of the emancipated coloured people lasted but for a brief period, for I noticed that by the time they returned to their cabins there was a change in their feelings. The great responsibility of being free, of having charge of themselves, of having to think and plan for themselves and their children, seemed to take possession of them. *It was very much like suddenly turning a youth of ten or twelve years out into the world to provide for himself. In a few hours the great questions with which the Anglo-Saxon race had been grappling for centuries had been thrown upon these people to be solved. These were the questions of a home, a living, the rearing of children, education, citizenship, and the establishment and support of churches.* Was it any wonder that within a few hours the wild rejoicing ceased and a feeling of deep gloom seemed to pervade the slave quarters? To some it seemed that, now that they were in actual possession of it, *freedom was a more serious thing than they had expected to find it.* Some of the slaves were seventy or eighty years old; their best days were gone. They had no strength with which to earn a living in a strange place and among strange people, even if they had been sure where to find a new place of abode. To this class the problem seemed especially hard. Besides, deep down in their hearts there was a strange and peculiar attachment to ‘old Marster’ and ‘old Missus,’ and to their children, which they found it hard to think of breaking off. With these they had spent in some cases nearly a half-century, and it was no light thing to think of parting. Gradually, one by one, stealthily at first, the older slaves began to wander from the slave quarters back to the "big house" to have a whispered conversation with their former owners as to the future.” —Booker T. Washington, *Up From Slavery*, 1900
- The institution was ended by the sufficient states' ratification of the *Thirteenth Amendment on December 18, 1865, but the hatred and prejudice of racism were not.*

- Overcoming the hatred and prejudice in another individual against one's self *is the struggle* of post Civil War America, and it is a struggle which *cannot* be resolved politically nor legally, neither by constitutional edict nor by force of law, nevertheless

Americans, in letting go of the principles of The Constitution of the United States, continue to attempt to use the powers of civil government to resolve hatred and prejudice.

- The Emancipation Proclamation and the laws that flowed from it—*e.g.*, the Thirteenth, Fourteenth, and Fifteenth Amendments, the Civil Right Acts of 1875, 1964 and 1991—have not undone political and social injustices
 - In issuing the Emancipation Proclamation and wording it as he did, Lincoln went as far as he felt the law permitted him to go. In subsequent months he went a bit further, inch by inch, until before his death he was calling for the enfranchisement of some blacks.
 - “Although it is now possible for most African Americans to eat at a lunch counter in most parts of the United States, the extension of these civilities has been accompanied by subtle, yet barbarous forms of discrimination. These forms extend from redlining in the sale of real estate to discrimination in employment to the maladministration of justice. . . . The law itself is no longer an obstruction to justice and equality, but *it is the people who live under the law who are themselves an obvious obstruction to justice.*”—*The Emancipation Proclamation An Act of Justice*, by John Hope Franklin
- Without the existence of The Constitution of the United States, the political infrastructure of America, mankind would be denied the personal struggle with self evident truth that is so vitally necessary to the progress of individual liberty in the world.
 - Freedom is more than a condition of the body, but of the soul. An individual’s capacity for freedom is proportionate to the liberty—internal freedom—he possesses, the ability which he has to do what he judges to be good and not to do what he judges to be evil; it is internal slavery *not* to do the good one judges to be good and to do what one judges to be evil or to do what he hates under duress
 - “In my early life I used to cherish a feeling of ill will toward any one who spoke in bitter terms against the Negro, or who advocated measures that tended to oppress the black man or take from him opportunities for growth in the most complete manner. Now, whenever I hear any one advocating measures that are meant to curtail the development of another, I pity the individual who would do this. I know that the one who makes this mistake does so because of his own lack of opportunity for the highest kind of growth. I pity him because I know that he is trying to stop the progress of the world, and because I know that in time the development and the ceaseless advance of humanity will make him ashamed of his weak and narrow position. One might as well try to stop the progress of a mighty railroad train by throwing his body across the track, as to try to stop the growth of the world in the direction of giving mankind more intelligence, more culture, more skill, more liberty, and in the direction of extending more sympathy and more brotherly kindness.” —Booker T. Washington, *Up From Slavery*, 1900
 - “. . .Lincoln’s vision of a nation truly fulfilling its *spiritual* heritage is not yet achieved.” —Gov. Nelson Rockefeller of New York, September 22, 1962, Washington, D.C., marking the opening of the exhibit of the *Preliminary Proclamation*
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