Lincoln and the Politics of Slavery: The Other Thirteenth Amendment and the Struggle to Save the Union

Review Number: 2063

Publish date: Thursday, 9 February, 2017

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ISBN: 9781469627311

Date of Publication: 2016

Price: £32.50

Pages: 304pp.

Publisher: University of North Carolina Press

Publisher url: http://uncpress.unc.edu/browse/book_detail?title_id=3757

Place of Publication: Chapel Hill, NC

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I recall the moment when I first encountered the existence of the so-called Corwin amendment of 1861. It happened by chance in an undergraduate political science class on constitutional law. The textbook contained a brief synopsis of the rediscovery and revival of the 27th amendment, ratified in 1992 some two centuries after its congressional adoption. What caught my eye though was an accompanying list of other unratified but adopted amendments, including a measure that reportedly passed the required two-third majority in Congress on March 4, 1861. Almost any student of the Civil War can pinpoint that date as the inauguration of Abraham Lincoln. While I was reasonably versed at the time in a subject that would later become a primary focus of my academic research, I could not recall any constitutional measures from that time outside of the failed Crittenden proposals and their equally unsuccessful appropriation by the Washington Peace Convention on the eve of the war.

It turned out the Corwin amendment had been hiding in plain sight. Abraham Lincoln referenced the measure and endorsed its ratification in his inaugural address, though the relevant passage was easy to skim past. It reads as a late appendage to Lincoln's otherwise meticulously revised and carefully argued case for the union. A further investigation revealed this was a likely event, the amendment having been adopted in a late session of the lame duck Senate only hours before the inaugural festivities began. Its contents presented a more startling discovery though as the Corwin amendment pledged a prohibition on any future contemplated constitutional measure that might 'authorize or give to Congress the 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'. The amendment's express purpose was to constitutionally enshrine slavery where it existed, apparently aiming to alleviate a number of sensationalized but oft-repeated concerns that the incoming Republican administration would meddle with the institution beyond the territories question.

Though this objective made for a somewhat surprising concession given the subsequent course of slavery during the war, the amendment nonetheless represented little in the way of material change to a document that had long been assumed to implicitly contain what it explicitly stated. Still, constitutional amendments are by their very nature extraordinary events and the story of this ‘lost’ original 13th amendment had very little in the way of scholarly elaboration.

As Daniel Crofts notes in *Lincoln and the Politics of Slavery*, in the otherwise profuse body of historical literature on the secession crisis and the outbreak of the Civil War, the Corwin amendment ‘gets no more than cursory treatment, fuzzy on specific details and at points simply misinformed’ (p. 9). Prior to Crofts’ book, the only specific study to consider the amendment’s legislative history at depth came in the form of a 1961 article by R. Alton Lee. Other historians before Lee had looked at the Corwin amendment in varying degrees of detail, though most followed the lead of David M. Potter, who both downplayed its legislative significance and specifically absolved Lincoln of his role in its adoption. Condemnations of the measure’s unwisdom – offered with a heavy presence of political diagnosis by hindsight – date to the reminiscence phase of Civil War historiography, most notably the political memoir that James G. Blaine penned in advance of his 1884 return to presidential politics. Yet the far more common approach to the Corwin amendment has been simple inattention by relegating the matter to a footnote or bypassing it entirely.

Crofts’ purpose in this study may be separated into two objectives as identified in the prologue, both of which aim to recover the Corwin amendment from its present day state of neglect. The first seeks to simply reconstruct the history of the measure and situate it within the context of the secession crisis. The second is interpretive. It seeks to reconcile the existence of an explicit, if modest, proslavery concession by northern moderates at the outset of the Civil War with the larger antislavery legacy of the war’s outcome, including in memory. In attending to both objectives, Crofts devotes a substantial amount of attention to Abraham Lincoln’s connection to the amendment and its meaning for his own legacy. Both warrant consideration in turn.

Much of Crofts’ effort takes form of historical detective work, and by necessity given the amendment’s neglect. The Corwin amendment was a direct product of the secession winter Congress of 1860–1, however his investigation takes the reader back many decades earlier into the now-obscure abolitionist debates over the ‘problem’ of the Constitution. The long-running question of whether the Constitution sanctioned slavery cut to the core of abolitionist doctrine – especially in its most radical manifestations. The affirmative case seemed obvious given the Constitution’s provisions for the return of escaped slaves and its apportionment clauses for congressional seats, tax burdens, and electoral votes. So was the implication of this conclusion to many abolitionists. A constitution that sanctioned slavery was itself illegitimate – worthy of discard or burning as in William Lloyd Garrison’s famous spectacle from 1854. Yet other abolitionists tried to salvage the document, noting its intentional evasion of directly naming slavery and use of ambiguous phrasing such as ‘other persons’ in its place.

At times, this debate was as much a philosophical abstraction as a legal inquiry. It produced lengthy treatises with William Goodell and Lysander Spooner advancing theories of antislavery constitutionalism. These theorists presented an alternative history that saw concessions that slavery lacked any true legal standing hiding in plain sight. Though a fringe viewpoint when judged by contemporary political evaluation, their arguments claimed a lineage that traced back to the famous *Somerset* case of 1772 – finding the absence of explicit legal sanction for slavery in England – and numerous subsequent ‘freedom suits’ such as Massachusetts’ Quock Walker trials of 1781. A tempered form of this theory at least partially informed antislavery judicial maneuvers all the way through the Dred Scott case. In its more radical form, theorists such as Goodell and Spooner counted among their converts Gerrit Smith’s manifestation of the Liberty Party and, following his own break with Garrison, no less a figure than Frederick Douglass. Garrison, Wendell Phillips, and others pushed back aggressively, even forwarding the notion that slavery’s implicit constitutional sanction delegitimized the government of the United States so long as the institution persisted.

Despite the raging tempest it produced in the abolitionist fringe, the constitutional debate over slavery did not intrude far upon the conventional assumption of slavery's sanction in the political mainstream. It did however have two identifiable legacies. First, its philosophical questions about the legitimacy of a proslavery constitution were transmitted through multiple political channels into the formative debates about the nature of the Republican coalition. Joshua Giddings, Smith, Douglass and others infused elements of its notions into their own political activities up to and including the 1860 election. Second, the radical constitutional theories inflamed the worst fears of the southern slaveocracy, and from both sides. The antislavery constitutionalists wished to use the Constitution itself to purge the institution, while the abolitionists who conceded slavery's constitutional standing did so by threatening to undermine the Constitution's own validity. Jointly, these considerations provide the deep backstory for the Corwin amendment and explain some of the issues it sought to constitutionally settle in a nod to the secessionists, albeit with a bitter pill for abolitionist hardliners.

The amendment itself came out of the secession winter congress, and Crofts meticulously traces its origins and progress from the Senate's Committee of Thirteen in late December 1860 through its adoption on the morning of Lincoln's inauguration. As a point of historical accuracy, the amendment could be more justly called the Seward amendment or the Seward-Corwin amendment in recognition of its original author and sponsor. Ohio Congressman Thomas Corwin inherited the measure through legislative procedure, though it had been passed to him from Senator William H. Seward by way of its earlier House sponsor Charles Francis Adams. This is no small point, and while it is likely common knowledge to specialists in Seward's biography, the Seward connection to the Corwin amendment serves to place Lincoln's choice for Secretary of State at the center of last ditch efforts to stave off secessionism from the date of South Carolina's ordinance to the moment Lincoln took the oath of office. Both as its initial sponsor and as a behind-the-scenes driver when the measure's momentum shifted from the Senate committee to the House, Seward takes on an even more pronounced role as the Republicans' most prominent conciliatory voice at a time when other compromise 'concessions' did not extend far beyond their respective existing dividing lines.

At this point the historical meaning of the amendment takes an intriguing turn. While Seward presented the measure before the committee in late December 1860, the circumstances of its introduction are enveloped in his own communications with the president-elect. Seward drafted the measure after conferring with his political ally and newspaperman Thurlow Weed on a train ride across New York. Weed had just come from Springfield, Illinois and carried both verbal and written instructions from Abraham Lincoln to his allies in Congress. Crofts reassembles the steps of each figure's journey to make a cautious case that Lincoln had fingerprints on the Corwin amendment from the beginning.

The main challenge here, and the one that led Potter astray, is that Lincoln's written instructions to Seward made no reference to a proslavery concession, though he did suggest elements of other parallel compromises that Seward submitted on the Fugitive Slave Act and a commitment to preserving the union. Seward's subsequent letters to Lincoln intimate that the future Corwin amendment was part of the verbal instruction that Lincoln provided to Weed, though this detail usually prompts the question of whether, or to what extent, either Weed or Seward were inserting their own objectives into the president-elect's mouth. While others have tended to follow Potter in assigning 'credit' to Seward or Weed, Crofts reviews the arguments at length and concludes that Lincoln likely gave the measure his 'tacit approval' (p. 212) at minimum.

I'll offer an additional argument that this assessment is indeed correct. Though not a part of his direct communications with Seward about the actions on the Committee of Thirteen, Lincoln drafted a parallel affirmation of 'the right of each state to order and control its own domestic institutions according to its own judgment exclusively' a few days after he met with Weed. This passage appeared in a proposed public statement that Lincoln drafted in an attempt to court southern unionists in Congress. He initially planned to send the statement to Duff Green, another Springfield visitor who came on behalf of outgoing president Buchanan, and make it public contingent upon Green's securing of six southern endorsements. There's a final twist. Although Lincoln's Green memorandum contains a very similar proposal to the Seward-Corwin

amendment, it also indicates that he did ‘not desire any amendment of the Constitution.’

It quickly became apparent that Lincoln could get no signers from the secessionist states, and the planned statement was aborted. Curiously, and with minimal notice by historians thus far, Lincoln revived and adapted several passages from the text of the Green memorandum in his inaugural address three months later. While declining to back unnamed compromise measures in apparent reference to the Crittenden-Peace Conference package, Lincoln affirmed the legitimacy of ‘the modes prescribed in the instrument’ of the Constitution for its amendment as well as a ‘fair opportunity’ of the people to do so. Lincoln’s late addition endorsement of the Corwin amendment was tacked to the end of this same paragraph in the address.

Though it is difficult to further specify his connection to Seward’s proposal barring an extraordinary archival discovery, we may safely credit Lincoln with favoring a concession that matched the eventual Corwin amendment in content. Lincoln’s reluctance to amend the Constitution – stated in writing in late December – also dissipated at some point between Seward’s introduction of the measure before the committee and the president-elect’s arrival in Washington in late February. Passed through legislative hands from Seward to Charles Francis Adams, then Adams to Thomas Corwin along with a substitution of the original Seward text of the Senate for Adams’ parallel language, the amendment showed signs of stirring in the House almost immediately after Lincoln’s arrival. Here Crofts performs an extraordinary service. With astute inferential skill and admittedly sparse archival attestations to build from, he pieces together the processes and hints of backroom deals that carried the amendment through both chambers by the narrowest of margins and through deft parliamentary maneuvering and overnight vote reversals.

The measure actually divided the Republican Party, itself still sorting through the complex facets of its antislavery coalition under the shadows of the old abolitionist constitutional debates. Lincoln apparently did much of the lifting to bring a sufficient number of Republican votes into the fold to secure the requisite two-thirds majorities. In other instances, antislavery legislators who could not countenance the measure were likely induced to intentionally abstain. Aside from a few direct witness attestations (Charles Francis Adams’ famous historian son Henry, then a young congressional staffer, provided one of them), Lincoln’s influence must be gleaned from sporadic reports of his private meetings with Corwin and other congressional leaders or, in one example teased out by Crofts, patterns in the patronage appointments he likely offered to a crucial congressional block from Maine.

Seward’s guarantee of non-interference with slavery where it already existed was the only compromise measure to emerge from the secession winter intact. It represented the final attempt of the incoming Secretary of State to find a legislative solution to the months-long crisis of disunion, and it had the backing of Abraham Lincoln. It was modest compared to the other compromises, but also apparently one of the only narrow pieces of common ground in the divide over slavery. And most notably, it failed. Attempts to secure ratification were preempted by the outbreak of war at Fort Sumter in April, though a few states gave it their sanction.

The amendment carried ratifying votes from the border states of Maryland, Kentucky, and the breakaway legislature of what became West Virginia in 1863, suggesting it offered at least some assurances to proslavery unionism in places where secession was arguably a threat. The amendment never approached the constitutional threshold and gained only a handful of northern ratifications, mostly in states with large Democratic presences in their legislatures. We may also be thankful of this result, as one direct legal implication of the Corwin amendment was its presumptive restriction upon future federal interference with slavery where it existed. It intentionally avoided the territorial question, and likely left open the possibility of Lincoln’s own favored route to ending slavery – a gradual and voluntary compensated emancipation scheme enacted at the state level and paired with federally subsidized colonization abroad. But it is also possible to see how a ratified and enrolled Corwin amendment could have severely weakened the legal standing of Lincoln’s most famous action, the Emancipation Proclamation, in a later court challenge, to say nothing of other more direct paths to emancipation.

Crofts stops short of expanding upon these and other legal implications of the amendment at length, and he avoids the temptation to indulge in the historical counterfactuals of a world where amendment joined the Constitution as Lincoln predicted it would from the inaugural address endorsement. This is for the better, as it retains the book's focus on a story that was in dire need of recovery. With so little prior work on the subject, the Corwin amendment required investigation and elaboration first. Others may now take up some of these tasks of elaboration and extension, proceeding from the book's vast evidentiary foundation.

The book's second objective – its interpretive discussion – may nonetheless be its primary avenue of influence upon historical understanding of the secession crisis. To this end, one of Crofts' most interesting and provocative moves in the book comes in the form of its short bibliographical postscript that investigates the inattention the Corwin amendment receives within the main body of secession crisis historiography. Part of the reason is intuitively expected for a failed measure, and doubly so considering its concessions on slavery relative to the outcome of the Civil War. As seen in Blaine's 1880s memoir, some Republicans were eager to disavow a compromise that ceded a core antislavery principle, criticizing the reputation of men like Seward and William Pitt Fessenden for their roles in facilitating its passage. Simple neglect soon supplanted this finger wagging though, and with it Lincoln largely escaped being attached to the measure.

The resulting void produced not only a misreading of the measure's purposes, but facilitated a further misconstruction of Lincoln's own secession crisis strategy. Since 'many historians today eagerly display themselves as proemancipation and pro-Lincoln' – hardly the boldest of positions for a scholar to take – a large part of the profession has found it 'challenging to explain Lincoln's position on the would-be thirteenth amendment' (p. 276). Some simply sidestep it, hence the ease with which the Corwin amendment is shuffled into a footnote or an afterthought. Others almost intentionally downplay Lincoln's expressed statements of noninterference with slavery, depicting instead 'a farsighted Lincoln who knew in advance what he wanted – and who stood ready to fight a war so that he could abolish slavery' (p. 189).

As Crofts notes, the amendment's proslavery concession and Lincoln's intimate attachment to its adoption are both problematic for an increasingly common strain of argument in Lincoln scholarship. In recent years it has become academically trendy to recast the 16th president as something of a hidden radical emancipationist from the outset of the war, if not earlier. Elements of this theme are present, to varying degrees, in widely acclaimed books by Doris Kearns Goodwin, Adam Goodheart, and especially James Oakes. Crofts is duly skeptical of the thesis, and sets his sights on its tensions with the historical evidence.

On its face, casting Lincoln as a secret emancipationist radical is not an easy task. It requires not only sidestepping Lincoln's pre-war commitment to noninterference with slavery where it already stood, but also making generous assumptions about the purposes of Lincoln's pre-emancipation incrementalism during the war. This is often achieved by deploying deeply esoteric readings of Lincoln's multi-decade commitment to a more moderate form of antislavery gradualism, effectively divining a radical course out of letters and speeches that explicitly commit Lincoln to an opposite position. With the Corwin amendment though, the Lincoln-as-radical thesis collides into something of a constitutional wall. It is difficult to reconcile a Lincoln who planned to strike at slavery from the outset of his presidency with a Lincoln who backed and, to some degree, orchestrated the proslavery concession of the Corwin amendment. To the extent that Crofts has proved the latter case in historical evidence – and I believe that he has – the current trajectory of Lincoln scholarship in this latter vein is likely in need of a course correction.

Note that this admission is not irreconcilable with Lincoln's own gradualist antislavery commitments, and Crofts is careful to differentiate the nuanced union-preserving rationale behind the Corwin amendment from those who might find in it a hasty declaration of 'proof' that Lincoln was pro-slavery. What he does show is the untenable position of those who infuse long-running and crafty designs for abolition by warfare or decree into Lincoln's politics. This is not a mark against Lincoln so much as a grounding of his presidency in evidence. As his Secretary of the Navy Gideon Welles would later reflect, 'one third of the administration of Mr. Lincoln expired before he had a clear and well-defined policy as to the course to be perceived on important questions affecting the government and the country'. The Corwin amendment is consistent with

this uncertainty. A Lincoln who is subject to the throes of history, and who adapts and adjusts to changing circumstances with uncertain and unpredictable outcomes, is a better explanation for the events of 1861 than a Lincoln who planned a secret but certain course through an unknown and unseen future.

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