H-Net Reviews
in the Humanities & Social Sciences

Michael Vorenberg. *Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment.* Cambridge and New York: Cambridge University Press, 2001. xviii + 305 pp. $25.00 (cloth), ISBN 978-0-521-65267-4.

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Published on H-Law (August, 2002)

Freeing the Constitution from Slavery

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The most significant departure from the original design of the 1787 United States Constitution occurred in 1865 with the adoption of the Thirteenth Amendment abolishing slavery. This most transformative of all constitutional amendments has, nevertheless, received far less attention than it deserves. Civil War historians preoccupied with the ongoing struggle between North and South have tended to focus on the earlier and strategically vital, if more limited and legally less important, Emancipation Proclamations. Constitutional historians concerned with grasping the full measure of the long-term implications and wide-ranging consequences of the 1860s upheaval have been drawn to the more complex Fourteenth Amendment, ratified three years later at the peak of Radical Reconstruction. Michael Vorenberg's fine and valuable book, *Final Freedom,* redresses these oversights by restoring attention to the Thirteenth Amendment, providing a careful and thorough accounting of its adoption, and offering valuable insight into why it marked a pivotal moment in formal constitutional development.

Vorenberg, an assistant professor of history at Brown University, begins with the obvious but essential fact that the Emancipation Proclamations did not free a single slave. Nor did war measures directed against the South address the continued existence of slavery in areas that remained loyal to the Union and adhered to the 1787 Constitution. It was only after the Emancipation Proclamations that serious discussions began in the North about the ultimate resolution of the slavery issue. From such discussions, constitutional abolition emerged as a possible, but not necessarily foregone solution. The surprisingly complex resolution of the issue reveals the subtleties of constitutional thought in the Civil War era.

Slavery was woven into the fabric of the 1787 Constitution in so many places and ways that it long seemed an irreversible part of the sectional compromise that formed the basis of United States government. With the notable exception of John Quincy Adams, abolitionists did not seek antislavery amendments, sharing the widespread belief that preservation of the nation required maintaining the Constitution intact. Even the Dred Scott decision did not provoke calls for amendment because it was treated, by Abraham Lincoln among others, as a sign of a flawed Court rather than a flawed Constitution. With the secession crisis following the 1860 election, amending the Constitution came into play only as a means of protecting slavery where it stood. The first thirteenth amendment, the so-called Corwin amendment of March 1861, adopted by Congress but not ratified, was a symbolic gesture to reinforce constitutional tradition, though one that failed to achieve its objective.

Even after the war came, reluctance to tamper with fixed constitutional arrangements on slavery persisted, in part to assuage loyal border states. Gradually, abolition of slavery gained ground as a war tactic and objective, but even then politicians and lawmakers first

explored administrative and legislative solutions. Hesitancy about constitutional reform remained strong except in the most radical circles. President Lincoln's own constitutionally cautious approach to emancipation was exemplified by his resort to confiscation acts and executive emancipation proclamations before he turned in December 1862 to his first modest amendment proposals for non-compulsory, gradual, compensated emancipation, Not until the Gettysburg Address, delivered on November 19, 1863, did the President even indirectly signal enthusiasm for an immediate and complete emancipation amendment through his call for "a new birth of freedom."

In the winter of 1864-1864 the Thirty-eighth Congress began to craft what became the Thirteenth Amendment. The process was a complicated one, not at all preordained by the Emancipation Proclamations, as Vorenberg makes clear in his well-documented narrative. Popular enthusiasm for total abolition rose rapidly in the North and even in the border states as wartime casualties and resentment of the South grew apace. Partisan support for amendment was initially greater among northern Democrats than among most Republicans, Vorenberg notes. Lincoln's initial reconstruction plan did not contemplate federal amendment but rather called for southerners to revise their state constitutions to abolish slavery. In discussions of reconstruction that followed among Republicans, Representative James Ashley (R-OH) emerged as the leading advocate of a federal constitutional emancipation amendment as necessary to guarantee perpetual freedom for ex-slaves. He linked it to a legislative package of reconstruction measures that he regarded as fundamentally a means of enforcing the antislavery amendment. Vorenberg argues persuasively that understanding this linkage is essential to comprehending Reconstruction. Specifically, the inability of Congress to enact a package of enforcement measures by the time the Thirteenth Amendment was ratified in December 1865 propelled the drive for the Civil Rights Act of 1866 and all that would flow from it.

The Thirteenth Amendment itself took shape not in Ashley's House committee but in the committee of Senator Lyman Trumbull (R-IL). Language was adopted that was confined to a Northwest Ordinance-like prohibition on slavery and involuntary servitude (except as punishment for conviction of a crime) rather than Charles Sumner's much broader phraseology declaring "equality before the law." Vorenberg contends that Trumbull and his allies thought their own language accomplished all that Sumner (R-MA) sought and yet avoided the political hostility from both War Democrats and some Republicans that Sumner's words provoked. In other words, the language of the Thirteenth Amendment should not be regarded as a retreat on substance but rather as a strategic move to assure the amendment's Senate passage.

Trumbull's proposed amendment generated discussion outside of Congress, in part due to a rising wave of enthusiasm for constitutional reform. Yet even a staunch abolitionist and advocate of constitutional reform such as Francis Lieber withheld public expressions of support because of election-year concerns. Many northern Democrats began to think that supporting an antislavery amendment made political sense, but persistent racism kept the party from embracing such an amendment in 1864. Some African Americans expressed enthusiasm for the antislavery amendment but others, such as Frederick Douglass, regarded it as inadequate because of its failure to guarantee black suffrage. Congress, as it began to debate amendment, was not, Vorenberg concludes, confronting any united support for the measure.

Congressional debate in 1864 over an antislavery amendment reflected Republican political posturing for the fall campaign as much as sincere interest in the objective. Republicans found the Slave Power- Democratic alliance a useful target even though some northern Democrats were embracing constitutional abolition. Democratic opponents raised the specter that abolition would lead to racial equality and race-mixing. Many Republicans, unsure of the implications of freedom, sought to dodge the issue. The strongest and, Vorenberg concedes, strangest argument against amendment was that it would be contrary to the founders' original constitutional intentions, including proslavery federalism and an amending power of limited capacity that did not allow the enlarging or extending of federal powers. Despite the credit given to Republicans for carrying forward the Thirteenth Amendment, it was, says Vorenberg, northern Democratic senators such as Reverdy Johnson of Maryland and John Henderson of Missouri who were responsible for challenging party rivals and making the case that the amending power was unrestricted and allowed the overturning of slavery. The Senate's adoption of the amendment in April 1864 by a vote of 38-6 demonstrated the inroads that abolition had made among Democrats as well as the unity of support among Republicans. For the time being, however, the issue teetered on the results of military action and the fall balloting.

As debate on the amendment began in the House of Representatives and then was suspended for the Re-

publican convention, fundamental issues of whether the amendment would guarantee equality and suffrage remained contested. Endorsement of the Senate amendment by Lincoln and the Republican platform helped to transform a policy issue into a partisan one. The subsequent House vote on the amendment followed rigid party lines and left the amendment thirteen votes shy of a two-thirds majority. Vorenberg finds it unfortunate that the amendment became an election issue before its legal meaning was clarified and articulated.

By mid-1864 the Republican Party was prepared to tie its electoral prospects to the abolition amendment, but to a considerable degree other matters, especially the military situation, had a greater impact on the election. Throughout the campaign both sides made an issue of miscegenation, the Democrats arguing that it would be the consequence of black freedom and the Republicans contending that it was a result of slavery. Other matters, peace terms and local issues, also tended to overshadow the emancipation issue. Nevertheless, in the aftermath of Lincoln's 55 percent electoral victory, he characterized the election as a mandate for the abolition amendment. Vorenberg finds this reasonable enough, despite the disappearance of the issue from campaign debate, because of the clear position of Lincoln and the Republican platform.

In the aftermath of the 1864 election, Lincoln and other Republican Leaders pressed hard for the lame-duck Congress to approve the emancipation amendment, rather than wait for the next Congress with its more than two-thirds Republican majority to adopt the measure. Vorenberg sees shifting attitudes about the Constitution's capacity for amendment together with a growing desire among northern Democrats not to be labeled proslavery as serving to advance the cause. When the House voted on the amendment on January 31, 1865, Republicans stood unanimously in favor and, critically, a number of Democrats either reversed their previous position or absented themselves, allowing the amendment to be adopted with two votes to spare.

State ratification debates over the emancipation amendment proved quite revealing. Northern states moved quickly to endorse the measure, the overwhelmingly Republican New England states doing so reflexively. In states where the Democratic party was more of a presence, War Democrats embraced the measure as their own and provided crucial support. In states that ratified (as well as Kentucky and Delaware, which did not), legislators clearly had doubts about the second clause granting the federal government enforcement power; further, many of them expressed and retained their belief in white supremacy. Consequently, some Republicans began in the midst of the ratification process to think in terms of an additional amendment to define citizenship rights.

The issue whether former Confederate states could, and indeed were needed to ratify the amendment was a matter of dispute. Lincoln's view that they had not left the Union led him to conclude that they must be a part of the two-thirds state ratification, and Andrew Johnson held to this view. Vorenberg perceives concerns about the enforcement clause and the implications of racial equality in southern conventions and legislatures as mirroring those in the north. Nevertheless, by December 6, 1865, with Johnson's encouragement, enough southern states had acted that the Thirteenth Amendment was declared ratified. On that very day, Vorenberg points out in an ironic touch, Thomas Corwin, the author of the prior Thirteenth Amendment proposal that would have perpetuated slavery, died.

The new, overwhelmingly Republican Thirty-ninth Congress, while refusing to seat representatives and senators from the former confederate states, did accept the Thirteenth Amendment as having been ratified. Indeed, the enforcement clause was used to justify the Freedmen's Bureau Act and the Civil Rights Act of 1866, the latter going beyond the original intentions for the Thirteenth Amendment in declaring that blacks possessed the rights of citizenship. Vorenberg suggests that disputes over the meaning of the freedom granted by the Thirteenth Amendment, together with a new bipartisan acceptance of constitutional amendment as the favored means of articulating principles, soon led to the adoption of the Fourteenth Amendment, which ever after would overshadow the Thirteenth.

Supreme Court rulings during the rest of the nineteenth century narrowed the scope of the Thirteenth Amendment. The Justices' holdings that the amendment only addressed slavery and not equality dashed the expectations of some of its architects and weakened its influence. The amendment failed, therefore, to become the foundation for racial justice that had once been the hope of advocates such as Lyman Trumbull and James Ashley. Only after a century had passed did the Court rule, in the 1968 housing discrimination case of *Jones v. Alfred H. Mayer Co.*, that the Thirteenth Amendment outlawed the use of "badges of slavery" and give it wider salience. The full implications of the Thirteenth Amendment for freedom will continue to be disputed, Vorenberg suggests:

"We lost sight of the fact that the amendment emerged slowly, unpredictably as the preferred method of abolition and that its adoption was contingent on developments that had nothing to do with slavery, emancipation, equal rights, or the law" (p. 249). Those who adopted the Thirteenth Amendment may have been committed to abolition but were less focused and more easily distracted by multiple other matters than we give them credit for. Vorenberg concludes, however, that it is indisputable that "Americans now understood that any generation could challenge and enlarge a previous generation's Constitution without violating the original charter" (p. 250).

Michael Vorenberg's assessment of the ultimate legacy of the Thirteenth Amendment calls fresh attention to the antislavery amendment's revolutionary character in altering the understood scope of Article V. *Final Freedom* enlarges our understand of the amendment process as well as the constitutional politics of the Civil War. Together with his thorough, detailed, and subtle account of the creation of the measure itself, Vorenberg's observations about the larger importance of the Thirteenth Amendment serve to enhance appreciation for what should no longer be the overlooked member of the trio of Civil War constitutional amendments.

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Citation: David E. Kyvig. Review of Vorenberg, Michael, *Final Freedom: The Civil War, the Abolition of Slavery, and the Thirteenth Amendment.* H-Law, H-Net Reviews. August, 2002.

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