THE FRAUDULENT LEGAL HISTORY OF SOUTHERN SLAVERY, AS IT WAS

by Thomas O. Alderman

When men having position within the Church of the Lord Jesus Christ make exegetical or historical claims which are likely to harden hearts toward the Gospel, it behooves His servants to examine those claims carefully. Upon such examination, should the claims appear to be warranted, they should be affirmed, while demonstrating how the Gospel is true nevertheless. However, if the claims appear not to be true, their falsity should be made least as public as the claims themselves were made to be.

Steve Wilkins and Douglas Wilson, the former a minister in the Presbyterian Church in America, have written a small book entitled, Southern Slavery, As it Was,[1] in which they have made several claims which most modern Christians will find very surprising, and which many nonbelievers are likely to deem to be grounds for rejecting the truth of the Gospel. Among those claims are several which depend for their validity upon the accuracy of the authors' statements of the legal history of the United States or of the Confederacy. As a Christian and an attorney interested in such things, it seemed good to me to consider whether those legal histories were accurately stated. I have determined that in several crucial respects, they were not accurately stated; and that indeed, since the misstatements are so at odds with easily established, notorious and important legal events with which the authors must have been familiar, the question is inescapably raised whether the misstatements were not deliberate and intended to mislead the naive and credulous.

I. The Contentions.

Southern Slavery, As It Was was written primarily to advance the notions that slavery, as practiced in the American South prior to the Civil War, was, with exceptions, relatively benign, and that as practiced in the South, slavery was consistent with the Hebrew and Christian scriptures. Those contentions do not directly raise issues of legal history, and the question whether they are sustainable is a subject treated elsewhere.[2]

But Wilkins and Wilson raise other contentions which do raise legal historical questions. The first such contention has to do with the reasons why it became necessary for this nation to become ensnared in the catastrophe of the Civil War. The authors maintain that the Civil War

---

[1] Moscow, ID: Canon Press, 1996.

[2] Jack Davidson, Wrong About the History of Southern Slavery: A Response to Steve Wilkins' and Douglas Wilson's History of Slavery, www.joshualetter.com, 2000.

was not fought over the question of slavery: "You have been told many times that the war was over slavery," they say, "but in reality it was over the biblical meaning of constitutional government.[3] In considering the validity of this contention, it will be most useful to review the Southern states' own Declarations of Secession, the formal acts taken with the specific purpose that both the reasons for their action and the righteousness of their cause might become known thereby to all the world. If one is to look anywhere to know why the war was fought, it is here, and these documents leave no doubt about the causes of the war.

Wilkins and Wilson's other contention which concerns the legal historian is that although the slave trade was unbiblical, it did not invalidate the entire institution of slavery because as practiced in the South, slavery was divorced from the slave trade through the righteous acts of the slaveholders. This contention also is demonstrably false, again with reference to fundamental and notorious legal facts.

II. The Cause of the Civil War.

One peculiarity of their book is that Wilkins and Wilson do not actually argue the question of the true cause of the Civil War - they merely declare that it was fought over the biblical meaning of constitutional government and not over slavery, and then they never mention the subject again! Perhaps they would say that demonstrating this point was beyond the scope of their book. Even then, one might expect the authors to anticipate an interest on the part of some of their readers to know what basis there might be for the authors' contention, and perhaps suggest additional reading; but they do not do even so much as this.

The notion that the Civil War was fought over the right of the several states to secede from the Union has been argued ever since the War itself. It is not so much a false claim in itself as an incomplete and misleading one. It is true that the Civil War would not have been fought if the North had recognized the southern States' right to secede, so in that sense the war was fought over that question. However, the South would have had no occasion for asserting the right to secede had it not seen secession as necessary for the preservation of negro slavery, which they saw as being under siege from the North.

In the case of Wilkins and Wilson, the question is further clouded by their failure to clarify what they mean by the phrase, "the biblical meaning of constitutional government." Since they did not elaborate at all upon this phrase, it is impossible to know whether they intend it as merely a reference to the states' rights view of the conflict, or whether they mean something else entirely. There is a strong theme among Christian nation theorists which draws a close analogy between God's covenant relationship with the Nation of Israel on the one hand, and the covenantal features of the Mayflower Compact and other early American sources of constitutionalism on the other hand, and Wilkins and Wilson may have this theme in mind.

---

[3]Wilkins and Wilson, p. 11.

Moreover, to a significant extent the seceding states did justify secession upon violations of the Constitution by the North. If this is what the authors mean by "the biblical meaning of constitutional government," then I have no quarrel with them on this question, for reasons stated below. It is possible, on the other hand, to demonstrate the falsity of the other part of the authors' contention - that the war was *not* fought over slavery - by referring to the clear language of the Southern states' declarations of secession.

A. The States' Rights View of the War.

Why is it important to slavery's apologists that it appear that the war was not fought over slavery? Although they defend the legitimacy of slavery, they must realize that few Americans are receptive to that principle; and it seems highly likely to me that they hope to gain a tactical advantage by shifting the argument to a more easily defensible proposition, in this case a question of higher jurisprudence.

As noted earlier, the view that the Civil War was fought over the right of the Southern states to secede, is true in important respects; and before considering whether the war was or was not also fought over slavery, it is crucial to pause long enough to consider carefully the validity of the South's legal claims. Why? Not because doing so tends to exculpate the South - it doesn't - but because doing so helps us to assess whether the nation as a whole must share the responsibility for causing the cataclysm. If so, then only by accepting that responsibility unflinchingly may we claim the right to make judgments about the role of the South.

Merely as a legal matter, the South had cause for complaint concerning its treatment by the North prior to the war. The Constitution of the United States contained numerous provisions protecting the institution of slavery. As one delegate to the Constitutional Convention put it, "domestic slavery [was] the most prominent feature in the aristocratic countenance of the proposed Constitution."[4] In no fewer than *five separate clauses*, the American Framers assured themselves that the institution of negro slavery would continue undiminished after the creation of the new republic.

First, the Constitution augmented the political power of the Southern states by increasing their representation in Congress for every slave owned. Art. 1, Sec. 2 of the Constitution provides:

> Representatives and direct taxes shall be apportioned among the several States . . . according to their respective numbers, which shall be determined by adding to the whole number of free Persons . . . three fifths of all other persons. [Emphasis added.]

---

[4]Governeur Morris of Pennsylvania, August 8, 1787, in The Constitution a Pro-Slavery Compact - Selections from the Madison Papers, etc., New York: Negro Universities Press, 1969, page 23. (Originally published in 1844 by the American Anti-Slavery Society, New York.)(Hereinafter, "The Madison Papers.")(Emphasis added.)

Second, the delegates to the Constitutional Convention made certain that the power of the national government would be available to put down the slaves, should they ever revolt. Article I, Sec. 8 provides:

> Congress shall have power . . . to suppress insurrections.

Third, the opportunity to continue to profit from the stealing of men, women and children was carefully protected. Article I, Sec. 9 provides:

> The migration or importation of such persons as any of the States now existing, shall think proper to admit, shall not be prohibited by the Congress, prior to the year one thousand eight hundred and eight. . . .

Nor should it be overlooked that the pecuniary motive for the importation of slaves and the political motive of increasing representation in Congress through the increase in the number of slaves, operated together in tandem, reinforcing each other, raised the price even further for abolishing slavery, and gave the monstrous institution even greater strength than it ever had prior to the Revolution.

Fourth, any hope that a slave might obtain his freedom by escape to a neighboring free state was cruelly extinguished. Article IV, Sec. 2 provides:

> No person, held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

Finally, according to William M. Wiecek, professor of history at the University of Maryland, Article I, Sections 9 and 10, which prohibited Congress and the states from taxing exports, were adopted in order "to prevent them from taxing slavery indirectly by taxing the exported products of slave labor."[5]

The Southern States' declarations of secession recite the North's offenses which gave rise to their legal claims. I have not undertaken to examine the validity of each charge; however, it can be shown that at least in one important particular, the South had a substantial legal complaint: the Northern states had refused to enforce the Fugitive Slave Clause, and indeed had impeded federal agents when they had attempted to do so not only by the actions of private citizens, but also by official acts of their elected representatives.

---

[5](Quoted in Free in the World: American Slavery and Constitutional Failure, by Mark E. Brandon, Princeton U. Press 1998, p. 56.)

It may come as a surprise to the reader that I make this concession, that the South had legal cause for complaint. Unfortunately, the concession is unavoidable. Although we rightly revere those features of the Constitution which protect our rights of conscience; although we are justified in admiring the balance of powers among the several branches of government, and gratefully credit Christian philosophers for the biblical wisdom on which the separation of powers was premised; nevertheless, when we consider the utter bleakness of the document for the black man, as it repeated his doom again and again, we are compelled to confess that our nation was born in shame and corruption.[6]

I once was fond of declaring my opinion that the American Constitution was the high-water mark of Western political philosophy; and in certain respects, it was. Since undertaking to review Wilkins and Wilson's book, unfortunately, I have been forced to adopt a more ambivalent view. What we see in the American Constitution is an object lesson in the truth of the biblical doctrine of man: he exemplifies the glory of the image of God, but also the depravity of his moral condition after the Fall.

The Framers' genius lay in their giving expression to the divine wisdom - given providentially only after centuries of the use of state power to persecute religious minorities - that the human conscience is incapable of responding to force or the threat of force; it responds only to its own conviction of the truth. Accordingly, the disestablishment of religion is necessary in the interests both of justice and of domestic harmony. This is the Framers' most important legacy, and it is a glorious one.[7]

But to forget the significance of the Constitution to the black man, or to glory in the greatness of what it achieved without also deploring the towering injustice and cruelty of its slavery clauses, is to perpetuate and compound that injustice, and is unworthy of the Lord's Church.

The Constitution, by its ratification, had become the supreme law of the land. It created legal protection for the slaveholder, and the North had violated those protections. Had I been alive then, I hope that I, too, would have violated them; but no honest person can deny that the Constitution was violated, or that legal claims arose as a result.

Whether secession was an available remedy for those violations is a separate question. It is a serious question; but conquest and time have made it an academic one.

---

[6]The question of the Founders' personal responsibility for the perpetuation of slavery is separately treated. See Thomas O. Alderman, Slavery and the American Constitution 2000, on this web site.

[7]I do not intend to minimize the complexities of the intentions of the founding generation in this regard, who did not themselves complete the doctrinal basis for freedom of conscience; nor is the work complete even yet. But that subject is beyond the scope of this essay.

Thus the view that the Civil War was fought over states' rights appears defensible. The North had entered a compact with its eyes open, and then had deliberately violated it. But that is not to say that the Civil War was not fought over slavery. Yes, the North had violated the compact; but it is disingenuous to ignore the fact that it violated the compact by attacking slavery. Of course the war was fought over slavery, as the Southern states' declarations of secession make clear.

B. The Declarations of Secession.

The Northern war effort was animated by more than one purpose. Lincoln was opposed to slavery, but he had no intention to ask Congress for legislation abolishing it, and hoped it would die without active governmental intervention. Initially at least, his purpose in engaging the South in battle was to preserve the Union.

But it is impossible to draw a complete distinction between Lincoln and abolitionism, whose purpose was to end slavery everywhere in the Union. Lincoln drew vital political support from abolitionism, even if he did not endorse its entire agenda. Furthermore, the movement was not submissive to him; and even if it had been, the South did not trust him to limit its aggressive tendencies. In other words, it is true that the war began when the South attempted to secede and the North attempted to stop it; but there would have been no thought of secession had the South not seen it as necessary in order preserve its way of life. To say that the war was not fought over slavery is to draw a false distinction between the legal issue of the right to secede and the momentous social controversy which gave that issue its life and its destructive power. Plainly, mothers do not send their sons to die for an abstract legal principle; they send their sons to die for a way of life. And in 19th-century America, mothers sent their sons to die for freedom, in the one case, or slavery, in the other. Any reasonable person reading the Southern States' declarations of secession will know this.

In the American colonies' Declaration of Independence of 1776, an American tradition was begun. There the revolutionaries acknowledged that in taking such momentous action as repudiating the authority of their King, they had a moral obligation to explain why their action was justified. Some 85 years later, several of the seceding Southern States followed the Founders' model. Indeed, they employed language reminiscent of the Declaration of Independence. In reading their words, it is difficult to avoid some sense that they sincerely considered themselves the true sons of the Revolution. It is also impossible to avoid the realization of the true cause of the war.

Four Southern States set forth their reasons for secession quite explicitly, others less so; and others merely declared their association with the Union to be at an end, without stating their reasons. The States which stated their reasons most clearly were Georgia, South Carolina, Mississippi and Texas.

1. Georgia.

The people of Georgia having dissolved their political connection with the Government of the United States of America, present to their confederates and the world the causes which have led to the separation. For the last ten years we have had numerous and serious causes of complaint against our non-slave-holding confederate States with reference to the subject of African slavery. They have endeavored to weaken our security, to disturb our domestic peace and tranquility, and persistently refused to comply with their express constitutional obligations to us in reference to that property, and by the use of their power in the Federal Government have striven to deprive us of an equal enjoyment of the common Territories of the Republic. . . . Our people, still attached to the Union from habit and national traditions, and averse to change, hoped that time, reason, and argument would bring, if not redress, at least exemption from further insults, injuries, and dangers. Recent events have fully dissipated all such hopes and demonstrated the necessity of separation. Our Northern confederates, after a full and calm hearing of all the facts, after a fair warning of our purpose not to submit to the rule of the authors of all these wrongs and injuries, have by a large majority committed the Government of the United States into their hands. The people of Georgia, after an equally full and fair and deliberate hearing of the case, have declared with equal firmness that they shall not rule over them. . . . The party of Lincoln, called the Republican party . . . is admitted to be an anti-slavery party. . . . [A]nti-slavery is its mission and its purpose. . . .

The prohibition of slavery in the Territories, hostility to it everywhere, the equality of the black and white races, disregard of all constitutional guarantees in its favor, were boldly proclaimed by its leaders and applauded by its followers.

With these principles on their banners and these utterances on their lips the majority of the people of the North demand that we shall receive them as our rulers.

. . . .

For forty years this question has been considered and debated in the halls of Congress, before the people, by the press, and before the tribunals of justice. The majority of the people of the North in 1860 decided it in their own favor. We refuse to submit to that judgment, and in vindication of our refusal we offer the Constitution of our country and point to the total absence of any express power to exclude us. We offer the practice of our Government for the first thirty years of its existence in complete refutation of the position that any such power is either necessary or proper to the execution of any other power in relation to the Territories. We offer the judgment of a large minority of the people of the North, amounting to more than one-third, who united with the unanimous voice of the South against this usurpation; and, finally, we offer the judgment of the Supreme Court of the United States, the highest judicial tribunal of our country, in our

favor. This evidence ought to be conclusive that we have never surrendered this right. The conduct of our adversaries admonishes us that if we had surrendered it, it is time to resume it.

The faithless conduct of our adversaries is not confined to such acts as might aggrandize themselves or their section of the Union. They are content if they can only injure us. The Constitution declares that persons charged with crimes in one State and fleeing to another shall be delivered up on the demand of the executive authority of the State from which they may flee, to be tried in the jurisdiction where the crime was committed. It would appear difficult to employ language freer from ambiguity, yet for above twenty years the non-slave-holding States generally have wholly refused to deliver up to us persons charged with crimes affecting slave property. Our confederates, with punic faith, shield and give sanctuary to all criminals who seek to deprive us of this property or who use it to destroy us. This clause of the Constitution has no other sanction than their good faith; that is withheld from us; we are remediless in the Union; out of it we are remitted to the laws of nations.

A similar provision of the Constitution requires them to surrender fugitives from labor. This provision and the one last referred to were our main inducements for confederating with the Northern States. Without them it is historically true that we would have rejected the Constitution. In the fourth year of the Republic Congress passed a law to give full vigor and efficiency to this important provision. This act depended to a considerable degree upon the local magistrates in the several States for its efficiency. The non-slave-holding States generally repealed all laws intended to aid the execution of that act, and imposed penalties upon those citizens whose loyalty to the Constitution and their oaths might induce them to discharge their duty. Congress then passed the act of 1850, providing for the complete execution of this duty by Federal officers. This law, which their own bad faith rendered absolutely indispensible for the protection of constitutional rights, was instantly met with ferocious revilings and all conceivable modes of hostility. The Supreme Court unanimously, and their own local courts with equal unanimity (with the single and temporary exception of the supreme court of Wisconsin), sustained its constitutionality in all of its provisions. Yet it stands to-day a dead letter for all practicable purposes in every non-slave-holding State in the Union. We have their covenants, we have their oaths to keep and observe it, but the unfortunate claimant, even accompanied by a Federal officer with the mandate of the highest judicial authority in his hands, is everywhere met with fraud, with force, and with legislative enactments to elude, to resist, and defeat him. Claimants are murdered with impunity; officers of the law are beaten by frantic mobs instigated by inflammatory appeals from persons holding the highest public employment in these States, and supported by legislation in conflict with the clearest provisions of the Constitution, and even the ordinary principles of humanity. In several of our confederate States a citizen cannot travel the highway with his servant who may voluntarily accompany him, without being declared by law a felon and being

subjected to infamous punishments. It is difficult to perceive how we could suffer more by the hostility than by the fraternity of such brethren.

The public law of civilized nations requires every State to restrain its citizens or subjects from committing acts injurious to the peace and security of any other State and from attempting to excite insurrection, or to lessen the security, or to disturb the tranquillity of their neighbors, and our Constitution wisely gives Congress the power to punish all offenses against the laws of nations.

These are sound and just principles which have received the approbation of just men in all countries and all centuries; but they are wholly disregarded by the people of the Northern States, and the Federal Government is impotent to maintain them. For twenty years past the abolitionists and their allies in the Northern States have been engaged in constant efforts to subvert our institutions and to excite insurrection and servile war among us. They have sent emissaries among us for the accomplishment of these purposes. Some of these efforts have received the public sanction of a majority of the leading men of the Republican party in the national councils, the same men who are now proposed as our rulers. These efforts have in one instance led to the actual invasion of one of the slave-holding States, and those of the murderers and incendiaries who escaped public justice by flight have found fraternal protection among our Northern confederates.

These are the same men who say the Union shall be preserved.

. . . The people of Georgia . . . know the value of parchment rights in treacherous hands, and therefore they refuse to commit their own to the rulers whom the North offers us. Why? Because by their declared principles and policy they have outlawed $3,000,000,000 of our property in the common territories of the Union; put it under the ban of the Republic in the States where it exists and out of the protection of Federal law everywhere; because they give sanctuary to thieves and incendiaries who assail it to the whole extent of their power, in spite of their most solemn obligations and covenants; because their avowed purpose is to subvert our society and subject us not only to the loss of our property but the destruction of ourselves, our wives, and our children, and the desolation of our homes, our altars, and our firesides. To avoid these evils we resume the powers which our fathers delegated to the Government of the United States, and henceforth will seek new safeguards for our liberty, equality, security, and tranquillity.

[Approved, Tuesday, January 29, 1861]

2. South Carolina.

. . . [T]he State of South Carolina having resumed her separate and equal place among nations, deems it due to herself, to the remaining United States of America, and to the

nations of the world, that she should declare the immediate causes which have led to this act.

. . . .

[In the Declaration of Independence, the thirteen British American colonies] solemnly declared that whenever any "form of government becomes destructive of the ends for which it was established, it is the right of the people to alter or abolish it, and to institute a new government. . . ."

. . . [I]n 1778, they entered into a League known as the Articles of Confederation, whereby they agreed to entrust the administration of their external relations to a common agent, known as the Congress of the United States, expressly declaring, in the first Article "that each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not, by this Confederation, expressly delegated to the United States in Congress assembled."

Under this Confederation the war of the Revolution was carried on, and on the 3rd of September, 1783, the contest ended, and a definite Treaty was signed by Great Britain, in which she acknowledged the independence of the Colonies in the following terms: "ARTICLE 1-- His Britannic Majesty acknowledges the said United States, viz: New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, to be FREE, SOVEREIGN AND INDEPENDENT STATES; that he treats with them as such; and for himself, his heirs and successors, relinquishes all claims to the government, propriety and territorial rights of the same and every part thereof."

Thus were established the two great principles asserted by the Colonies, namely: the right of a State to govern itself; and the right of a people to abolish a Government when it becomes destructive of the ends for which it was instituted. And concurrent with the establishment of these principles, was the fact, that each Colony became and was recognized by the mother Country a FREE, SOVEREIGN AND INDEPENDENT STATE.

. . . .

We hold that the Government . . . established by the Constitution is subject to . . . the law of compact. We maintain that in every compact between two or more parties, the obligation is mutual; that the failure of one of the contracting parties to perform a material part of the agreement, entirely releases the obligation of the other; and that where no arbiter is provided, each party is remitted to his own judgment to determine the fact of failure, with all its consequences.

. . . .

This stipulation was so material to the compact, that without it that compact would not have been made. . . .

. . . .

[The Declaration proceeds to contend that the north has violated the compact by its refusal to enforce the Fugitive Slave Clause, in language parallel to that employed by the State of Georgia in its Declaration.] Thus the constituted compact has been deliberately broken and disregarded by the non-slaveholding States, and the consequence follows that South Carolina is released from her obligation.

. . . .

For twenty-five years this agitation has been steadily increasing, until it has now secured to its aid the power of the common Government. Observing the forms of the Constitution, a sectional party has found within that Article establishing the Executive Department, the means of subverting the Constitution itself. A geographical line has been drawn across the Union, and all the States north of that line have united in the election of a man to the high office of President of the United States, whose opinions and purposes are hostile to slavery. He is to be entrusted with the administration of the common Government, because he has declared that that "Government cannot endure permanently half slave, half free," and that the public mind must rest in the belief that slavery is in the course of ultimate extinction.

. . . .

Sectional interest and animosity will deepen the irritation, and all hope of remedy is rendered vain, by the fact that public opinion at the North has invested a great political error with the sanction of more erroneous religious belief.

We, therefore, the People of South Carolina, by our delegates in Convention assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, have solemnly declared that the Union heretofore existing between this State and the other States of North America, is dissolved, and that the State of South Carolina has resumed her position among the nations of the world, as a separate and independent State; with full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do.

[Adopted December 24, 1860.]

3. Mississippi.

In the momentous step which our State has taken of dissolving its connection with the government of which we so long formed a part, it is but just that we should declare the prominent reasons which have induced our course.

Our position is thoroughly identified with the institution of slavery--the greatest material interest of the world. . . . [A] blow at slavery is a blow at commerce and civilization. That blow has been long aimed at the institution, and was at the point of reaching its consummation. There was no choice left us but submission to the mandates of abolition, or a dissolution of the Union. . . .

. . . .

4. Texas.

. . . .

[The declaration makes somewhat oblique reference to offenses of the North which appear to have to do with the institution of slavery. It then refers to the failure of the Federal government to protect the State of Texas from the violence of Indians and Mexicans. It then describes in clear and emphatic terms the violation of the Fugitive Slave Clause by the northern states.]

The States of Maine, Vermont, New Hampshire, Connecticut, Rhode Island, Massachusetts, New York, Pennsylvania, Ohio, Wisconsin, Michigan and Iowa, by solemn legislative enactments, have deliberately, directly or indirectly violated the 3rd clause of the 2nd section of the 4th article [the fugitive slave clause] of the federal constitution, and laws passed in pursuance thereof; thereby annulling a material provision of the compact, designed by its framers to perpetuate the amity between the members of the confederacy and to secure the rights of the slave-holding States in their domestic institutions – a provision founded in justice and wisdom, and without the enforcement of which the compact fails to accomplish the object of its creation. Some of those States have imposed high fines and degrading penalties upon any of their citizens or officers who may carry out in good faith that provision of the compact, or the federal laws enacted in accordance therewith.

In all the non-slave-holding States, in violation of that good faith and comity which should exist between entirely distinct nations, the people have formed themselves into a great sectional party, now strong enough in numbers to control the affairs of each of those States, based upon an unnatural feeling of hostility to these Southern States and their beneficent and patriarchal system of African slavery, proclaiming the debasing doctrine of

equality of all men, irrespective of race or color--a doctrine at war with nature, in opposition to the experience of mankind, and in violation of the plainest revelations of Divine Law. They demand the abolition of negro slavery throughout the confederacy, the recognition of political equality between the white and negro races, and avow their determination to press on their crusade against us, so long as a negro slave remains in these States.

. . . .

They have proclaimed, and at the ballot box sustained, the revolutionary doctrine that there is a "higher law" than the constitution and laws of our Federal Union, and virtually that they will disregard their oaths and trample upon our rights.

. . . .

And, finally, by the combined sectional vote of the seventeen non-slave-holding States, they have elected as president and vice-president of the whole confederacy two men whose chief claims to such high positions are their approval of these long continued wrongs, and their pledges to continue them to the final consummation of these schemes for the ruin of the slave-holding States.

In view of these and many other facts, it is meet that our own views should be distinctly proclaimed.

We hold as undeniable truths that the governments of the various States, and of the confederacy itself, were established exclusively by the white race, for themselves and their posterity; that the African race had no agency in their establishment; that they were rightfully held and regarded as an inferior and dependent race, and in that condition only could their existence in this country be rendered beneficial or tolerable.

That in this free government all white men are and of right ought to be entitled to equal civil and political rights; that the servitude of the African race, as existing in these States, is mutually beneficial to both bond and free, and is abundantly authorized and justified by the experience of mankind, and the revealed will of the Almighty Creator, as recognized by all Christian nations; while the destruction of the existing relations between the two races, as advocated by our sectional enemies, would bring inevitable calamities upon both and desolation upon the fifteen slave-holding states.

. . . .

For these and other reasons, solemnly asserting that the federal constitution has been violated and virtually abrogated by the several States named, seeing that the federal government is now passing under the control of our enemies to be diverted from the

exalted objects of its creation to those of oppression and wrong, and realizing that our own State can no longer look for protection, but to God and her own sons--We the delegates of the people of Texas, in Convention assembled, have passed an ordinance dissolving all political connection with the government of the United States of America and the people thereof and confidently appeal to the intelligence and patriotism of the freemen of Texas to ratify the same at the ballot box, on the 23rd day of the present month.

[Adopted February 2, 1861.]

The declarations of secession of Alabama and Virginia were more elliptical, but contained enough language concerning the causes for their action to enable the reader to discern the motivation behind them.

5. Alabama.

Whereas, the election of Abraham Lincoln and Hannibal Hamlin to the offices of President and Vice President of the United States of America, by a sectional party, avowedly hostile to the domestic institutions and to the peace and security of the people of the State of Alabama, preceded by many and dangerous infractions of the Constitution of the United States by many of the States and people of the Northern section, is a political wrong of so insulting and menacing a character as to justify the people of the State of Alabama in the adoption of prompt and decided measures for their future peace and security; therefore,

Be it declared and ordained by the people of the State of Alabama, in Convention assembled, That the State of Alabama now withdraws, and is hereby withdrawn, from the Union known as "the United States of America," and henceforth ceases to be one of said United States, and is, and of right ought to be, a Sovereign and Independent State.

6. Virginia.

The people of Virginia in their ratification of the Constitution of the United States of America, adopted by them in convention on the twenty-fifth day of June, in the year of our Lord one thousand seven hundred and eighty-eight, having declared that the powers granted under said Constitution were derived from the people of the United States and might be resumed whensoever the same should be perverted to their injury and oppression, and the Federal Government having perverted said powers not only to the injury of the people of Virginia, but to the oppression of the Southern slave-holding States:

Now, therefore, we, the people of Virginia, do declare and ordain . . . [etc.].

The States which merely declared their separation from the Union, without stating their reasons in the resolutions themselves, include Arkansas, Missouri, Florida, Louisiana and North Carolina.[8]

From the Southern states' own declarations of secession, we see that none of the Southern states raised secession as the basis for their claims; it was merely the remedy they chose. The availability of that remedy was not in question until after the North had committed its offenses, and its offenses were to attack the institution of slavery. The South did not seek secession as an abstract principle, but as a means of preserving slavery.

This view is well stated by William W. Freehling:

> . . . [T]he Revolutionary generation found slavery a national institution, with the slave trade open and Northern abolitionists almost unheard. When Jefferson and his contemporaries left the national stage they willed to posterity a crippled, restricted, peculiar institution. Attacking slavery successfully where it was weakest they swept it out of the North and kept it away from the Northwest. They left the antebellum South unable to secure more slaves when immigrants rushed to the North. Most important of all, their law closing the slave trade and their tradition concerning individual manumissions constituted a doubly sharp weapon superbly calculated to continue pushing slavery south. By 1860 Delaware, Maryland, Missouri, and the area to become West Virginia all had fewer slaves than New York possessed at the time of the Revolution, and Kentucky did not have many more. The goal of abolition had become almost as practicable in these order states as it had been in the North in 1776. As the Civil War began, slavery remained secure in only eleven of the fifteen slave states while black migration toward the tropics showed every capacity to continue eroding the institution in Virginia and driving slavery down to the Gulf.
>
> . . . .
>
> No one spied these trends better than the men who made the Southern Revolution of 1860-61. Secessionist newspaper editorials in the 1850s can almost be summed up as one long diatribe against Jeffersonian ideology and the policy to which it led. . . .
>
> When . . . Lincoln triumphed [in the election of 1860], lower South disunionists believed they had reached the moment of truth. They could remain in the Union and allow the noose to tighten inexorably around their necks. They would then watch slavery slowly ooze out of the border South and permit their own domain to shrink to a handful of Gulf and lower Atlantic states. Or they could strike for independence while the upper South retained some loyalty to bondage, thereby creating a confrontation and forcing wavering slave states to make their choice. This view of the options helped to inspire the lower

[8]Tennessee also seceded. Unfortunately, I have been unable to locate the act of its secession.

South's secession, in part a final convulsive effort to halt the insidious process the Founding Fathers helped begin.[9]

If the right to secede had been merely a question of law, it would not have been necessary to settle it on the battlefield, since it could have been settled in court. The Supreme Court of the United States had repeatedly demonstrated its readiness to protect, and even to promote, the institution of slavery. Furthermore, the Court would not necessarily have been forced to choose between granting secession or denying relief altogether, since the lesser remedies of mandamus or specific performance might also have been available. Had it been necessary, in order for the North to choose war, to repudiate the authority of the Supreme Court, it would have had no cover for the illegality of its actions, and it is far from self-evident that the North would have taken that step. But since the South did not go to court, the issue in the War was not the authority of the highest court in the land, or indeed the very rule of law itself, but the right to secede - which the North could plausibly deny in the absence of any definitive ruling. Furthermore, even if a judicial ruling favorable to the South had proved unenforceable, it might not have been without advantage altogether. Even if the North had defied the Supreme Court, a judicial victory might have weakened northern resolve or enabled the South to hold on to more of the border states.

Whether the South ever considered legal action may be an interesting historical question. But both sections of the Nation had purposes beyond establishing a legal principle. It was the purpose of Northern abolition to put an end to a way of life, and the purpose of the South to preserve it. Morally, the North fought for liberation, and the South fought for property in men.

III. Did the Slave Trade Corrupt the Entire Institution of Negro Slavery in the United States?

The other legal contention which the authors make is that the institution of slavery was not corrupted by its origins in and sustenance from the slave trade.

Man-stealing is flatly and unconditionally condemned in the Bible. Exodus 21:16 states that "He who kidnaps a man and sells him, or if he is found in his hand, shall surely be put to death." Wilkins and Wilson admit this, as they must:

The slave trade was an abomination. The Bible condemns it, and all who believe the Bible are bound to do the same. . . .[10]

---

[9]"The Founding Fathers and Slavery," William W. Freehling, 219-231, at 229-230, in The Law of American Slavery: Major Historical Interpretations, Ed. Kermit L. Hall (New York: Garland, 1987).

[10]Wilkins and Wilson, p. 21.

Indeed, the authors concede more than this. They state that "because of the evil of the slave trade, the larger system of slavery in the South was certainly sub-scriptural." Yet they maintain in the very next sentence that "Nevertheless, the Bible prohibits us from saying that slave-*owning* in such contexts is sin."[11]

The biblical injunction against man-stealing and against receiving a stolen man is clear and unconditional. In order to defend their central thesis that southern slavery was biblical, the authors must show how slavery (supposing, only for the moment, that it was not inherently evil in itself) was not corrupt at its source. How do they attempt to do this? By a very few arguments that are not merely transparently fallacious logically, but also untrue historically.

A. Southern Christians Opposed the Slave Trade.

First, they suggest that the connection between the slave trade and southern slavery was somehow attenuated because the civil leadership in the states where the slave markets existed had opposed the slave trade:

> [T]he civil leaders had repeatedly and consistently tried to stop the slave traders. One of those places, Virginia, had attempted on no less than twenty-eight occasions to arrest the slave trade, but was stopped by higher (non-southern) authorities.[12]

There are several difficulties with this argument. For one thing, Virginia's opposition to the slave trade was far from typical of the Southern position. In fact, the one source cited by the authors themselves in support of their contention shows that Virginia's position was unique among the Southern states. The only source which the authors cite is a book by R. L. Dabney, written after the war, entitled A Defense of Virginia [and Through Her, of the South]. A reading of this book reveals that even Dabney acknowledges that other Southern states - South Carolina and Georgia, specifically - "never attempted to restrain the importation of slaves, and . . . on the contrary . . . wished to continue it."[13]

Furthermore, the suggestion that the South generally was opposed to the slave trade is directly contradicted by perhaps the most important, and certainly one of the most indisputable, historical facts of the entire story leading to the catastrophe of the Civil War, namely, that at the Constitutional Convention in 1788, it was the slave trade which the Southern delegates made the *sine qua non* of ratification – a fact which several southern States frankly acknowledge in their declarations of secession. More than any other clause in the proposed Constitution, the debate about slavery at the Convention was over the slave trade. The Three-Fifths Clause was of secondary importance, and the Fugitive Slave Clause was not debated at all. Repeatedly, the

---

[11] *Ibid*., p. 17. (Emphasis in original.)

[12] *Ibid*., pp. 19-20. (Emphasis in original.)

[13] Dabney, p. 55.

Southern delegates emphasized that it was the slave trade they had to have. Here are the words of the southern delegates on the floor of the Convention. (I am quoting Madison's summaries of the delegates' remarks.)

> Mr. Pinckney [South Carolina]. South Carolina can never receive the plan if it prohibits the slave trade.[14]
>
> Gen. Pinckney [South Carolina]. South Carolina and Georgia cannot do without slaves. . . . He . . . should consider a rejection of the clause as an exclusion of South Carolina from the Union.[15]
>
> Mr. Williamson [North Carolina] stated . . . the Southern States could not be members of the Union if the clause should be rejected. . . .[16]
>
> Mr. Rutledge [South Carolina]. If the Convention thinks that North Carolina, South Carolina and Georgia, will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those States will never be such fools, as to give up so important an interest. He was strenuous against striking out the section. . . .
>
> Mr. Sherman [Connecticut] said it was better to let the Southern States import slaves, than to part with them, if they made that a *sine qua non*. . . .[17]
>
> Mr. Williamson [North Carolina] said, that both in opinion and practice he was against slavery; but thought it more in favor of humanity, from a view of all circumstances, to let in South Carolina and Georgia on those terms, than to exclude them from the Union.[18]

In the end, the delegations of all the Southern States, joined by the delegations from New Hampshire, Massachusetts, Connecticut and Maryland, voted in favor of the Slave Trade Clause.

Thus, what the authors have conceded was "evil," "an abomination," and "sub-biblical," the Southern delegates themselves treated as essential to the institution of slavery.

---

[14] Madison Papers, p. 25.

[15] *Ibid*., p. 27.

[16] *Ibid*., p. 28.

[17] *Ibid*., p. 29.

[18] *Ibid*., p. 30.

Even more to the point, the authors already conceded the wickedness of the slave trade. The fact that some southerners condemned it would not justify anyone in participating in it.

B. The Southern States Prohibited the Slave Trade.

Next, the authors observe that the slave trade was prohibited in Virginia in 1778, in Georgia in 1798, and in the Confederacy in 1861. But they take no note of the fact that everywhere else in the South until 1808, when Congress abolished the slave trade for the entire Union, the importation of slaves remained legal, and slaves could be brought even to Georgia and Virginia from other parts of the Union. Thereafter, more millions of slaves were descended from stolen Africans. What justifies the stealing of the children of those taken from Africa? And stolen they were - at birth, from their slave parents; and not by others, but by Southern slaveowners themselves.

C. It Was Others Who Originally Enslaved the Negro.

Wilkins and Wilson refer to the fact that generally it was not Southerners who originally enslaved the Africans:

> [T]he vast majority of the slaves had already been enslaved in Africa by other blacks. They were then taken down to the coast and sold to the traders. The traders transported them, usually under wicked conditions, to those places where a market did exist for their labor. . . .[19]

`How can this be relevant? The Bible does not specify death for the slaver only if the slave came into his hands directly from the kidnaper; the Bible specifies death for the slaver, irrespective of the number of purchase transactions: "if he is found in his hand, [he] shall surely be put to death." This contention is tantamount to saying, "So long as I did not kidnap you myself, it is permissible for me to reward him who did and then imprison you again."

D. Purchase by Southerners Spared the Slaves a Less Humane Fate in Other Lands.

Finally, the authors contend:

> [I]f the slaves were not sold in the South, they were taken on to Haiti and Brazil, where the condition and treatment of slaves was simply horrendous. The restoration of these slaves to their former condition was a physical impossibility. Now, under these conditions, was it a sin for a Christian to purchase such a slave, knowing that he would take him home and treat him the way the Bible requires? If he did not do so, nothing would be done to improve the slave's condition, and much could happen that would make

[19]Wilkins and Wilson, pp. 19-20.

it worse. The slaves were not stolen wares - they were human beings - and the many Christians who treated them lawfully were in no way disobedient.[20]

The answer to the question, "Under these conditions, was it a sin to purchase such a slave?" is so obvious that it is tedious to explain it; but it is necessary. Clearly, the slave buyer did not purchase in order to free the black man, or even to spare him a worse fate - he purchased him in order to profit from his labor, for the lifetime of the man. This is directly and flatly prohibited by scripture. That should end the discussion.

Now, if the purpose of the buyer had been to free the slave, that would present a different question. I suppose that even if he purchased him and held him only long enough to receive the price back through the value of the man's labor, that would also present a different question. But the scriptures do not permit us to purchase a stolen man merely to save him from being purchased by a worse master. Jesus said that "It is necessary that offenses come; but woe to him by whom they come!" Let the offense come by someone else, then, and let me work to rescue his victim, by one means or another - buying him and freeing him myself, for instance, or by working to end the slave trade. The authors would appear to have us believe that the South did press for the abolition of the slave trade, but that the North prevented it. We have seen that such a notion is preposterous.

Nor was it any excuse that the laws of the United States (through the insistence of the South) failed to protect the stolen man. The Bible does not specify death for the slaver only if the civil law prohibits it; the Bible specifies death for the slaver, irrespective of the civil laws. Is the law of God subject to the laws of men? The scriptures are binding on the Christian in every land, under every regime.

The Bible does not absolve the slaver from death if he treats his slave better than the next highest bidder would have treated him; the Bible specifies death for the slaver, irrespective of his treatment of the stolen man. The Bible does not specify death for the slaver only if, but for his captivity, he could have found his way home; the Bible specifies death for the slaver, irrespective of what the stolen man's prospects would be if he were released.

Thus, the question whether, "under these conditions . . . it [was] a sin for a Christian to purchase such a slave, knowing that he would take him home and treat him the way the Bible requires?" must be answered, Yes, it was a sin, because the Christian did *not* treat the stolen man the way the Bible requires: he did not release him.

Exodus 21: 16 specifies that "He who kidnaps a man and sells him, or if he is found in his hand, shall surely be put to death." None of the authors' rationalizations succeed in softening that language. The only questions the scriptures permit is whether these people were stolen and

---

[20] *Ibid*., p. 20.

sold, and whether they were found in the southerners' hands. Yes. That should end the discussion.

Did the receiving of stolen men, women and children constitute indirect support of the slave trade? Wilkins and Wilson pose this question, but they never forthrightly address it. They begin by saying that before discussing this question, we must discuss Southern opposition to the slave trade, which prior to 1861 turns out to have been opposition by Virginia and Georgia only; the fact that the Africans were originally enslaved in Africa, which is completely irrelevant; and the worse prospects which the Africans faced if they did not find a market in the United States, which is also no justification. The authors then conclude by saying that although trading in slaves is "an abomination," and although the Bible condemns it, "*owning* slaves is *not* an abomination. The Bible does not condemn it. . . . [I]f we were to look in history for Christians who reflected this biblical balance - i.e., a hatred of the slave trade and an acceptance of slavery in itself under certain conditions - we will find ourselves looking at the *ante bellum* South."[21]

But where is the answer to the question whether slavery constituted an indirect support of the slave trade? The authors pose that question, but they never actually get around to answering it. Instead, they say that before discussing this question, certain other matters must be considered, and then never return to the question itself. In between, they offer a long falsification of extraneous matters, apparently intended to distract the reader from the fact that they never come back to the question they earlier posed. Why? Clearly, it is because there is only one possible answer to the question whether the receiving of slaves constituted an indirect support of the slave trade: it certainly did. Slavery could not have existed without the trade; the trade could not have existed without slavery. "If he is found in his hand, [he] shall surely be put to death."

IV. Conclusion.

To obscure the true causes of the Civil War; to deny the centrality of the slave trade in the scheme of American slavery; or to deny the terrible brutality of American slavery - all are part of an attempt to destroy memory. If the attempt were to succeed, it would compound the injustice in many ways. It would deprive the slaves and their descendants of the judgment of posterity; it would encourage modern racists to believe that new oppressions might also escape judgment; it would make us incapable of addressing intelligently or fruitfully the continuing injury which slavery's dislocations still cause in our own day; and it would sap the capacity of American society to make moral judgments of any kind.

Who or what are we, that we should receive justice? As Christians, we know that the answer to this question is that we have been created in the image of a personal God, and that therefore, our own personhood is real - and hence, our value and dignity are also real. Justice consists in treating others in a manner which is commensurate with that dignity. The Church, in

---

[21] *Ibid*., p. 21. (Emphasis in original.)

order to fulfill its commission to teach the Good News to all men, must emphasize the truth of these biblical grounds for human dignity and must demonstrate the failure of every other philosophy to explain why we must respect each other. Can the Church do this effectively if she shelters those who perpetuate racial hatred?

Must we say that Wilkins and Wilson are guilty of this? Let them answer this question: Given that their arguments are so transparently fallacious that only those excited by racism can fail to see through them, what other conclusion can we draw?