

**REVIEW-ESSAY**  
**IN SEARCH OF FREEDOM:**  
**SLAVERY AND THE PRINCIPLES OF THE AMERICAN FOUNDING\***

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In the twenty-four years since Harry Jaffa's *Crisis of the House Divided* first appeared,<sup>1</sup> numerous departures in the historiography of slavery have appeared, some more important than others. A virtual forest of treatises on every conceivable aspect of slavery exploded from the presses. The most recent count of serious titles shows nearly 4,000 books, largely since the mid-50s. *Crisis* was one of them, appearing in 1959. Better than sixty percent of the total dealt with New World slavery and the Atlantic trade, and twenty-six percent focus on North America.

In this vast proliferation, however, there has been a noticeable failure to take up Harry Jaffa's insistence that the debate over the nature of the American regime is the real, the substantial discussion of slavery. While landmark efforts such as Fehrenbacher's analysis of the *Dred Scott Case* stand as exceptions and take up the challenge, the prevailing tendency of slavery historiography has been to detach American slavery in particular from American politics and to subsume it under broader historical or cultural developments. That's the posture in which we find Davis, a standard bearer for this tendency. He would reverse the modern separation of slavery from other forms of oppression and cease to regard it peculiarly as an "obstacle to progress and a crime against humanity." It is for him but a specific instance of a generic problem which also includes other dimensions of American constitutionalism. For him, accordingly, Jaffa's challenge misses the mark; it elevates the American founders, and Lincoln above all, beyond any role which he will admit for the authors of such historical deeds.

Whether past events will be illuminated for us by their principal movers or subordinated to a universal causal model is the substance of the historian's choice as he undertakes his task. The history of American slavery reveals the tensions between these

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<sup>1</sup> Jaffa, *Crisis of the House Divided: An Interpretation of the Lincoln-Douglas Debates* (Garden City, New York: Doubleday and Company, 1959; reprinted at Seattle: University of Washington Press, 1973; reprinted at Chicago: University of Chicago Press, 1982). Hereinafter, *Crisis*. See David Brion Davis' February, 1983 *New York Review* discussion of Orlando Patterson's *Slavery and Social Death: A Comparative Study*, for a general description of trends in slavery historiography, pp. 19-22.

alternatives.<sup>2</sup> The reason this is so is that American slavery itself existed and was eliminated in the midst of highly wrought disputes about the moral significance of universal principles.

Beyond this readily comprehensible reason for confusion about the history of slavery, slavery historiographers perform their tasks under the heavy burden of a concern with the outcome of slavery.

... white supremacy has been not only *the* central theme of Southern history, but a major theme in American history and wherever whites and non-whites have lived together in large numbers. Race has been a baleful, brooding presence in American life, plumbing depths of irrationality, violence, and despair. Its impact must be explored *if* our past is to be made meaningful. [Original emphasis]<sup>3</sup>

That is, American slavery historiographers—as Americans themselves—expect the “true” history of slavery to reveal as well the “true” basis of the relationship between the descendants of the slaves and the descendants of the slave owners, on the one hand, and the relationship between the principles of the American founding and present circumstances, on the other hand. Hence their accounts of slavery are often like Tocqueville’s account of American democracy—something more than history in scope and intent. *Crisis of the House Divided*, alone willing to measure the question of race by the standard of nature, alone seems willingly to have undertaken to provide such an account, with the expectation that one could discover this elusive truth within the very sinews of the American regime. Other histories, on the other hand, while possessing the most ambitious hopes for their influence over contemporary opinion, have nevertheless shrunk from affirming that truth in this matter affirms the sufficiency of American constitutionalism.

The most visible example in the last wave of slave historiography was Davis’s own *The Problem of Slavery in the Age of Revolution*.<sup>4</sup> He attempted to account for the founding father’s relationship to slavery by “reading” their words and actions in the light of a theoretical model of history. He constructed a Hegelian-Marxist dialectic, the purpose of which was to reveal the underlying ideology which made the institution possible. The only difficulty he confronted lay in the radical nature of the American founding: It was, we might say, especially wordy. Or, whatever Jefferson’s “unconscious” or “class laden” motivations, he often explained what he was about and, to be sure, without resort to Freudian-Marxist schemes of interpretation. To explain Jefferson or any founder by any such schema requires the analyst first to explain *away* his own explanations. Hence, the underlying ideology Davis provides must account for the explicit constitutional principles the founders provided as well as for their actions. He

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<sup>2</sup> Cf., Bertram Wyatt-Brown, review of “David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770-1823*,” in the *Journal of American History*, LXII, December, 1975, p. 675.

<sup>3</sup> James McPherson, “Slavery and Race,” *Perspectives in American History*, III, 1969, p. 473.

<sup>4</sup> David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770-1823*, (Ithaca, N.Y.: Cornell University Press, 1975).

accomplished this essentially through a subjective analysis rooted in what we *now* claim to know of historical causes. Davis, then, understood the founders better than they understood themselves.

Davis left no doubt of his own moral condemnation of slavery. But in phrasing that condemnation, he undermined the forcefulness of the identical judgment among the founders. One consequence of his analysis, therefore, is that America today must be viewed as fundamentally opposed to what it was then. In addition, the establishment and preservation of freedom comes to light as manifestly less problematic than might otherwise appear. There was and is no excuse for compromising freedom. Hence, ultimate freedom *may* be sought at anytime and, indeed, will eventuate through historical processes apart from political considerations. “Due to [Davis’s] emphatically ‘present-oriented’ perspective, [he] is unable to see how complicated the defense of freedom, both practically and theoretically, can be.”<sup>5</sup>

It is a fact in itself worthy of historical and philosophical consideration that this particular mode of investigation produces at the same time rejection of the founders of modern regimes and acceptance of the principles they ostensibly espoused. This is true not only of Davis’s view, which finds defects in the political system to have resulted from *persistent features of bourgeois economic and political life*. It is also true of an opposite view. The opposite view is more dramatic, for it brings to the defense of a neoabolitionist position the arguments of the pro-slavery school of the nineteenth century. The leading exponent of this view is the historian, John Hope Franklin. Accepting the opinion of Chief Justice Taney from the case, *Dred Scott v. Sandford*, the holders of this view consider that “the moral legacy of the Founders is shameful and harmful.”<sup>6</sup>

On this view, the founding fathers brought forth *true* principles, but they did so hypocritically. Slavery consistently gave the lie to their expressed intentions. Nonetheless, the principles developed a life of their own and committed succeeding generations to the attempt truly to adopt them. On this reading, the *lingering legacy of slavery alone* impedes the full consummation of those principles—not yet realized. Hence, the history of slavery serves primarily to reveal those causes the effects of which are required to be corrected in order to construct genuine freedom.

The passion to relate slave historiography to contemporary political problems obscures the importance of comprehending in their own terms the political events associated with American slavery. While no one exceeded Jaffa in reading the debate over slavery as an expression of vital political differences in our own time, it is also the case that no one has provided better than he for understanding the ancient combatants as

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<sup>5</sup> Jeffrey D. Wallin, “Democratic Leadership and Value Formation: The View from Monticello,” a paper delivered at the 1977 annual meeting of the Western Political Science Association, Phoenix, Arizona, p. 22. This paper is a thoughtful and helpful consideration of Davis’ account of Jefferson’s views on slavery.

<sup>6</sup> Herbert J. Storing, “The Founders and Slavery,” *The College*, vol. xxviii, no. 2, July, 1976 (Annapolis, Maryland: St. John’s College), p. 17.

they understood themselves. It would be of considerable importance for historiography, political science, and jurisprudence if those two questions could be so far distinguished conceptually that each would yield to modes of analysis appropriate to its own dimensions. It could restore the integrity or wholeness of contemporary political analysis, if it were freed from the presumption that it were the mere working out of previous undertakings. Only a complex of confused universal, scientific, and political principles stand in the way of that achievement. If we had to reduce it to a single principle we could call it, in a word, the necessity to conciliate the ahistorical concept of equality with the modern notion of history (as the evolutionary source of our opinions about politics and morality). Never before, perhaps, may it have been more surely said that we are what we think we were.

It is far easier to see how modern political analysis has fallen into this predicament than to see a way out. In the nineteenth century men commonly contrasted free and slave society from the perspective of judging their comparative prosperity.<sup>7</sup> Still, it was clearly understood that the comparisons were between free men who depended primarily on their own efforts and free men who depended primarily on slaves. It was sheer folly to contrast slaves and free men, as if the purpose of slavery were to enrich the slave. Even the “positive good” school went no further than to suggest the retrieval of slaves from barbarism. No one ever suggested that the conditions of life for slaves ought to be comparable to the conditions of life for free men. The only question was whether the conditions of life for the master class were comparable to the conditions of life of free men independent of slavery. Thus, no matter what conclusion one arrived at, slavery was defended or rejected entirely from the perspective of things needful to the lives of free Americans.

In the twentieth century, however,—more particularly, in the revisionist and post-revisionist eras—the same comparison has had the express purpose of measuring free men against slave men. And, because that enterprise *begins* with a necessary abstraction from the possibility that honor and civic responsibility are intimately and necessarily connected with the circumstances of free men, it focuses on the idea of prosperity narrowly understood as a function of material production and consumption. The purpose of this latter day comparison between free and slave society sought, alternately, to undermine the argument that slavery was harmful and degrading to the slave (neglecting the abstraction mentioned above), and to demonstrate that slavery constituted severe and oppressive deprivation. Both arguments turned partially on the capacities and characters of the slaves themselves—i.e., their productivity and “habits” of consumption. Further, they involved deductions with respect to the effects of freedom on ex-slaves. That is, after the abolition of slavery the capacities and characteristics of the ex-slaves were judged on the basis of the analysis of slavery rather than on the basis of an analysis of freedom. The alternative judgments were employed either to enhance the ex-slave’s claim to special political consideration or to deny his eligibility for any genuine political consideration.

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<sup>7</sup> See Alexis de Tocqueville, *Democracy in America*, translated by Henry Reeve (New York: Schocken Books, 1961), vol. I, p. 428. He does this nearly twenty years before Olmsted and, himself, is only following tradition.

The last wave of slave historiography spurned Harry Jaffa's summons to address the question of the rights and privileges of citizenship in light of the fundamental principles of freedom which proved the recourse for the eventual elimination of slavery. Jaffa's position, anti-Marxian and founded in natural law, is incompatible with the modern scientific predisposition to view men as being nothing in particular and therefore making themselves and their "values" by the arbitrary concatenation of will and circumstance. Instead, modern slave historiography cultivated the view of an intimate connection between possible views of slavery and views of the extent and nature of the political participation that is to be accorded to blacks in contemporary America. As a crude and limited but nonetheless instructive example, we may say that whether reparations are owed to contemporary blacks (ideally but not necessarily the descendants of slaves) is a function of our view of the effects of slavery. Similarly, we may say that the question of the eligibility of blacks for positions of social, political, and economic responsibility turns upon our view of the effect of slavery on the subsequent acquisition of those mental and personal characteristics required in such positions. And out of these considerations emerges the further question (given greatest juridical force and expression in Justice Marshall's *Bakke* dissent) of whether we are in truth dealing with the lingering legacy of a given historical event, or whether such defects or advantages as are found in contemporary America are rather the result of persistent features of the political and economic system itself.

The great debate engendered by *Time on the Cross* expressed in many respects the uncertainty with which the "lingering legacy" school regarded the "persistent system" school. By arguing that slaves were not necessarily ill-fed and ill-treated, and indeed possibly even better off than some northern free laborers, and further that slavery was prosperous rather than withering on the vine, *Time on the Cross* made the thesis of slavery's brutalization of the slaves untenable. Thus, there could not be a "lingering legacy" of brutalization—the "badges and incidents" of slavery—where in fact slaves were not dehumanized. That would leave only the crypto-Marxian argument of alienation and exploitation of free labor, whereby to condemn the practice of slavery and to arraign its continued influence—through proletarianization of black masses in the aftermath of slavery—as persistent features of the specific, capitalistic organization of the modes of ownership and production in the society. The last alternative, of course, requires that we see slavery/capitalism as a necessary stage in the development of the socialist society. Now, where men are certain of the advent of the hoped for historical evolution, they do not fear to lose the moral persuasion inherent in the idea of an injustice required to be corrected. Where, on the other hand, they fear that justice will not be done, save that men are persuaded to undertake it, they are less willing to trust to history. Accordingly, the "lingering legacy" school was loudest in its outcry against Fogel and Engerman's work, for it seemed to erode the very foundation of their charge against slavery. Unable to condemn slavery in the natural law language of the Declaration of Independence, they hesitate to lose the force of the historical value they found in the "lingering legacy." The "lingering legacy" school might well have been willing to sever its concern for contemporary problems from its historical perspective, had it been able to overcome the fear that the "persistent system" school simply will not prove practical. That is, they fear that the imagined moral force which is manifest in the idea of a "lingering legacy" cannot

be replaced by the only alternative they recognize: some form of historicism. That historicism which stops short of dialectical materialism but still denies that man has a nature is called value relativism, which, in this context, attributes the authority of the condemnation of slavery not to right or nature, but to historically developed values which, we may say, being ever subject to “wander,” require the dramatic impact of blood and gore—slave coffles—to endure.

In other words, here we behold the two sides of the bad coin to which Jaffa’s teacher, Leo Strauss, feared the modern world had reduced itself. When there could emerge from liberal democracy no principled response to Marxist historicism and Communist imperialism—when the *best* defense of liberal democracy could be seen only as a reference to some form of will, present or past, majority or otherwise,—it would be the head of this coin, the historicist tyranny, which would determine which will should prevail. In the new preface to *Crisis* Jaffa acknowledges that Strauss’s insight provided the thrust for his own discovery that political philosophy (principle over will) and political history (particularity over universality) constitute the unalloyed currency of politics.

In that light I would restate the purpose of this essay. I propose to raise anew the historiographical question: What is the appropriate historical perspective on the relationship of slavery to the American political system? The specific occasion of this analysis is the re-publication (third) of *Crisis of the House Divided* in a University of Chicago Press Phoenix edition. Originally published a quarter century ago, *Crisis* has survived these vogues of slave historiography. A surprising quiet has replaced the storm of controversy which greeted *Time on the Cross* and other works of the era a scant six or eight years ago. That very calm seems to have summoned *Crisis* once again (Summer, 1982), and we might do well to take stock of what all the fuss came to.

#### SLAVERY AS A NATURAL SYSTEM

The very first words of *Time on the Cross*<sup>8</sup> invoked the awesome imagery of Christianity prefigured in its title. They also announced that any anticipation that the slaves were crucified is an error. “The years of black enslavement and the Civil War in which they terminated were *our nation’s* time on the cross.” (Emphasis supplied.) We were asked to regard the book as an account of a long national travail that ought fully to have merited Harry Jaffa’s inspired conception of a “world historical tragedy.”<sup>9</sup> Indeed, when we consider ordinary demands of scholarship, we might have expected the detailed rebuttal or substantiation of Jaffa’s original scholarship fifteen years earlier.<sup>10</sup> *Time on*

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<sup>8</sup> Robert Fogel and Stanley Engerman, *Time on the Cross: The Economics of American Negro Slavery* (Boston: Little, Brown and Company, 1974), 2 vols., “Prologue,” p. 3, vol. 1.

<sup>9</sup> Harry V. Jaffa, *How to Think About the American Revolution: A Bicentennial Cerebration* (Durham: Carolina Academic Press, 1981).

<sup>10</sup> See Note 1, above.

*the Cross*, however, not only had not, officially, heard of Jaffa, but seemed wholly untouched by any notion of the requirements of political history.

To repeat, recent slave historiography manifests a predominant concern with the importance of consciousness-raising vis-à-vis the contemporary struggle over political equality.<sup>11</sup> These studies take the just account of the consequences of slavery for the slaves themselves also to account for the social-political status of ex-slaves in the American regime. They eschew the appeal to the regime's principles as an appropriate defense of the claims of ex-slaves. Implicitly, therefore, this historiography maintains that contemporary demands for liberty or equality are extra-constitutional or extra-regime. History, properly, is not political history nor perhaps social history. It is rather cultural history. The determining factor in any existing political arrangement is the impact of some past cultural relationship. Thus, it cannot have been the case that blacks though slaves were included in the principles of the Constitution. And it must be the case that the inclusion of blacks though ex-slaves in the *present* Constitution is rather the work of historical circumstances. Appeals to the nature of man cease to be appeals to a specific regime. They become appeals to historical forces and usually include a simple faith that human nature will emerge untarnished in the end. *Time on the Cross* participated in this general historiography—including the faith in human nature—but alarmed many if not most of its confederates with conclusions which seemed to challenge that very faith.

*Time on the Cross* proved conclusively that a perfectly rational slave owner could have operated a rationally organized plantation at substantial profit to himself and with some degree of benefit and comfort to his slaves. This rests on the implicit hypothesis that men—any men—can indeed be enslaved successfully. And this was the single benefit of that work. The work misunderstood itself, when it argued that its real contribution was to give an “accurate image of the black man.” (*TOTC*, p. 108.) It is important that southern slave masters *expected* to profit from their slaves, not that they did so. Nor is it crucial to know whether blacks were especially harmed by slavery or superior to free white laborers. But it is of the first importance to know that slavery is and shall remain a possible and viable human regime. *There are no natural obstacles to a system of slavery*. Thus, there can only be moral obstacles.

Whether any man ought hold property in another can never be answered once and for all—though a single answer be eternally valid—but must ever be answered anew. Slavery as a system can profitably be discussed only in light of the discovery of natural rights. The natural rights which can distinguish men that have known them from men who know them not do not, however, necessarily rule human affairs. Natural rights can be not so much lost as no longer referred to; thus, it seems that the moral judgment must consist as much in moralizing as it understandably consists in a life in accord with those principles than which none higher are possible. Lincoln's vexatious (to his contemporaries) and apparently, but only apparently, anachronistic insistence on the Missouri Compromise as authoritative, even after its repeal, and his relentless quest to

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<sup>11</sup> For an extensive discussion, see Stanley M. Elkins, “The Slavery Debate,” *Commentary*, vol. 60, no. 6, December, 1975, pp. 40-54.

embarrass Senator Douglas on the question of whether, admitting the fact of slavery, the principle be acceptable, is the guiding example of that kind of moralizing, as, also, is *Uncle Tom's Cabin*. Not historical forces but political action killed American slavery.

### SLAVERY AS A POLITICAL SYSTEM

Before turning to *Crisis* I will devote a few pages to revive two arguments that *Time on the Cross* considered itself to have refuted. In doing so I wish to make manifest that the narrow limits of the thesis in *Time on the Cross* (namely, that slavery was not harmful to the south and poor whites, and not even necessarily harmful to slaves) did not respond to the wider claims of these arguments even when their computations are shown to be erroneous. By contrast, *Crisis* does respond to them. By this device, then, we may know the context in which *Crisis* formulates its argument. The two arguments are those of Hinton Helper's *The Impending Crisis*<sup>12</sup> and Eugene Genovese's *The Political Economy of Slavery*.<sup>13</sup> The former was written prior to the Civil War and therefore serves as a reminder of the broad nature of the struggle over slavery in America. Its very title calls to mind the expression of Senator Seward, the "irrepressible conflict," thus allying Yankee and Southerner in fretful anticipation of the effect of slavery on the nation. Helper, however, preached an abolitionism centered squarely on the needs of the white South. His work maintains the thesis that the South's full participation in the modern democratic and industrial revolution called for an end to slavery.

Genovese's work was done 100 years after Helper's, and was a vindication of the way of life in the ante-bellum South in every way that Helper's work was an assault on the way of life. Genovese, a self-professed Marxist, developed an analysis rooted in an understanding of the South as struggling, however vainly in the end, to preserve a way of life not mired in the inevitable and debasing capitalist evolution which had gripped the North. He portrays their efforts as a Promethean venture—one might say mankind's last chance—to elude the mire of dialectical materialism. Helper and Genovese are nearly related, despite their opposite purposes, because their interpretations are rooted in nearly identical readings of the material circumstances of the South. Where Helper saw the economic and political pressures mounting, he found evidence of tendencies oppressive to the South and barring their advent to the status of a "developed society," Genovese read the same evidence as mounting indication of the need for dramatic, not to say desperate, action to the end of the South's salvation as a distinct and humane way of life.

Hinton Helper claimed that slavery was unprofitable. "Not so," proved *Time on the Cross*, albeit primarily by reducing the question of profitability to that of a return on the planter's investment. Helper, however, maintained that he was not concerned with profitability in the narrow accounting sense (p. 171). Rather, he found slavery

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<sup>12</sup> Hinton R. Helper, *The Impending Crisis*, included in *Ante-Bellum*, ed. by Harvey Wish (New York: G.P. Putnam and Sons, 1960), pp. 157-256.

<sup>13</sup> Eugene Genovese, *The Political Economy of Slavery: Studies in the Economy and Society of the Slave South* (New York: Random House, Vintage Books edition, 1967): Genovese's later work did not materially advance the argument of this early collection of essays.



unprofitable to the South and, hence, the nation with respect to specific goals of civilization. In this he was not unlike adherents of wide-scale industrial reform in our own day, whose charges of great losses are not always informed by a reading of financial statements. After all, some people can strike it rich even in recessions. Helper did consult the aggregated statistics of the 1850 census, as did a good many of the nation's newspapers which presented conclusions quite similar to his own. But this was not mere "objective" scholarship. Helper avowed his purpose to create a specifically Southern abolitionism (p.172), the cause of which was only incidentally the unprofitability of slavery.

When Helper called for "retribution against the treacherous slave-driving legislators" he but affirmed his primary concern to effect a political change, understood as comprehending but not emanating from an economic change (pp. 176-177). He sought to base the political structure of the South on its white masses but found them thoroughly submissive to the planter oligarchy (pp. 181, 201). These largely poor whites needed to be convinced that their poverty stemmed directly from the existence of slavery, *if* they were to be moved to overthrow slavery. Hence, the unprofitability of slavery that Helper depicted was almost entirely intended to be an account of *its failure to enrich the poor whites*. He treated the economic cause as secondary in his critique of the slave regime. The "sole aim and drift" of the legislation of the "slaveholders and slave-breeders" who have ruled the South since "the eleventh year previous to the close of the eighteenth century" [excepting the "noble abolitionists," Washington, Jefferson, and Madison and their compatriots] has been to aggrandize themselves, strengthen slavery, and degrade the poor whites.

It is less our purpose to inquire whether Helper's account was correct than to note the relationship of his argument to that of *Time on the Cross*. So far from refuting Helper on this level, *Time on the Cross* in fact supports his argument. From these most recent findings it is manifest that poor whites had nothing to fear from manumitted slaves. If this knowledge were accessible to those whose interest was to know the state of their own economic relationships and enterprises, it could have been denied to poor whites only by a willful deception. And this cornerstone of the bigoted resistance to emancipation would come to light as the conscious work of those men whose prudence was extolled in *Time on the Cross*.

*The Political Economy of Slavery* undertook to prove that the South was a separate nation—"a social system and a civilization with a distinct class structure, political community, economy, ideology, and set of psychological patterns..." (p. 3.) The purpose of the argument is to counter the minimizing thrusts of revisionist historiography, which argued that the Civil War was not an irrepressible conflict, that the South had no need to expand, and that the conflict was purely moral. "The question of a profound material antagonism has thereby virtually been laid to rest." But, to Genovese, "so intense a struggle of moral values" requires radically different ideologies or "world views." And where world views differ worlds differ (pp. 6-7). He made clear that his argument was not intended to begin from mechanical determinism. If the Civil War was irrepressible, it was so only from the moment in which slavery became "the basis of the southern social order" and generated "material and ideological conflict." Genovese maintained that the intersectional tensions arose not from the political difficulty of

dealing with slavery in the republic but rather from the contiguity and interdependence of two distinct republics or nations (p. 8). This denied, naturally, that the tensions produced were a result of the particular founding of the United States and the institution of a national government eleven years prior to the close of the eighteenth century. Presumably, the establishment of the regime of tolerance was an ordinary historical affair.

The burden of Genovese's argument was to prove that the material bases of the slave regime had been undermined, generating pressures for radical reformulation of the regime, including territorial expansion. "Therefore secession and the risk of war were emerging as a rational course of action" (p. 9). He responded to this burden by recanting the unprofitability of slavery and, simultaneously, depicting the North as a rapidly expanding competitor which became a "predatory foe" for reasons of profit (p. 159). The primary problem for the Southern planter, however, was not the earning of a profit. It was rather the salvation of his "pre-capitalist regime." Hence, the finding of unprofitability does not reveal whether the regime is healthy or diseased. From the "Eight theses" of the note, "From Economics to Political Economy," the fourth is relevant here:

The question of profitability, strictly considered, can and should be approached as an empirical problem having only tangential relation to the large political and social issues. Both the traditional and revisionist interpretations of the origins of the war can absorb either positive or negative findings. (p. 281)

Genovese's rejection of the criticisms in *Time on the Cross* (in effect, an advance defense of his later work, *Roll, Jordan, Roll*, in which he did not yield to those criticisms) is the apparent self-characterization of his work as traditional. That is, he considered it no more than an elaboration of the Calhoun thesis. He was able to do so only by rendering the American founding non-problematic and failing to understand Calhoun sympathetically. Calhoun recognized and sought to refute the radical and universal claims inherent in the founding, above all, that "all men are created equal." He recognized that, if this principle of political life were conceded, every other mode of political organization, beyond the republican, would be unacceptable and illegitimate. Calhoun therefore sought a principle of constitutional order which would permit in some superior claims to rule others, aware that that would mean, if successful, the decisive refutation of the American founding. Genovese, however, did not view Calhoun's constitutionalism as possibly possessing revolutionary implications. Calhoun's goal, a Southern nationality, was for Genovese an assumed fact and secession was a rational act of national self-defense.

Is it true that men may pursue "political and social" ambitions without any regard for the debit column in relation to the object in mind? Looking at both works, the Genovese thesis essentially amounts to the converse of the Helper thesis. It is an agenda of necessary and probable courses of action which might relieve the embarrassments of slave society from the perspective of the planter oligarchy. With Helper, therefore, it joined in depicting a regime which faced imminent failure. *Time on the Cross* refuted that portrait, if to refute it it was sufficient to demonstrate the slave owners themselves were receiving and might continue to receive handsome returns on their investments. But if

*Time on the Cross* succeeded in its greatest ambition, we were left with a vexing question: Whatever happened to American slavery?

### SLAVERY IN AMERICAN POLITICS

*Crisis of the House Divided* has an introduction which discloses its purpose. It intends to account for that national embarrassment which is fully pre-figured in the title of the work. That national embarrassment grew out of the principles of the regime; *not* the operation of those principles but, rather, the manner in which those principles were conceived. They informed various, perhaps equally eligible, conceptions of the national embarrassment.

The crisis of the house divided was the spiritual crisis which preceded secession and war. It is the thesis of this volume that had not Lincoln challenged Douglas in 1858, there would probably have been no subsequent crisis, or at least none of the same nature... This study is meant to record, not without suggesting something of its passion, Lincoln's conception of the intellectual content of that moment of deliberation when the nation, as he believed, was tempted to abandon its "ancient faith." (p. 2.)

This historiography (the history of political deliberation), by refusing to abstract from the underlying law which rationalizes economic and other social relationships—indeed, by beginning with the law or "ancient faith"—places itself in the way of accounting for both the happiness of the pre-war regime and those unheeded contradictions which could tear it apart.

Jaffa's purpose is ambiguous. He suggests that the Civil War was not inevitable at the same time that he argues that political circumstances seemed to mandate it. "Had not Lincoln challenged Douglas," the subsequent crisis may have been averted. But it is equally the case that, before Lincoln's crucial intervention, the forces had been unleashed. In 1854 Chase and others attacked Douglas with an intensity that unleashed passions which were spent only in "the blood of fratricidal war" (p. 47). The journals of the period reveal that this was not an exaggeration.

Clearly, *Crisis* does not intend to argue that the nation would not have come to grief over slavery but for Lincoln. Rather, it seeks to demonstrate that the particular form in which the crisis was manifested resulted from a deliberate choice as to the requirements of the regime. *Crisis* cares more for the nation as such than it does for the slaves or ex-slaves. But it does so consciously and without the apology of narrow relevance, because it intends to portray a whole which cannot be comprehended by the mere addition of segments.

Perhaps, however, it would be better to refer to the changes in American citizenship rather than to the change in the status of a particular group. Such drastic alterations as occurred either in the 1860s or in the 1960s affect, of necessity, all the citizens and the nature of their citizenship. (p. 8.)

Yet, the achievement of a clear view of the whole requires a heightening rather than minimizing of the differences among the parts, in order that that which is common to them by virtue of common participation in the whole be magnified in the reflection.

Among the first of those recent works to argue the profitability of slavery, *Crisis* sees that result rather as the formulation of the difficulty than a resolution. An unprofitable slavery need sooner or later abort itself and save the nation the trial, provided it also could not become profitable.

Those political as opposed to economic deliberations in which the profitability and expansionist tendency of slavery were crucial departed from understandings of the requirements of human life. We might say, rather, that the facts about slavery did not derive their importance from their status as objective truths. It was rather derived from their relationship to moral truths, something which has been an elusive conception for modern scholarship (p. 11). In this sense, the “racist” opinions of pre-war critics and defenders of slavery are closer to political wisdom than the ascetic indifference of *Time on the Cross*. What we require to know is how the articulations of political opinion, taking these objective truths into account, can be explained on their own and judged against true standards of political wisdom.

It is certainly true that racial prejudice—not, incidentally, “white racism,”—has always constituted an obstacle here to equal justice under law. Indeed, prejudices come to enjoy authority in a free society precisely because the government of such a society does rest upon the opinion of the governed. *Crisis of the House Divided* is ... the first study to point to the comprehensive character of Lincoln’s understanding of the teaching of the Declaration and to the presence therein of a tension between equality and consent. (p. 13.)

We may justly inquire whether it does not beg the question to oppose to errant opinion true opinion. But it is Jaffa’s intention to demonstrate not that Lincoln opposed true opinion *to* errant opinion. Rather, Lincoln opposed errant opinion *on the basis of* true opinion.<sup>14</sup> Lincoln’s eristics eventuated in a political act, an act of statesmanship. In this sense, the successful compassing of the tragic action and the establishment of true opinion seem identical.

Jaffa holds that Lincoln viewed slavery as a cancer. It was fundamentally incompatible with free government. It undermined the republican principle that no man rule another save by consent. “There was no principle, Lincoln often argued, that might justify enslavement of Negroes that might not also, with equal force, be used to enslave white men.” By comparing the institution to cancer he outlined the treatment paradox that sees total excision as fatal to the patient and expansion as equally fatal (pp. 30-31). Hence, Lincoln’s call for contemptuous sufferance of the institution in its limited frame amounted to a call for re-dedication to principles of bodily health. Only the view that the South was *a de facto* separate nation could undermine this argument. That is why Genovese, later on, was relatively quiet about *Time on the Cross*; the latter joined him in treating the pre-war South as a *de facto* separate nation. In that case, of course, the cancer (if we still may call it so) profits mightily from its host. Nonetheless, Lincoln’s

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<sup>14</sup> Readers who will consult Jaffa’s later work, *How to Think About the American Revolution* and, latterly, “The Doughface Dilemma,” will see in his own refutations of Martin Diamond, Irving Kristol, Walter Berns, Robert Goldwin, Arthur Schlesinger, Jr., et al., that Jaffa carries on in his own name the very confutations he discovered in the prudence of Lincoln.

condemnation remains in the poignant reminder of the impossibility of an independent existence for the parasitic force. He affirms the principles of republicanism while also radically questioning the possibility of a slave regime. Thence, the profitability of slavery takes on a peculiar and limited meaning and, indeed, can be maintained only so long as one maintains that the South was *not a* separate nation, *de facto* or *de jure*.

But for Lincoln—and for Douglas—such a distinction would be irreverent, for it places the question of what profits a part prior to the question of the good of that whole without which the part would fail. That the South manifested cultural—if we will—differences no more made of it a separate nation than did the manifest differences in society in the Utah of that day or among the Amish in our day. No question of the nature or character of any part of the regime—whether geographical or otherwise, natural or accidental—could fail to rest ultimately on the character of the regime as a whole. Thus, the problem of slavery derives its meaning from its role in and effect on the nation and not its economic advantage or disadvantage to the South.

Indeed, a robust slavery was a far greater difficulty than a hobbled slavery. The problem of slavery derived its meaning entirely from the relationship of its presence to the presence in the regime of those principles by which the regime would be known to rise or fall. This is the relationship to which Charles Pinckney appealed in the South Carolina ratifying convention when, challenged to account for the absence of a “bill of rights” in the Constitution, Pinckney responded that, inasmuch as such documents characteristically begin with a clause to the effect that “all men are created equal,” it seemed to the delegates of the South that they would make such a declaration with decidedly ill grace. They quite clearly understood, as Calhoun at his best understood, that the “all men” meant “all human beings are created equal,” and therefore none can be governed without his consent. Similarly, no one would consent to guarantee the rights of someone not himself capable in principle of consenting to respect a “bill of rights.” Since, then, the language of a “bill of rights” would indeed have been addressed to the slaves in their capacities as human beings, although they were politically ineligible to respond, the Southern delegates thought better to leave that awkward point under the tutorial care of silence. In the end, of course, those pregnant words were already so far inwrought in the very frame of the regime that their eventual preeminence was inevitable. As Jaffa has pointed out, the Civil War was only the application to an independence-minded South of the very principles Madison envisioned as applicable to an independent-minded Rhode Island or any other non-ratifying state in 1787-1788:

The second question is not less delicate... It is one of those cases which must be left to provide for itself. In general, it may be observed that although no political relation can subsist between the assenting and dissenting states, yet the moral relations will remain uncanceled. *The claims of justice, both on one side and on the other, will be in force, and must be fulfilled*; the rights of humanity must in all cases be duly and mutually respected; whilst considerations of a common interest, and above all, the remembrance of the endearing scenes which are past, and the anticipation of a speedy triumph over the obstacles to reunion, will, it is hoped,

not urge in vain *moderation* on one side, and *prudence* on the other. (The latter emphases are original.)<sup>15</sup>

It is not frequently enough remembered—though Jaffa has sought to demonstrate—that Lincoln, by insisting on the sanctity of the union, was saving for the republic a claim to those founders whose origins and descendants were in the secessionist South. Had the struggle gone other than it did the worshippers of Washington, Marshall, Madison, and Jefferson—on either side of the conflict—would have been morally forced to inter their heroes beneath a blanket of silence. Slavery, without the illumination provided by the great moral conflict was a mere excrescence—in itself of no particular significance and, to the historian, of only passing importance.

The particular details and circumstances of slavery constitute no more than the basis of those prudential calculations which inform the process of deliberation. As the moral end requires an explicit choice from among the means available and manifests itself only through the deeds occasioned by such choices, the details of slavery serve to illuminate its effect on the regime in given circumstances. A study like *Time on the Cross* gained significance to the extent that it demonstrated the validity of those reflections which constituted the deliberations of the statesman. Jaffa argues that Lincoln's deliberations turned on the profitability and expansionist tendency of slavery. *Time on the Cross* provided the statistical measure of that insight and established that Jaffa was correct all along, maintaining that Lincoln had just cause to fear. Hence, the perspective of slavery which Jaffa gives us is that from which we recognize the over-riding importance of judging Lincoln's and Douglas's contrasting interpretations of the posture of slavery as it affected the nation.

Now, Lincoln's perspective was one in which it is necessary to ground every detail of slavery in its relationship to the teachings of the Declaration of Independence. Though slavery could never be founded on such principles, the danger it posed need not be such as to require its immediate elimination as the only source of salvation for those principles. Slavery was conceivable, for Lincoln, only as a means of production and/or consumption. Further, every question of ethics must sooner or later return to the question of the individual's disposition toward material pleasures and pains, though these are the least rather than the highest formulations of the problems of morality. This is the reason that Lincoln did not count himself among the "natural limits" men.

... the Negro was a man and that as such he was capable of being exploited in *any* way that human labor might be exploited. [If the North and West could be profitably settled, slaves could profitably be used there.] Any break in the legal barriers confining slavery was a threat to free labor, because slave labor could be used to degrade free labor wherever there was a legal possibility of their being used side by side. (p. 395.)

It cannot be too frequently repeated that one need not demonstrate a preexistent tendency to slave morality to accept Lincoln's thesis. Lincoln did not think that men were

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<sup>15</sup> James Madison, Alexander Hamilton, John Jay, *The Federalist Papers*, ed. by Clinton Rossiter (New York: New American Library, 1961), paper number 43, p. 280.

determined by a value milieu, however much they inclined to follow established opinion. As Aristotle evinces in the *Ethics*, virtue is a matter of individual choice, right choice is rooted in habituation, and the focus or subject of choice more often than not is the passions or appetites. Abandoning men to govern themselves by their passions means quite literally to offer no guidance as to the right choice. Providing guidance for right choice requires a concern to preserve right conditions and to inculcate habits for judging pleasures and pains by something other than passions or appetites. Lincoln, therefore, thought it far wiser to found the characteristic judgment of slavery, wherever possible for Americans, rather on the Declaration than on questions of personal convenience or avidity. The difficulty he depicts always centers on the corrosive effects of individual passions—not social passions. That the effect becomes social is undeniable; but the political problem is to deal with sources or causes so as to preclude effects.

A society requires a regnant morality. But that morality is always subject to the baneful influence of individual decline. We need not be forced to argue that the West qua West was weak on sentiments of liberty in order to appreciate the possibility that it may become so. Nor is it an unlikely possibility that what is profitable for the “society” may fall prey to what is profitable for only a part of society.

Even if it were true that the productivity of a system based on free labor is greater than one based on slave labor, it does not follow that it is more *profitable to the men who run it*. A large portion of a smaller sum may still be more than a small portion of a larger one. (p. 395.)

The similarity between this conclusion and Genovese’s “fourth thesis” emphatically reveals the reason *Time on the Cross* did not, as *Crisis* does, disclose what happened to American slavery. To prove that slavery was profitable—nay, even productive,—is not a prelude to a symphonia of “all lived happily ever after.” It is rather to depict a problem of grave proportions. It did not refute Helper; it justified him. And in providing the measured substantiation of Jaffa’s thesis, it established Jaffa’s argument as the full response to Helper.

Let us try to comprehend why Lincoln opposed Douglas. This last, like Helper, reduced the question to a notion of material self-interest and profitability. But Lincoln insisted that slavery was wrong in itself and could be tolerated only so long as it did not undermine that conviction. It was, therefore, Lincoln’s conviction that Douglas was wrong in expecting slavery to prove ultimately unprofitable that determined him (Lincoln) to oppose the risk of dedicating the entire nation to slave morality on the chance that the nation would abandon it as slavery itself withered (pp. 34-36, 53-54, 109).

Jaffa only ambiguously esteems Lincoln for this posture. For there was certainly some force in Douglas’s insistence that the only real hope of liberty reposed in the prudent expansion of America’s territorial limits. This, he was sure, could not be accomplished in a nation wracked by slavery nor, for that matter, if a *significant* portion of the democracy were denied opportunity to share in the prosperity that resulted on terms suitable to themselves. Jaffa pointedly reminds the reader that, but for Democrats like Douglas—not to mention Jefferson,—there would have been no continental union for Lincoln to save.

... we must, in fairness, also remember that Lincoln and his party [i.e., the Whigs] did not have such a vision. *They* warned, as with the voice of Webster, that territorial expansion would undermine the principles of a free republican government. The annexation of Texas alone meant the certain addition of one slave state and the possible addition of five . . . (p. 77.)

And it is also true that *Whigs* emphasized more strongly the danger anticipated from the “borough-mongering” that came to dominate a Senate populated with representatives from many thinly populated states. Granting all this, it remains, however, that Lincoln may not have had to save the union at all—at least not for the reason he did—had there not been mindless expansion.

A central part of the tale of what happened to American slavery must focus on the era of expansion especially initiated by Jefferson in 1803. It would not be tenable to suggest that slavery proved but another institution which was incompatible with the challenges of the frontier thrust of American democracy. But it would be equally untenable to minimize the effect of territorial expansion in the development of sectional consciousness in both North and South. It is not without significance that the first (Missouri) and last (Kansas-Nebraska) great territorial crises were the legacy of Jefferson’s acquisition of Louisiana. Nor is it an accident that the last amounted to an undoing of the former and, in effect, returned the crisis of slavery to the ground first created by the problem of Louisiana.

[Jefferson] accepted the ‘diffusionist thesis,’ that allowing slavery to spread into new country such as Missouri did not tend to its perpetuation but only spread it ‘thinner.’ Lincoln was to blast and wither this argument and to heap upon it his bitterest contempt. But its connection with Jefferson is carefully concealed; only sentiments worthy of the hero of the Declaration and the patron of the Northwest Ordinance are presented to our view. (p. 143.)

Similarly, therefore, he does not recall Jefferson’s relationship to the Louisiana Purchase, despite manifest evidence that failure to acquire that territory may have resulted in evils greater than the Civil War—which was, after all, the successful consummation of the founding.

In light of the foregoing, it may seem that the fate of American slavery hung from the beginning in the outcome of the battle over expansion. Once the Whigs lost in their attempt to prohibit expansion, the thing itself stood nakedly—without its surrogate—as the object of attack. Expansion we would have, but perhaps slavery could be denied a right to participate in it. At that point, the question of slavery’s tendencies became crucial. There would be no need to deny politically a right which slavery could never exercise in the nature of things. The robust prosperity of the slave kingdom in the 1850’s—as well as slavery’s insistent desire to expand—forever obscured this peaceful vision, despite the gigantesque efforts of Stephen A. Douglas. If slavery were, finally, to be denied a right to participate in expansion, America was, finally, to endure a direct confrontation of the relationship of the principles of slavery to the principles of the regime itself. Though not having been spared the difficulties caused thereby, the nation had been spared that bare confrontation ever since the occasion offered in the



deliberations of the Constitutional Convention of 1787. The resources of compromise had been exhausted.

The real story of *Crisis of the House Divided* is therefore the story of Lincoln's presentation of the case for the regime. It was a case founded on clearly stated principles if ambiguous in its circumstances. Lincoln built—and repeatedly—on the proposition “all men are created equal” as an “abstract truth.”

The implications of this truth were only partially realized, even for white men, and largely denied as far as blacks were concerned. Yet it supplied the direction, the meaning of all good laws in this country, although the attempt at that time [the 1850s] to achieve all that might and ought ultimately to be demanded in its name would have been disastrous. It is foolish to attempt to achieve abstract justice as the sole good by succumbing to the fallacy to which the mind is prone, which regards direct consequences as if they were the only consequences; and so is a law foolish which does not aim at abstract or intrinsic justice. Those who believe the law should sanction only what is right commit one error; those who believe anything sanctioned by law is right commit another. (p. 195.)

We have recourse to law, and especially fundamental law therefore, not to discover what men must have done nor what the character of institutions must have been. Naiveté is not permitted to political history. We turn to law and speeches about law in order to grasp the directions to which statesmen have dedicated their ambitions. The case for the American regime and Lincoln's conception of that case thus informs our understanding of what happened to American slavery as the case for liberal democracy informs our understanding of what happened to Nazi Germany and what ought to happen to Soviet Communism.

Lincoln rooted the concept of self-government in the meaning of that “abstract truth,” “all men are created equal.” It was his discovery that the full theoretical or moral implications of that view had been insufficiently affirmed which constituted a political truth. In his 1838 Address to the Young Men's Lyceum of Springfield, Illinois, he maintained that the “true test” of the capacity of a people for self-government had not yet occurred. Jaffa does not fail to show that this startling conclusion seems to contradict Lincoln's deepest convictions and the conventional view of the heroism of the Revolution. But that conventional view is undisturbed at the surface of the Lyceum address, which is on “The Perpetuation of Our Political Institutions,” and this troubling theory emerges only from the analysis (p. 209). What is troubling in the theory is the implication it raises about the status of the regime in 1838.

The government of men may be based on force or fraud, in which case it is illegitimate, or it may be based upon consent. Such is assuredly the irreducible meaning of the Declaration of Independence . . . (p. 211.)

The political truth which had been discerned by Lincoln would constitute as much a declaration of independence from the practice of the founders as did the original from British loyalty.

Jaffa reveals that Lincoln's independence was qualified by the existence of the original Declaration. What they may not have achieved in practice the founders did

dedicate themselves to in principle. And they braved the censure of all mankind—without a previous example to which to appeal—in order to do so. In insisting on the political relevance of the abstract truth which the founders had enshrined, Lincoln could brave only the censure of his fellow heritors. He could, consistent with the principles of that abstract truth, claim no more for himself. For they alone who first raised that standard were at liberty to abandon all previous belief (p. 221). He who would seek to rival their eminence must become an enemy of self-government. But the doing so would reveal the baseness of his ambition.

All men are created equal, because those who are really superior are in the decisive sense above humanity. For them to claim superior rights would be absurd, because such a claim would imply an appetite for those political goods for which they have no desire. ‘All men are created equal’ remains the decisive political truth, because those who might with justice deny it have no motive to deny it, while those who do deny it can only do so because of an unjust motive. (p. 222.)

In a sense, Jaffa’s account of Lincoln’s understanding of political prudence establishes that what happened to American slavery—that is, to the principle of slavery—is that it was submitted to a strict accounting of the requirements of human nature. Modern politics, too, could reveal those distinctions in nature which ennoble human existence. It is but a matter of adjustment of perspective to comprehend “Ye shall know them by their appetites.” Human appetites or preferences come to be recognized as legitimate or based on consent only as they follow from acceptance of an equality of rights. All other signs of distinction are confounded. While there will ever remain humans who are older, wiser, more pious, wealthier, lovelier, friendlier, stronger, and bolder, and such other claims as men may admit, none of these convey title to rule, as they did heretofore. All have been subordinated to the decisive nod of consent. Yet, so long as men may distinguish themselves by that whereto they give consent—however they are brought to do so—no one may say that humanity has been leveled.

Lincoln, we saw, welded the abstract truth of the Declaration into a practical account of human life. In order to do so he had to expand its content. The present-oriented “contractual union of individuals” became an historical entity: “a union with ancestors and posterity; it is organic and sacramental” (p. 228). The American Regime—like the divine regime of Israel—established a mission which its people failed to follow because of a want of “practical influence” upon their conduct (p. 230).

The Declaration of Independence thus not only expresses the central truth upon which free government is based but undermines the possibility of reverence which alone can stabilize government founded upon that truth. (p. 231.)

The particularly limiting aspect of the Declaration is its tendency to promote a worldly circumspection about the relationship of government to private ends, a willingness to judge government by “what it’s done for me lately,” rather than the permanent things.

Thus, the Declaration is a problematic foundation of a civilization as distinct from a regime, until it has been made venerable. The historical tragedy arises precisely from the necessity of a process of sanctification. So far as I know, Jaffa never compares this

republic to Athens or Rome, as he compares it frequently to Israel. This striking contrast with the habits of the thinkers of the founding generation suggests a defect, as Jaffa conceives it, of the founding (namely, the *novus ordo seclorum* is rather more secular than consistent with human things). But it is only fair to note that Jaffa demonstrates that this was the habit of Lincoln—to depend on the Testaments. Hence, it is really Lincoln’s reflection which Jaffa so sharply contrasted with the reflection of the founders.

Finally, we must note the practical application of Lincoln’s conception of the founding. That he challenged Douglas for a seat in government and that slavery was *the* topic of the day cannot explain Lincoln’s insistent demand that the Declaration and the Missouri Compromise be considered *the* statements of national policy toward slavery. For Lincoln, the slaves were *men* of a given legal status. Hence, it was necessary to affirm the existence of slave law as an exception to America’s primary conception of the relationship between men and law (pp. 281, 349). Slavery had to be publicly acknowledged as an exception not only to equality but to the consent of the governed. The failure to do so was seen as a threat to fundamental law and hence a threat to free men. Stated slightly differently, *Lincoln insisted that free men be understood as free in relation to their rights as men and not by virtue of their accidental juxtaposition with slaves.*

This perspective required that no consequence of slavery be considered inevitable, for any accommodations to be made had to be made with the principles of the regime and not with nature (p. 299).

It made all the difference in the world whether the anti-slavery migrants to Kansas were men who merely thought slavery unprofitable or men who thought slavery a profound moral and political evil. (pp. 299-300.)

Lincoln’s insistence on the profitability and expansionist tendency of slavery, therefore, was not just a bit of objective social science. Besides depicting the extent and force of the moral and practical threat, it was as well a means of counteracting the tendency in some men to allow nature to settle a work that politics had to perform. It would certainly not be just to imagine that Lincoln would have insisted on risking war, if he knew that nature could save free government. But neither is it just to conceive that Lincoln saw the danger in slavery to result from the mere physical presence of slaves.

The order of the argument upon which Jaffa insists is that which subordinates the question of whether the extension of slavery was materially possible to the question of whether it was morally possible (p. 302). It was Lincoln’s argument that the mid to late fifties had brought forth, for the first time in the republic’s history, those efforts to affirm the truth of the Declaration while excepting the slaves from its provisions (pp. 313-314). *Time on the Cross*, by accepting the logic of the *Dred Scott* decision, contributed to the perpetuation of this distorted view of the republic and advanced the cause of its particular scholarship only by devaluing the argument from moral possibility. By consigning the American past to “racism” and perceiving no further moral distinction, it may treat material possibilities as determinative. For this reason it did not reveal what happened to American slavery. Only a historiography which is alive to the demands of the regime and well-versed in the reflections of its statesmen is a suitable vehicle for the consideration of such questions. The economic analysis Fogel and Engerman provided may well assist in

this endeavor, but their pretense to have corrected centuries of injustice to blacks will remain vain prejudice, unless and until they can discover that slaves, as Pinckney knew, were included in the language of the Declaration. For that, alone, is the source of slavery's injustice.

That racism is involved in American slavery we confess. Douglas, indeed, sought to salvage the defense of slavery by reducing it to racial differences. Indeed, many were they, critics and defenders of slavery, whose abhorrence of the African presence provided the full measure of motivation for their concern for the problem. Yet, for critics and defenders alike, the real issue involved rather the nature of the American regime than the character of the slaves. And it was Lincoln who reduced even the racist defense to its lowest common denominator: the power of *any* majority to enslave *any* minority, "whatever its color or composition" (p. 349). The racist argument fell easily because it was never so seriously entertained as a *defense* of slavery. Jaffa of course knew, without saying so, that throughout much of the thousands of years to which Douglas liked to advert, white men as well as black men were always enslaved. The perversion that color made a difference may, perhaps, only be explainable with recourse to the awkwardness created by modern principles.

Upon reflection, then, we may demonstrate by example the sources of the errors found in works such as *Time on the Cross* and *Roll, Jordan, Roll*. Genovese's notion that the South was locked in a blighted yet noble battle to avoid the evils of bourgeois capitalism demonstrates the incurable myopia of dialectical theology. Just as comparisons of the Soviet Union and the United States with respect to material and spiritual liberties draw only more turgid rationalizations from the contemporary Marxian apologist, so does Hinton Helper's analogous comparison of North and South draw from Genovese's acceptance of the stated facts but an unwillingness to consider them instructive. Genovese, by converting "manifest destiny" into an instrument of purely Southern chauvinism, makes it a danger to the North. That the Southern position on the question of tariffs and expansion was quintessentially an aspect of foreign policy as well as economics, and that the purpose of safeguarding domestic slavery required quite different objectives from safe-guarding domestic liberty on the plan of the American founding, are facts which can no longer be overlooked in the attempt to elucidate pre-war social and political discourse.

Fogel and Engerman erred by confusing two forms of slavery. In computing the rate of return on investment and the level of expropriation, they credited to the master the cost of non-income producing slaves as a capital basis, and then assumed that the income produced by productive slaves was in fact produced by all. If, in fact, only the direct income producers are considered, they produced even *more* income, individually, than *Time on the Cross* suggested, and the level of expropriation is *higher* both as to them and as to those who are held to service in non-income producing activities. These latter do receive their maintenance, but as they generate no income *per se* and are allowed to generate none, they cannot be used to diminish the claims of those who do generate income. In pure terms, of course, they should not be included as capital costs. They are rather articles of private consumption. And there are in fact two forms of slavery: the one productive and the other confined to the sphere of action.

This last is properly not discussed nor susceptible of being discussed by econometric methods. Nothing can show more clearly that *Time on the Cross* was a book not about slavery but about capital investment.<sup>16</sup> It added nothing to the discussion of slavery as a social system—beyond restoring the once commonly accepted notion that such a system is materially or naturally possible. This is the secret Fogel and Engerman did not grasp. Men can indeed be persuaded by the facts; but facts, including cultural facts, do not explain themselves. This is the story which *Crisis* has told, with the purpose to reveal the character of a particular regime.

*Crisis of the House Divided*, alone in our time, provides for a comprehensive judgment of slavery in the light of the founding of the United States. Because it achieves this end, it also stands alone in providing for a comprehensive judgment of slavery in the light of what the United States has become. In the new “Introduction” Jaffa renews his commitment to publish the sequel, *A New Birth of Freedom*. In that he reaffirms the significance of a correct understanding of slavery and its abolition to the proper understanding of liberty in our time. That Lincoln, on the strength of America’s universal

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<sup>16</sup> A fair example of the authors’ limited political vision is their refusal to comprehend the connections between the Constitutional Convention, the prohibition of the Atlantic slave trade, and the purchase of Louisiana. “And during the last half century of the legal U.S. involvement in the slave trade, although the absolute level of importations was high compared with earlier U.S. experience, importations contributed only half as much to the growth of the black population as did natural increase” (pp. 15-16, 29). This obscures through averaging the last twenty years of imports—as their own figures 6 and 7 disclose—and thus fails to defend the argument that *only* a favorable climate and good care made the United States the principal slave regime of the nineteenth century. The argument hinges on the demonstration that cotton was yet an incipient crop and that the demand for tobacco could in no way account for dramatic increases in slave numbers. Now, this masks a dogged refusal to recognize the effect of the *political decision* to end traffic in slaves, which was made not in 1807 as they somehow imagine but at the Constitutional Convention. The dispute in 1807 was not whether to accede to this limited and generally accepted proposal of abolition. It centered rather on what to do with any contraband that may have been apprehended. Jefferson’s original proposal—following legal tradition—called for sale in the interest of the government. But others and especially Quakers pointed to the grand paradox that would involve the United States in the selling of Africans as a means of denying that privilege to American citizens in the name of the rights of humanity. The counterproposal that the Africans be freed rather than sold is the immediate cause which touched off a heated debate. That debate, above all in the House of Representatives, produced the first compromise on slavery which admits the existence of irreconcilable differences between North and South. Here, for the first time, we have an explicit threat of civil war over the institution of slavery, and an accommodation which recognized that “Easterners” must not be asked to turn their backs on the founding and principles of humanity, while “Southerners” must not be asked to participate in a condemnation of their way of life. Therefore, the Northern proposal, effectively to free the cargo within the United States and even within slave states, was amended, first, to freeing them only in the North (i.e., indenturing them for a term of years at a stipulated wage), and ultimately, to remanding them to such provisions as the states might make, with the tacit understanding that they were not to be dealt with as property. It is interesting to speculate about what might have eventuated had Jefferson and Madison reflected initially on the impropriety of proposing legislation to handle the Africans as contraband. See the *Annals* of Congress for the 9<sup>th</sup> Congress.

principles, could make good on the original, moral claim to a particular manifestation of those principles—that is, insofar as Lincoln’s victory finally established the moral right to instantiate those universal principles in a particular, exclusive regime, he provided for a liberty founded in political right and capable of informing contemporary political judgments. The contemporary judgment of what befits the ex-slave would be founded not on the past circumstances of the slave but on the principles of the regime. Accordingly, we may expect *A New Birth of Freedom* to set forth the case for our consulting the constitution or regime whenever we justly press demands for liberty and equality.

What this points to most significantly, therefore, is that *Crisis of the House Divided* reveals above all the birth of freedom as a political principle itself. Jaffa’s students profoundly misunderstand him if they take his teaching as an instrument of liberation (called transcendence) from the history and principles of the Constitution and the founding itself. Because he shows so clearly how the American founding stands as a concrete instance of address to the question of the human good, the benefit we derive from his work is the discovery that the study of our constitutional past is at the same time the study of the universal claims of human nature in their truest representation.