Mastery, Slavery, and Emancipation

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Hegel's best known text is the dialectic of master and slave in the *Phenomenology of Mind*, where he portrays a master unable to command the respect of a slave because he is unwilling to grant the slave respect. Some historians have been at pains to point out this passage's inaccuracy as a portrait of Southern slave society. Yet Hegel's dialectic of master and slave does not purport to be an analysis of actual slave societies. Instead, it is a state of nature argument, aimed at reformulating the state of nature argument of Hobbes. It is intended to demonstrate that Hobbes's war of all against all is incapable of sustaining the very individuality it takes as its premise. Hegel's purpose in presenting this dialectic is not to critique slavery, but to critique freedom, as commonly conceived in the early nineteenth century. He aimed to show that freedom had to be conceived as some form of association rather than independence; and that it had to be mediated by politics rather than defended from politics.

In this essay I will suggest a communitarian interpretation of emancipation inspired by Hegel's dialectic of master and slave. This interpretation will proceed from an account of slave society which, like Hegel's dialectic, equates slavery with the denial of social recognition. This account will argue that the experience of slave society led both the masters and the slaves to conceive of freedom in social rather than individual terms. Proceeding from this account, I suggest that emancipation be conceived as the restoration to Afro-Americans of the sovereignty and social esteem that Southern society valued, rather than the repudiation of Southern values in favor of the Northern, liberal ideal of independence.

I. THE PROBLEM OF INTERPRETING EMANCIPATION

Americans conceive of themselves and their country as "free." While that traditional self-conception considerably antedates emanci-
The process of emancipation—extending freedom—required our political and legal institutions to define that freedom with an unprecedented precision and concreteness. The process of legally defining freedom so that it could be extended to former slaves placed white Americans in a harrowing trilemma: define their own freedom accurately and release blacks from their position of subordination; extend to blacks a limited conception of freedom and define their own freedom in limiting terms; or define their own freedom in ambitious and generous terms and offer blacks a greater freedom than whites believed they themselves enjoyed. The choice made by the governing institutions of American society was the second one. They perpetuated a tradition of identifying freedom as individual independence. This meant that blacks were forced to take their place in society as vulnerable individuals; the systematic violence and deprivation to which they were subjected was defined as the product of a series of individual, discrete, private prejudices. The equation of freedom with independence also meant that whites would remain vulnerable to an increasingly intrusive and volatile market.

The American Revolution inspired considerable abolitionist sentiment and arguably led to abolition in a number of Northern states. See id. at 262-98. Nevertheless, the war was fought to preserve what the colonists understood to be the customary liberties of Englishmen, rather than to create new liberties. See B. Bailyn, The Ideological Origins of the American Revolution (1967); Quarles, The Revolutionary War as a Black Declaration of Independence, in Slavery and Freedom in the Age of the American Revolution 284 (I. Berlin and R. Hoffman eds. 1983). Moreover, if many revolutionaries saw these liberties as incompatible with the institution of slavery, many others saw black slavery and white freedom as so consistent as to be mutually entailed. See D. Davis, supra note 2, at 258-62; D. Davis, The Slave Power Conspiracy and the Paranoid Style 32-51 (1969); E. Morgan, American Slavery, American Freedom: The Ordeal of Colonial Virginia (1975).


The claim that the interpretation of liberty as independence simultaneously disadvantaged blacks and laboring whites has hardly received unanimous assent. See A. Bickel & B. Schmidt, The Judiciary and Representative Government 1910-21, at 725-818 (Lochner era formalism benefited blacks by limiting or undermining segregation); Nelson, The Impact of the Antislavery Movement Upon Styles of the Judicial Reasoning in Nineteenth Century America, 87 Harv. L. Rev. 513 (1974) (post-Civil War era formalism represented the triumph of abolitionist jurisprudence). For me, however, the limits of "liberty of contract" for liberating blacks are revealed by another Supreme Court case decided the year after Lochner v. New York, 198 U.S. 45 (1905). In United States v. Hodges, 203 U.S. 1 (1906), the Court concluded that private interference with labor contracts was not sufficiently injurious to black laborers' liberty to justify federal prosecution pursuant to the thirteenth amendment. Liberty as independence restricted the legal enforcement of slavery, but it also restricted the legal enforcement of freedom.
II. A Critique of Independence

Hegel's dialectic of master and slave in the *Phenomenology of Mind* provides an intellectual foundation for modern communitarian conceptions of freedom in its devastating critique of the ideal of independence. How does a person come to conceive of herself as an independent individual? Hegel reasons that we must come to see ourselves as distinct particulars by the same process that we come to see other objects as distinct particulars. How do we distinguish objects from their surroundings? Hegel's answer is that we do so instrumentally—that we can only perceive objects as distinct from their surroundings if we can imagine appropriating them to some use or purpose. It is only our own purposive intelligence that enables us to break apart the totality of our surroundings.

But what enables us to differentiate ourselves from the world of objects that we thus invent? Hegel's surprising answer is that we must identify some other purposive intelligence, outside of ourselves, capable of viewing us instrumentally—in other words, capable of objectifying us. From this it proceeds that we need others in order to establish an independent identity. Without being able to see ourselves through another's eyes, we would simply melt into the world of our

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6 Phenomenology of Mind, supra note 1.

7 For Hegel, the identification of an object is a three-part process, beginning with the perception of the object as other, which Hegel characterizes as a negation of it. By negating the object as other, the knower becomes aware of herself as that which is opposed to the object. Finally, by sublating or imagining a use for the object, the knower negates the object's otherness, while preserving it as an aspect of the knower's self. In sum, the knower identifies an object by differentiating it from the self and then reincorporating it into the self as a purpose. Phenomenology of Mind, supra note 1, at 217-27. Accordingly, objects take on their identity as particulars from their utility for their perceivers. "What the object immediately was *in itself* [an sich] . . . it turns out, in truth, not to be this really; but instead this inherent nature (Ansich) proves to be a way in which it is for an other." Id. at 218. Consequently, desire differentiates objects from their surroundings, even as it differentiates objects from the knowing subject. As Kojève summarizes, "Desire is what transforms Being . . . into an 'object' revealed to a 'subject' by a subject different from the object and opposed to it." A. Kojève, Introduction to the Reading of Hegel: Lectures on the Phenomenology of the Spirit 3-4 (1969). "Self-consciousness, which is absolutely *for itself*, and characterizes its object directly as negative, or is primarily desire, will really . . . find through experience this object's independence." Phenomenology of Mind, supra note 1, at 221. That the knowing subject cannot accomplish—or even identify—her projects without differentiating objects implies the independence of those objects; but their dependence on a purposive knower for their identities in turn unifies discrete objects into a world of life experience. Id. at 222-24.

8 "A self-consciousness has before it a self-consciousness. Only so and only then is it self-consciousness in actual fact; for here first of all it comes to have the unity of itself in its otherness." Phenomenology of Mind, supra note 1, at 226-27. By being other—that is, an object—for a self-conscious subject, a second self-conscious subject acquires a distinct identity. This identity is not just the sum total of its life experience, but it is one life experience in a world that can be experienced differently because it can be experienced by others.
own perceptions. Accordingly, concludes Hegel, we are dependent upon one another for recognition.  

Hegel uses a hypothetical master and slave relationship to illustrate a further claim: we cannot achieve recognition outside of a political community characterized by mutual obligation. Beginning with two utterly egoistic individuals, each bent on receiving recognition while conferring none, Hegel envisions a struggle to death for recognition. Because neither can experience recognition by killing the other or by being killed, Hegel reasons, one will eventually submit to the other, initiating a master-slave relationship.

By means of this relationship, the master hopes to achieve independence by obtaining recognition without assuming any social obligations to another. The slave, traditionally characterized as dependent, retains with life the future hope of achieving recognition. In the meantime, however, the slave must gratify the master’s every whim, offering unrequited recognition. But now, proceeds Hegel, the master encounters a difficulty: because the slave exists for her only to serve her own purpose, she cannot recognize the slave as an independent purposive intelligence. While the master may demand recognition from the slave, the master cannot receive it because she has deprived the slave of the capacity to objectify her. The slave, permitted to express only the master’s subjectivity, cannot provide the

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9 Id. at 229.

10 Id. at 231-32. The reason these two are driven to fight for recognition rather than earning it through cooperation, is the distorted conception of individual identity for which they desire to be recognized. Each wants to be recognized as independent of everyone and everything. Accordingly, they want to show that they are independent of the other, by demonstrating the other’s mortality. They also want to show their independence of the world by denying their own fear of death. Accordingly, “each aims at the destruction and death of the other,” and each “risks its own life.” Id. at 232.

11 Through death, doubtless, there has arisen the certainty that both did stake their life, and held it lightly both in their own case and in the case of the other; but that is not for those who underwent this struggle. They cancel their consciousness which had its place in this alien element of natural existence.

Id. at 233.

When Hegel concludes that “[i]n this experience self-consciousness becomes aware that life is as essential to it as pure self-consciousness,” id. at 234, it must be understood that for Hegel the italicized term signifies much more than biological functioning. Life is the mediation of consciousness through experience: the entire lived world of involvement with others, dependence, maturation, and learning. See id. at 223-24.

12 Id. at 234.

13 “[W]hat is done by the bondsman is properly an action on the part of the master.” Id. at 236. By this, Hegel does not mean merely that the master is legally responsible for the slave’s acts, but that the master is psychologically constrained by her role as master to recognize only herself and not the slave’s actions. Kojève explains: “[Since the Slave works only for the Master, only to satisfy the Master’s desire and not his own, it is the master’s desire that acts in and through the Slave.]” A. Kojève, supra note 7, at 18-19.
master with an Archimedean point from which to see herself.\textsuperscript{14} Thus unable to objectify the master, the slave is paradoxically constrained from offering the master recognition. Deprived of an identity, the slave cannot confer one on the master—withstanding esteem from the slave, the master cannot credit the esteem she compels the slave to confer. For the master, the price of eschewing meaningful society is a loss of individual identity.

In this process the master, having given over all purposive activity to the slave, loses not only her self, but her world as well. The slave, on the other hand, is engaged with the world through her work and has all the requisites for developing an individual identity.\textsuperscript{15} She learns her own capacities through work and learns to see herself through another's eyes, even if only as an object, a product.\textsuperscript{16} Only the master's lack of a discerning purposive intelligence impoverishes the slave's sense of identity.\textsuperscript{17} Yet it is the slave, deprived of formal recognition, who achieves an identity.\textsuperscript{18} The master, unwilling to recognize that identity, can receive neither recognition nor identity in return.\textsuperscript{19} Because it is the slave's agency and identity that permits the master to act purposively in the world, it is the master who is dependent on the slave rather than vice versa.\textsuperscript{20} The master's attempt to render herself utterly independent of the world by mediating her rela-

\textsuperscript{14} The master "is thus not assured of self-existence as his truth." Phenomenology of Mind, supra note 1, at 237. In a celebrated passage, Kojève concluded that "he is recognized by someone whom he does not recognize . . . without value for him. For he can be satisfied only by recognition from one whom he recognizes as worthy of recognizing him. The Master's attitude, therefore, is an existential impasse." A. Kojève, supra note 7, at 19.

\textsuperscript{15} These requisites include the fear of death that has supposedly induced the slave to consent to slavery. For Hegel, fear of death is an aspect of recognizing one's contingency—the fact that the world can go on without one. It is in part this detachability from our world that gives each of us a distinct identity. Thus for Hegel it is really death that is "the sovereign master." Phenomenology of Mind, supra note 1, at 237.

\textsuperscript{16} By viewing herself as an object, like the resources upon which she labors, the slave can imagine cultivating, developing, and transforming herself through labor. See id. at 238; A. Kojève, supra note 7, at 24-25.

\textsuperscript{17} The master's ability to objectify, to use the slave, is limited by the poverty of the master's desire. Indeed, as Patterson points out, in criticizing Hegel's model, "most slaves in most precapitalist societies were not enslaved in order to be made over into workers; they may even have been economic burdens on their masters," maintained as idle status symbols. O. Patterson, Slavery and Social Death 99 (1982). Yet Kojève's interpretation of Hegel's model accounts for this, in treating all of the master's commands as aimed at confirming mastery rather than accomplishing some change in the world. "[The Master is fixed in his Mastery. He cannot go beyond himself, change, progress. . . . He can be killed; he cannot be transformed, educated. He has risked his life to be Master. Therefore, Mastery is the supreme given value for him, beyond which he cannot go.]" A. Kojève, supra note 7, at 22.

\textsuperscript{18} Phenomenology of Mind, supra note 1, at 237.

\textsuperscript{19} Id. at 236.

\textsuperscript{20} “It is not an independent, but rather a dependent consciousness that he has achieved.” Id. at 236-37.
tions with it through another completely dependent upon herself has failed.\textsuperscript{21} She has lost the ability to distinguish herself from the world and has become completely dependent upon another human being. Because independence is impossible, individuality can only be achieved in a community characterized by mutual recognition. Thus, our very identities commit us to recognize others and obligate us to create or perpetuate communities characterized by such mutual recognition.

Now I want to stress that the obligation this entails cannot be met within liberal society in so far as we conceive of liberal society as a set of discrete individuals permitted by a stable legal framework to pursue instrumental activity.\textsuperscript{22} It is not an obligation that can be discharged by each citizen independently, by conformity to rules specified in advance. Instead, it is an unbounded and unpredictable obligation to others of the sort entailed by a friendship, an obligation that cannot be fulfilled without the help of society. In such a society, others are obligated to recognize us; and we are obligated to help them by showing our concern for their esteem. The recognition required by Hegel's argument in the dialectic of master and slave is more than the tolerance of other's ends that, for example, Bruce Ackerman defines as the foundation of liberal political discourse.\textsuperscript{23}

In his introduction to the section on lordship and bondage, Hegel demonstrates that an instrumental conception of personal identity is inadequate given the nature of human desire. Self-conscious persons can not be defined in terms of their ends. Instead, concludes Hegel, "self-consciousness \textit{is} infinite"\textsuperscript{24} because "[w]hen a self-consciousness is the object [of desire], the object is just as much ego as object."\textsuperscript{25} In other words, we cannot identify ourselves over time by our ends because what we desire is the experience of relationships that will change us in ways we cannot predict. We desire to change the object of our desire into someone we cannot continue to desire without ourselves changing. The desire for recognition fundamental to individual identity requires us to affect and be affected by the desires of others. Hence, it is inconsistent with the mutual tolerance of and

\begin{itemize}
\item \textsuperscript{21} Id. at 235-36 (master attempts to gratify desires without encountering the independence of the object discovered in the process of working).
\item \textsuperscript{22} Cf. Westphal, Hegel on Slavery, Independence, and Liberalism, 10 Cardozo L. Rev. 1566 (1989) (liberal society characterized by mutual obligation; Hegel's \textit{Phenomenology} not generally thought of as critique of liberalism).
\item \textsuperscript{23} See Ackerman, Why Dialogue? (unpublished draft available at Cardozo Law Review).
\item \textsuperscript{24} \textit{Phenomenology} of Mind, supra note 1, at 229.
\item \textsuperscript{25} Id. at 227.
\end{itemize}
indifference toward the preferences of others that circumscribes the civic obligations of the citizen of any liberal society.

III. ON THE PERILS OF APPLYING HEGEL

As an account of the origins of slavery as actually practiced in the Western hemisphere in the nineteenth century, Hegel's story would be not only inaccurate but pernicious. It is inaccurate to the extent that it suggests that such slavery was the consequence of conflict between equally powerful individuals in a state of nature. Instead, it always involved massive, sustained politicide by one culture against another, driven by the imperatives of a market economy. Hegel's scenario is pernicious to the extent that it repeats the myth of "the cowardly contract." The cowardly contract is a captive's agreement, at sword point, to perpetual service in return for prolonged life. This myth of the origins of slavery, prevalent in Western culture, partially explains the Southern slaveholders' characterization of the slave as a person without honor. According to Orlando Patterson,

The idea that a person's honor is more valuable than his life, and that to prefer life to honor betrays a degraded mind, comes close to being a genuinely universal belief. It is a theme that haunts Western literature . . . .

. . . [I]t was the choice of life over honor that the slave or his ancestor made, or had made for him. The dishonor of slavery . . . came in the primal act of submission.27

A conflation of two of the origins of slavery recognized in Roman law—capture and contract—the cowardly contract was an obligatory topic for any natural law theorist from the sixteenth through the nineteenth centuries.28 Beginning as justifications of slavery,29 these discussions evolved into condemnations of slavery based on the


27 O. Patterson, supra note 17, at 78.

28 Roman law provides three lawful origins for slavery: capture during warfare, self-sale, and heredity. T. Wiedemann, Greek and Roman Slavery 23 (1981) (citing Marcianus, Dig. 1.5; M. Inst. 1.5). While there is no indication that captives had discretion to choose death rather than serve, Orlando Patterson argues that Roman captors frequently chose to kill captives. O. Patterson, supra note 17, at 107. The legal foundation for slavery was of interest to natural law theorists because in Roman law, slavery represented a rare instance of a practice condemned by natural law but permitted by the law of nations. See D. Davis, The Problem of Slavery in Western Culture 83 (1966).

29 See 2 H. Grotius, De Jure Belli ac Pacis Libri Tres 103-04, 107-08 (F. Kelsey trans. 1923) (1625) (justifying slavery as condition entered voluntarily or imposed upon children to prevent starvation); T. Hobbes, Leviathan 132-33 (M. Oakeshott ed. 1962) (1651) (despotic dominion over captive justified by captive's consent in return for being spared); 2 S. Pufendorf,
unconscionability of its underlying "contract." Yet even such abolitionist renditions of the myth tended to blame slavery on the slave, substituting a paternalistic defense of emancipation for the paternalistic defense of slavery offered before. According to this critique, slavery is illegitimate not because it was imposed on slaves against their will, but because their consent to it was coerced. Slaves had to be emancipated because they did not know their own best interests, just as others had argued that slaves had to be mastered because they were incompetent custodians of their own interests.

Both viewpoints are premised on a contempt for the slave as dishonorable, as a collaborator in her own victimization. Such an outlook entered modern American historiography with the carefully documented argument of Ulrich Bonnell Phillips that slaves were contented. Less malevolent tributaries to this tradition include those who, like Stanley Elkins and Senator Moynihan, present the slave as morally disabled by slavery rather than enslaved because of her disability. Elkins's portrait of American slaves as "infantilized Sambos" is etched against his contrasting admiration for the "heroic" warriors of Africa and "impressive" slave rebels of Brazil. Moreover, he argues, the recorded experience of concentration camp victims demonstrates that infantilization "proved possible for people in a full state of complex civilization, for men and women who were not black and not savages." Despite his earnest efforts to strip the racist implications from his thesis that Afro-Americans accepted slavery, Elkins cannot forbear from referring to American slaves as "plantation Negro[es]" whose aspirations were limited to the enjoyment

Elementorum Jurisprudentiae Universalis Libri Duo 15 (W. Oldfather trans. 1931) (1660) (lawful to enslave those liable for execution, in return for sparing their lives).

30 J. Locke, The Second Treatise of Civil Government 88 (J. Gough 3d ed. 1966) (1690) (lawful captor may kill or enslave captive, but captive cannot contractually consent to slavery); C. Montesquieu, The Spirit of the Laws 236 (T. Nugen trans. 1949) (1748) (captors may not lawfully kill captives and so may not enslave them; nor can slavery be created by contract because liberty is inalienable); J. Rousseau, The Social Contract 57-58 (M. Cranston trans. 1968) (1762) (liberty inalienable; captor has no right to kill; even if he did, spared captive would have no obligation to obey); W. Blackstone, Commentaries on the Laws of England 411-12 (1765) (repeating Montesquieu's arguments).


33 S. Elkins, supra note 32, at 84-88.

34 Id. at 97-98.

35 Id. at 137 & n.2.

36 Id. at 89.

37 Id. at 129.
of "catfish and watermelons." Indictments of slavery that insist its worst crime was the dehumanizing of the slaves still imply that slaves were something less than human.

There's no question that Hegel's dialectic of master and slave could be read as simply another example of this depressing theme in Western culture. Passages like "the master gets his recognition from an other consciousness, for . . . the latter affirms itself as unessential" can be read to imply the slave's acquiescence in slavery. Con-

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38 Id. at 136. Many of the assumptions upon which Elkins's argument rested have been challenged: (1) His failure to adduce primary evidence in support of the "Sambo" characterization has been pointed out. See F. Boney, Southerners All 149 (1984). (2) The accuracy of white perceptions of black dependence and contentment has been challenged. Compare S. Elkins, supra note 32, at 131 (illustrating this assumption) with E. Genovese, Roll, Jordan, Roll: The World the Slaves Made 97-113 (1974) and H. Gutman, The Black Family in Slavery and Freedom, 1750-1925, at 320-24 (1986) (challenging this assumption by noting the mass shock of former slaveholders at the time of the emancipation when scores of ex-slaves chose to leave the plantations rather than continue in the service of their masters) and V. Harding, There is a River: The Black Struggle for Freedom in America 97-112 (1983) (challenging this assumption by pointing to the upsurge of black activists such as Nat Turner and Frederick Douglass). (3) The assumption that the relative lack of armed resistance to slavery implied acceptance has been challenged. Compare S. Elkins, supra note 32, at 133-39 (illustrating this assumption) with E. Genovese, supra (challenging this assumption). (4) The assumption that black parents and black fathers in particular had no familial authority (on which D. Moynihan, supra note 32, at 16, relied) has been challenged. Compare S. Elkins, supra note 32, at 130-31 (illustrating this assumption) with E. Genovese, supra, at 450-58, 482-501 (challenging this assumption) and H. Gutman, supra, at 303-08, 461-69 (challenging this assumption). (5) Finally, the assumption that American blacks retained nothing of their African cultural heritage has been challenged. Compare S. Elkins, supra note 32, at 103 (illustrating this assumption) with L. Levine, Black Culture and Black Consciousness (1977) (challenging this assumption).

39 The absoluteness with which such a personality ("real" or "unreal") had been stamped upon the plantation slave does much to make plausible the ante-bellum Southerner's difficulty in imagining that blacks anywhere could be anything but a degraded race—and it goes far to explain his failure to see any sense at all in abolitionism. S. Elkins, supra note 32, at 85.

40 Phenomenology of Mind, supra note 1, at 236.

41 Nor is this an isolated passage. Hegel's argument that self-consciousness requires interaction with human beings turns on the idea that all other objects of desire are invincibly independent. Because they must work for the gratification of desire, people are constantly made aware of their dependence on a world outside themselves. Only through other human beings can our desires be gratified without our efforts. Thus we can achieve independence of the material only through the voluntary offices of another: "On account of the independence of the object . . . [self-consciousness] can only attain satisfaction when this object itself effectually brings about negation within itself." Id. at 225-26.

Yet Hegel is at pains to point out that the master simply substitutes one form of dependence for another, while the slave finds a measure of independence in her mastery over the material world. The master's fantasy of a one-sided transaction is unachievable. Thus, for Hegel, the slave's agency in her own oppression is simply a hypothetical moment in a dialectical argument—not a description of an actual or even possible scenario. If the master were to blithely rely on the uncoerced will of the slave, she would soon find herself mastered. The only ways to maintain control over the slave are (1) coercion, which involves labor, the one thing
sider the following passage from John Gabriel Woerner's civil war novel, *The Rebel's Daughter*. Woerner, a judge, journalist, philosopher, and legal scholar, was a member of a circle of mainly German-American Hegelians, centered in St. Louis in the mid-nineteenth century. Henry Brokmeyer, one of the leaders of this movement, is represented in Woerner's novel by the character of Professor Rauhenfels, who exclaims:

"[U]nder the present condition of things it is of far greater importance to humanity—to the cause of freedom—that our government remain intact, than that the normal condition of the slaves be changed. As Doctor Taylor [a cipher for Denton Snider, another leading American Hegelian] once neatly expressed it—

'Tis not the outward bond that makes the slave—but the base craven thought within the man.'

Slaves are such upon their own compliance. No freeman, loving liberty above life or ease, was ever yet made a slave. To the slave, then, manumission is of no benefit. The vice of slavery consists in its degradation of the master, because slavery is incompatible with his own freedom."

This is an example of the potentially racist implications of reading Hegel's dialectic of master and slave as an account of actual slave societies. Accordingly, historians of slavery such as Eugene Genovese and Orlando Patterson have attacked such readings as inaccurate portrayals of slave society.

Genovese has invoked Hegel in insisting upon the agency of slaves in perpetually resisting slavery. Nevertheless, Genovese's distinction between acquiescence and resistance sometimes seems remarkably elusive. Thus, he attributes to Hegel the view that "[i]f one man could [become an extension of another's will], he could do it only by an act of that very will supposedly being surrendered, and he would remain so only while he himself chose to." This sentence looks very similar to the sentiment, attributed to the character of Dr. Taylor in *The Rebel's Daughter*, that slaves deserved slavery for not

that, according to Hegel, the master wishes to avoid or (2) offering the slave recognition, which would mean that the slave would cease to be a slave. Orlando Patterson argues that in most slave societies, this is exactly what masters did: "By holding out the promise of redemption, the master provides himself with a motivating force more powerful than any whip." O. Patterson, supra note 17, at 101. Any slave who responded to this offer by cooperating with the master could hardly be said to be acting out of self-contempt. To the contrary, such slaves acted out of "a passionate zeal for dignity and freedom." Id.

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43 Id. at 427-28.
44 See infra notes 45-51 and accompanying text.
45 E. Genovese, supra note 38, at 88.
emancipating themselves.46 Yet Genovese seems to be offering it in support of the subtle argument that in merely exercising the will to choose whether and when to accommodate themselves to slavery, slaves resisted it. "Thus, the slaves, by accepting a paternalistic ethos and legitimizing class rule, developed their most powerful defense against the dehumanization implicit in slavery."47 If Genovese is not entirely convincing in reconciling Hegel's analysis of slavery with the phenomenon of slave resistance, he has revealed his debt to Hegel in counting among such resistance the slaves' efforts to endow one another with social identities through the constant reconstruction of culture and community.48

While Genovese has challenged the assumption that slaves acquiesced in slavery, Patterson has challenged the platitude that slavery hurt the masters more than the slaves by stressing the ability of Southern whites to confer recognition on one another.49 Accordingly, concludes Patterson, "I disagree totally with the view that slavery created an existential impasse for the master."50 Yet he too shows his debt to Hegel by counting dishonor—the denial of recognition—as the essential feature of slavery and seeing in this feature a fatal instability.

The slave's struggle made it necessary that the master, in order to make slavery workable, provide an opportunity for the negation of slavery. The conflict between master and slave became transformed from a personal into an institutional dialectic, in which slavery, as an enduring social process, stood opposite to and required manumission as an essential precondition.51

IV. THE INTERNAL CONTRADICTIONS OF INDEPENDENCE

If Professor Rauhenfels's sanctimonious pronouncements are inaccurate as readings of Southern slave society, that is in part because they're inaccurate readings of Hegel. In condescending to the slaves, Rauhenfels reveals a faith, more liberal then Hegelian, in the capacity of isolated individuals to emancipate themselves. This faith is further exemplified by Rauhenfels's naive assumption that masters may recover their independence simply by casting off their human property. Yet, as Hegel understood, people became dependent upon the exploitation of others in pursuit of independence, not in flight from it.

46 J. Woerner, supra note 42, at 427.
47 E. Genovese, supra note 38, at 7.
48 Id. at 598 (generally); id. at 284 (religion); id. at 432 (language); id. at 452 (family).
49 O. Patterson, supra note 17, at 97-101.
50 Id. at 99.
51 Id. at 101.
C.B. Macpherson has argued that the political and economic independence valorized in seventeenth- and eighteenth-century political thought could only be maintained in a market society through the constant accumulation of capital and the exploitation of others.  

According to Macpherson, the ideal of independence entered British political discourse in the turbulent century of Hobbes and Locke because of changes in British economic life. The proliferation of markets temporarily generated a substantial class of yeoman farmers and self-employed artisans. Because relations of employment were understood to entail political subjection, the emergence of a substantial class of self-employed farmers and artisans provided a political as well as an economic referent for the concept of independence. This class was particularly vigilant in defending its meagre capital because that capital was all that stood between its members and the political status of servitude that attended employment. Moreover, argues Macpherson, they had good reason to be frightened of losing this political and economic independence.  

Macpherson contends that even in an entire society composed of independent producers, some will eventually be forced into employment, as long as a market exists in land or capital. Especially diligent or lucky producers, producing more, will be able to cut prices. This will drive down the income of the least efficient producers below subsistence levels, requiring them to sell either their capital or their labor. Selling their capital will only reduce their productive capacity and further increase their need to sell labor to those acquiring surplus capital. As these capital-rich producers increase their yield, they are able to further cut prices, thus forcing more capital and more labor onto the market. Unless land is abundant and labor can be imported—as was the case in colonial Virginia—land will eventually be in the hands of a few, and most independent producers will enter the labor market (as is now the case). In such a setting, any producer failing to accumulate capital would lose it. Accordingly, the maintenance of political and economic independence in a market society depends upon the exploitation of others.  

Realizing this, the Virginia planters embraced slavery as a way to preserve a political community of apparently “independent” produ-

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53 See id. at 153-54.
54 Id.
55 See id. at 51-55.
56 Id.
The seventeenth century was a time of bitter social conflict in Virginia, as the efforts of large landowners to maintain control of a largely indentured labor force "placed the colony continually on the brink of rebellion." By the end of the century, however, "the substitution of slaves for servants ... ended the threat ...." As white immigration to Virginia tapered off, the fortunes of laboring whites improved. Released from servitude after shorter terms, they were granted land and could aspire to be masters themselves. Small farmers improved their economic position during this period as well. As white laborers acquired property and the political franchise, they found that many of their political and economic interests now coincided with those of their former employers. But what bound them together even more thoroughly was their assimilation of the republican ideology that would later drive the revolution.

In the eyes of Virginia's republicans, the problem posed by an unregulated market society of the sort modeled by Macpherson, was not that it required the exploitation of some, but that it threatened the independence of all. While republicanism required "a wide distribution of property to create an enlarged enfranchised yeomanry who would see to it that government stuck to its proper business of protecting liberty and property," it by no means required that property ownership and its attendant independence be universal. To be sure, paupers could pose a threat to a republican polity: "an ambitious adventurer could buy them with bread, and arm them to attack the liberty of the rest." But it was precisely this threat to which slavery responded, not by making the poor "wards of the state, which would have aggravated the danger, but [by] spread[ing] them among the independent landholders, whose strength they would thereby increase instead of diminish." Hence the role of slavery in republican thought was paradoxical; "it was the primary evil that men sought to avoid for society as a whole by curbing monarchs and establishing

57 See E. Morgan, supra note 3.
58 Id. at 295.
59 Id. at 308.
60 Id. at 331, 344.
61 Id. at 343.
62 Id. at 365-66.
64 E. Morgan, supra note 3, at 370.
65 Id. at 383.
66 Id.
republics. But it was also the solution to one of society’s most serious problems, the problem of the poor.”67

Wealthy Virginians supported, even subsidized, the spread of mastery in order to maintain its political legitimacy—and the political ideal they employed to legitimate it was that of independence. Witnessing the industrialization of British and Northern society in the decade before the Civil War, The Richmond Enquirer could insist with increasing confidence that “‘[i]n this country alone does perfect equality of civil and social privilege exist among the white population, and it exists solely because we have black slaves.’”68 Accepting the founders’ interpretation of freedom as independence, Virginia’s leading newspaper was bound to conclude with them that “‘[f]reedom is not possible without slavery.’”69

If some Southerners proved no less invested in independence than their Northern critics, Northern ideals were no less dependent on mastery than Southern ones were. Like their Southern opponents, many Northern abolitionists held republican commitments. Accordingly, they shared the Virginians’ idealization of the independent producer and with it, their contempt for the laboring poor: “[F]or all their glorification of labor,” concludes Eric Foner, Lincoln’s supporters “looked down upon those who labored for wages all their lives.”70 If they classified wage laborers as “free,” it was only because of the faulty assumption that the abundance of land seized from native American tribes would enable laborers to become independent.71 “‘Our paupers today,’” the New York Times assured its readers, “‘thanks to free labor, are our yeomen and merchants of tomorrow.’”72 Nor could laborers be fully redeemed from their despised state of dependence even by self-employment. In a dynamic market society, no one could be assured of independence until he employed others. As one Republican senator saw it, “‘[a] young man goes out to service . . . for compensation until he acquires money enough to buy a farm . . . and soon he becomes himself the employer of labor.’”73 “‘The man who labored for another last year,’” in-

67 Id. at 381.
69 Id.
71 Id. at 32 (contrary to the beliefs of Republicans, opportunities for economic independence were shrinking in the 1850s and few laborers became yeoman farmers as a result of westward expansion).
72 Id. at 16 (quoting N.Y. Times).
73 Id. at 17 (quoting Senator Zachariah Chandler).
sisted Lincoln, "'this year labors for himself, and next year he will hire others to labor for him.'" Republicans were able to reconcile their new characterization of the wage laborer as free with their traditional identification of employment as servitude only through faith in a millenarian future. The laborer could be characterized as free only if reimagined not only as his own master, but as the master of others. The instability of economic independence, even in the republican imagination, reveals that the ideal of independence was dependent on fantasies of mastery. Eventually, these fantasies will be replaced by a cynical social Darwinist rhetoric of equal opportunity which will redefine servitude as the failure of an exacting test. Thus, republican images of wage labor began by condemning exploitation, proceeded to deny it, and ended by justifying it.

In the end, the Republican party of Lincoln opposed slavery for the same reason that the Republican party of Jefferson supported it: each was committed to a contradictory conception of freedom as independence in a market society where no one could remain free without enlisting, coercing or hiring help.

V. BEYOND INDEPENDENCE: THE SLAVES' FREEDOM

Southerners, black and white, offended Northern individualism by having the temerity to admit that freedom required power. Masters and slaves shared this conception of freedom, but not because the masters imposed their culture on the slaves. Orlando Patterson tells us that the sub-Saharan African societies from which slaves were drawn were, like most slave societies, timocratic. To be a slave in such a society—generally a captive in warfare or descended from a captive—was to be without honor. These societies associated honor with conformity to exacting codes of courtesy. They also placed great emphasis on membership, kinship, and ancestry. Living kin

74 Id. at 30 (quoting Abraham Lincoln).
75 See, e.g., Coppage v. Kansas, 236 U.S. 1, 38 (1915) (complacent recognition that market competition leads to inequalities of bargaining power and coercion).
76 O. Patterson, supra note 17, at 96 (all slave societies timocratic); id. at 82-83 (sub-Saharan Africa); id. at 97 (northern Nigeria). Patterson takes the term timocracy from Plato, Republic *548-49 (culture in which love of honor and glory is the guiding principle). See O. Patterson, supra note 17, at 81 n.14.
77 O. Patterson, supra note 17, at 39-40 (Ashanti).
78 Id. at 83-84 (Fulani).
80 O. Patterson, supra note 17, at 83 (number of dependents crucial for prestige in African societies). African persistence in organizing social life around tribal lineage even after evolving centralized states is in striking contrast to the European feudal experience and can be attributed to avoiding the socially disruptive effects of institutionalized slavery on the Roman—or American—model. See B. Davidson, The African Slave Trade 46 (1980).
were viewed as a source of prestige and social protection, and departed ancestors as a source of magical protection. To be free meant to have many protectors, alive and dead; to be a slave, cut off from one's kinship, ancestry, and village meant to have only one.

Instead of defining slaves and nonslaves in polarized terms, people in societies where the personalistic idiom was dominant perceived the status of persons along a single dimension of power: that of claims and powers in other persons. All persons were seen as the objects of property. Individuals differed in the degree of power, claims, and privileges others had in them and in the counterbalancing set of claims, powers, and privileges they had in others.

In human terms this was seen as the amount of protection a person had and the number of his protectors. Basil Davidson confirms that in the kingdom of Ruanda, "nobody was 'free' in the modern sense of the word, for even the [elite] Tutsi were wedded to their laborers by a formal code of interwoven duties. Moreover, it was better for a Tutsi to become the vassal of a stronger man than to remain 'on his own.'" In such a society, to have no protectors, alive or dead, was to be socially nonexistent. To be independent was to be worse off than a slave, because spiritually and socially vulnerable: "'If you have not a master,' goes a popular [Ashanti] proverb, 'a beast will catch you.'" All Ashanti entered into voluntary relations of dependence: "'it was the masterless man and woman who ran the imminent danger of having what we should term "their freedom" turned into involuntary bondage of a more drastic nature.'" With no place in society, one might as well commit suicide, as many captive Africans did en route to America. Accordingly, slaves in African societies rarely ran away, having "no place to go" since they had often lost honor in their own communities and, with it, the protection of their ancestors.

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81 O. Patterson, supra note 17, at 53.
82 Id. at 28.
83 Id. at 27 (discussing nonwestern societies but especially African); see also id. at 5, 9-10 (slave societies generally); id. at 53 (African).
84 B. Davidson, supra note 80, at 35.
85 O. Patterson, supra note 17, at 27.
86 Id. (quoting R. Rattray, Ashanti Law and Constitution 33 (1929)).
87 Id. at 81 (desire "to be dead" of Tupinamban slave (South America)).
88 See V. Harding, supra note 38, at 18-20, 22, 32, 60; H. Gutman, supra note 38.
89 O. Patterson, supra note 17, at 53 (Tiv of central Nigeria). Patterson explains the acceptance by slaves of the authority of the master in traditional societies on the basis of the slave's social isolation—only by accepting her role can the slave receive even the limited social recognition Patterson attributes to such "liminal incorporation" into society. "Without the master, as the Tuareg insist, the slave does not exist. The slave came to obey him not only out of fear, but out of the basic need to exist as a quasi-person, however marginal and vicarious
To Africans, slavery meant the deprivation of membership in networks of dependence and the eradication of their histories. Freedom, by contrast, meant dependence upon and identification with a tribal collectivity enduring in time. Identification with a community gave one social power and the communal recognition of that power took the form of social esteem or honor.

The real antithesis to slavery in societies where the personalistic idiom of power was dominant was what may be called countervailing power. People did not seek to be "free" (in the modern Western "bourgeois" sense of isolation from the influence of others) in such systems because, ironically, this was the surest path to slavery.

Eschewing independence, Africans sought to protect and enhance their own social power by accepting the protection of others. While the resulting relations of protection certainly involved hierarchy, authority, and deference, few African societies were characterized by rigid class or caste stratification and some—especially before the pervasive penetration of the European slave trade—practiced representative government.

Strictly speaking, then, there was no concept of "freedom" in the non-Western societies from which the west's slaves were drawn. Nevertheless, it was the struggle of these non-Western slaves against institutionalized slavery that gave birth to the west's master value—freedom. "The first men and women to struggle for freedom, the first to think of themselves as free in the only meaningful sense of the term, were freedmen. And without slavery there would have been no freedmen." The concept of freedom cannot be given meaning in isolation from the institution of slavery as practiced in the West. But that does not mean that freedom must be interpreted as a wholly Western value, for it has little meaning apart from the struggle against slavery that existence might be." Id. at 46. In fairness to the oft-criticized Stanley Elkins, the parallel should be pointed out between this explanation of domination and Elkins's account of what he sees as the acceptance of white authority by American slaves. S. Elkins, supra note 32, at 119-37.

O. Patterson, supra note 17, at 53 (Imbangala of northwestern Angola).

Id. at 10-11 (honor connected with social power). But see id. at 331-32 (social power associated with honor turns on membership in community, not political authority as such).

B. Davidson, supra note 80, at 47 (fluid class structure); id. at 38 (descendants of slaves could become chiefs in a few generations); O. Patterson, supra note 17, at 82-83 (absent or vague stratification in most traditional African societies).

B. Davidson, supra note 80, at 36 (states without kings); id. at 106 (tribes without chiefs or with "broadly representative" chiefship).

O. Patterson, supra note 17, at 27.

Id. at 342; see also id. at 101 (struggle against slavery engenders concept of freedom).
of the non-Western people it was imposed upon. We cannot understand what those reluctant Afro-Americans were struggling for unless we recall the political values of the African societies American slavery destroyed. And those values exalted community, ancestry, and place.

Thus forced immigration, plantation agriculture, and market society represented a much more devastating deprivation for Africans than slavery alone. It represented displacement for people whose identities were grounded in a sense of place. It represented the eradication of family and village for people whose identities were invested in membership. At the same time, the patterns of Southern agricultural labor made it difficult to resurrect village life. Slaves were either isolated on small farms unable to support a viable community, or subjected to work regimens on large plantations that severely limited their opportunities to collectively order their lives.

Accordingly, slave resistance was initially focused on escaping white society altogether, by returning slave ships to Africa, by establishing maroon communities in the American swamps, or, less often, by joining native American communities. Frequently, these collective escapes involved attempts to maintain tribal ties or at least

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97 Newly arrived Africans valued and attempted to reconstitute traditional kinship systems in this country. See H. Gutman, supra note 38, at 329-31. Of course their new families proved no more secure in the face of slavery than their old ones. Gutman describes the torment of slaves, ripped by sale from families they would remember all their lives. Id. at 6-7 (letter of remarried husband and father to beloved wife away from whom he was sold); id. at 35-36 (letter of wife to sold husband about the imminent sale of their children); id. at 319 (slaves could never accommodate themselves to breakup of family). Frederick Douglass discusses the slaves' great attachment to place and kin and their constant fear of loss:

> The people of the North, and free people generally, ... have less attachment to the places where they are born and brought up than had the slaves .... [After sale and removal] [h]is going out into the fields was like a living man going to a tomb, who, with open eyes, sees himself buried out of sight and hearing of wife, children, and friends of kindred tie.

Id. at 357-58. Accordingly, slaves constantly pressured masters to let families work together and to sell them only en bloc, sometimes with success. See id. at 285-90; Morgan, Black Society in the Lowcountry, 1760-1810, in Slavery and Freedom in the Age of the American Revolution, supra note 3, at 125. If this tactic failed, it was sometimes possible to escape and rejoin the family. Id. at 129.

98 E. Genovese, supra note 38, at 6-10.

99 On the slaves' struggle to maintain traditional work rhythms and collective autonomy in their work, see id. at 285-325.

100 V. Harding, supra note 38, at 11-15, 17-18, 20-22.

101 Id. at 30, 34, 39-40, 72-73 (maroon bands); Id. at 64, 81, 48-49, 109-11 (armed fugitives joining or cooperating with Indian tribes). See also E. Genovese, From Rebellion to Revolution: Afro-American Slave Revolts in the Making of the Modern World 68-81 (1981) (maroon communities in the American South and generally poor relations with Indian tribes); J. Oakes, supra note 68, at 23-24 (early slave generations escape together in groups “reflecting their communal heritage”).
to reconstitute the community of the slave ship.\textsuperscript{102} In addition, the communities established by fugitives maintained African traditions and political institutions.\textsuperscript{103} Even those slaves and freedmen who remained in the towns of colonial New England elected chiefs and established their own courts.\textsuperscript{104} Hence, it was not the experience of slavery that forged Afro-Americans into a community—to the contrary, it was their deeply enculturated need for political association that slavery frustrated.

As the institution of slavery spread during the early nineteenth century, it became increasingly difficult to imagine fulfilling this need in a country of captivity. Occasionally, slaves responded to this dilemma by initiating quixotic insurrections apparently aimed at purging an entire region of whites.\textsuperscript{105} Many black abolitionists—most notably Martin Delany and H. Ford Douglas—proposed ambitious plans for emigration and the establishment of an Afro-American polity beyond the reaches of white society.\textsuperscript{106} These proposals were inspired by the desire to be "a necessary constituent in the ruling element of the country in which we live," combined with the belief that "[n]o people . . . can ever attain to greatness who lose their identity."\textsuperscript{107} Others—perhaps inspired by the models of colonial New England black communities—proposed a nationwide black political association for mutual aid and defense, for education, and for economic cooperation. More sanguine about America, these leaders—including David Walker and Frederick Douglass—nevertheless envisioned its thorough transformation.\textsuperscript{108} It should not be assumed, however, that sovereignty was merely the utopian dream of a few ambitious leaders. Despite its daily frustration by slavery, collective sovereignty was a value affirmed daily in the lives of the slaves.

While slavery degraded and separated the slaves, it could not

\textsuperscript{102} Morgan, supra note 97, at 131.
\textsuperscript{103} H. Gutman, supra note 38, at 332-33; E. Genovese, supra note 101, at 52-54.
\textsuperscript{104} H. Gutman, supra note 38, at 332-33.
\textsuperscript{105} E. Genovese, supra note 101, at 43 (New Orleans, 1811); id. at 129-30 (Camden, South Carolina, 1816); V. Harding, supra note 38, at 55-57 (Gabriel Prosser, Henrico County Virginia, 1800); id. at 68-72 (Denmark Vesey, Charleston, 1822); id. at 94-99 (Nat Turner, Southampton County, Virginia, 1831); see generally E. Genovese, supra note 101, at 44-50 (Prosser, Vesey, Turner). There were some early eighteenth-century forerunners of these "plots." See V. Harding, supra note 38, at 32-33.
\textsuperscript{106} V. Harding, supra note 38, at 173-76, 184-92.
\textsuperscript{107} Id. at 191 (quoting the Cleveland Declaration in 1 Documentary History of the Negro People in the United States 363-66 (H. Aptheker ed. 1951-74)).
\textsuperscript{108} Id. at 192.
\textsuperscript{109} Id. at 84-94 (Walker's proposal and attitude toward America); id. at 154-55 (Douglass's attitude toward America); id. at 182-83 (proposal and attitude toward America of convention organized by Douglass).
eradicate their hunger for honor and community. The culture that
Africans developed in this country may have discarded many of the
particular customs and artifacts from their past, but it perpetuated the
communal process of creating new artifacts that they had known in
Africa. It was an oral culture, in which language—even prayer—
was always social, never private. Song, in particular, accompanied
nearly every activity, facilitating and ordering cooperation in work
and play. Yet song itself was the product of cooperative effort and
its collective improvisation often made religious worship a celebration
of community.

By constituting the slaves as a community of mutual respect, reli-
gious worship offered a spiritual context in which their wounded
honor could be healed. Patterson cites the theologian Olin P. Moyd
to the effect "that 'redemption is the root and core motif of black
theology' and that it means essentially liberation from sin and confed-
eration within the fellowship of black worshippers . . . ." Yet,
Genovese argues that Afro-American Christians never fully accepted
the concept of original sin and its corollary that the world that sur-
rounded them was profane.

Accordingly, they rejected the masters' gospel that slavery was
God's punishment of the guilty, and instead saw slavery in traditional
African terms as shameful, a condition of dishonor. Hence, what
the slaves sought from Jesus was redemption of their honor. They
believed that through Christ each could vicariously choose death
before dishonor and earn release from the cowardly contract. What
they asked of Jesus was the recognition denied them by their
masters; his answer, as they understood it, was a command to "love
one another."

When the living offered insufficient solace, slaves
could turn, like their African forebears, to the dead. Their own ances-
tors promised to return, like Jesus, to judge and redeem: "The ghosts
of loved ones frequently returned to render aid and protection . . . .

110 L. Levine, supra note 38, at 4-5.
111 Id. at 157-59; E. Genovese, supra note 38, at 432.
112 L. Levine, supra note 38, at 208-15 (work songs); id. at 148-49 (ring game).
113 Id. at 26-30 (slave spirituals); id. at 188-89 (twentieth-century gospel songs).
114 O. Patterson, supra note 17, at 75.
115 E. Genovese, supra note 38, at 208-09 (white preachers told slaves their oppression was
deserved in God's eyes); id. at 211-12, 247 (slave rejection of concepts of guilt and sin in favor
of shame); see also D. Davis, supra note 28, at 84-85 ("In the eyes of Christians the independ-
ent, natural man . . . was a sinner."); O. Patterson, supra note 17, at 70-71 (one strand of
Christianity sees all men as slave to sin and redeems them by offering them slavery to God).
116 O. Patterson, supra note 17, at 71, 75.
117 E. Genovese, supra note 38, at 25.
118 Id. at 265.
Some satisfaction was taken, too, in stories of dead slaves who returned to demand justice from the whites who had abused or killed them.\footnote{119}{L. Levine, supra note 38, at 79.}

Just as masters owed their dead victims compensation, the slaves owed their ancestors respect and gratitude.\footnote{120}{E. Genovese, supra note 38, at 212-13.} Hence, along with their demands for emancipation, they insisted upon reparations as a matter of honor and filial piety. After emancipation, one planter offered to employ two of his former slaves. They sent him an invoice for some $12,000:

\begin{quote}
We have concluded to test your sincerity by asking you to send us our wages for the time we served you. . . . If you fail to pay us for faithful labors in the past we can have little faith in your promises in the future. We trust the good Maker has opened your eyes to the wrongs which you and your fathers have done to me and my fathers, in making us toil for you for generations without recompense.\footnote{121}{E. Litwack, Been in the Storm So Long: The Aftermath of Slavery 334 (1979).}
\end{quote}

More commonly the demand for reparations was focused on land rather than money.\footnote{122}{E. Foner, Reconstruction, supra note 4, at 69, 80-83; V. Harding, supra note 38, at 263, 265, 269, 297, 304, 315-16, 319-20.} This was because, as good republicans, freedmen associated land with economic autonomy.\footnote{123}{E. Foner, Reconstruction, supra note 4, at 44, 72-73.} “We all got a right to de tree ob life” went one spiritual.\footnote{124}{L. Levine, supra note 38, at 39.} But while “there was desire for the thing whites possessed” they were sought in different ways.\footnote{125}{Id. at 139.} In the slaves’ famed Brer Rabbit tales, “what Rabbit craves is not possession but power . . . .”\footnote{126}{Id. at 109.} Unlike white republicans, freedmen did not necessarily idealize individual independence—instead, they sought mutual protection and support in self-governing farming communities.\footnote{127}{See V. Harding, supra note 38, at 233 (discussing self-governing contraband camps, during civil war); id. at 263-64 (delegation of black leaders requests land on which to “live together,” “reap the fruit of our own labor,” and “take care of ourselves.”); id. at 268-71 (discussion of several black organized self-governing farming communities on confiscated land at end of civil war).} Thus, freed slaves sought political association as part of their conception of freedom.

For the slaves, emancipation marked the birth of a new polity, constituted by a raft of “Freedmen’s Conventions.”\footnote{128}{L. Litwack, supra note 121, at 502-04.} These were soon followed by proliferation of “Union Leagues,” mutual aid socie-
ties, and political clubs among blacks.^{129} They showed interest in taking on another of the attributes of sovereignty, offering to "assist the government" in defending their freedom, and frequently acting in collective self-defense in the absence of government protection.^{130} Finally, the newly freed slaves sought each other's company in a new and heretofore forbidden context: almost universally, they demanded education.^{131} Because the education they expected—and got—was generally segregated^{132} and often supervised by black teachers,^{133} the slaves' pursuit of education created contexts for the development of black community and black leadership.

Africans may not have developed a conception of freedom until they became Afro-Americans—but the conception of freedom they offered America was inspired by the community, sovereignty, and history they had left behind in Africa.

VI. BEYOND INDEPENDENCE: THE MASTERS' FREEDOM

Dynamic supplier of a growing world market in cotton, the ante-bellum South was not exactly the insulated organic society of legend. On the other hand, West Africa, supplier of a growing world market in slaves, did not remain insulated or unchanged either. Yet members of both societies developed and maintained timocratic and communitarian values that consoled them in the face of the atomization of their social worlds.^{134} Slaves to commerce, Southern planters quixotically

^{129} V. Harding, supra note 38, at 289-90.
^{130} Id. at 233, 263, 297, 304-06.
^{131} Id. at 233, 264, 297, 308; L. Litwack, supra note 121, at 335, 472-76. Revolutionary era blacks had demanded education as a right. Quarles, supra note 3, at 297-98.
^{132} L. Levine, supra note 38, at 140.
^{133} L. Litwack, supra note 121, at 494-500.
^{134} James Oakes, noting the relentless dynamism of Southern society and restless acquisitiveness of slaveholders denies that slaveholding encouraged community, paternalism, or respect for tradition. Instead, he claims, these were common values of the colonial period that slaveholding "debilitated." J. Oakes, supra note 68, at 67-68, 192-96. Oakes is certainly correct that paternalism and community were pervasive values in colonial society even where there was little slaveholding. See R. Steinfeld, The Disappearance of Indentured Servitude (forthcoming 1989) (paternalism); Mensch, The Colonial Origins of Liberal Property Rights, 31 Buffalo L. Rev. 635 (1983) (community). What Oakes fails to consider is the possibility that it was the very mobility and opportunity created for Southern whites by slavery, that enabled them to afford and preserve these values. Basil Davidson notes that:

There is scarcely a modern African people without a more or less vivid tradition that speaks of movement from another place. Younger sons of paramount chiefs would hive off their followers, and become paramount themselves in a new land. . . .

But this wandering of peoples clearly acted as a powerful preserver of the old system of "tribal-feudal" relationships, for it gave play to an elasticity and tolerance that could absorb and eliminate strains and stresses which must otherwise have forced a social crisis.
came to define their freedom in terms of independence of the North's market society, while rejecting the ideal of independence.

At the heart of the Southern conception of freedom lay an obsessive concern for honor. According to Bertram Wyatt-Brown, the Southerners' sense of honor, like that of sub-Saharan Africans, was bound up with kinship. To be without family was to be without opportunities to demonstrate honor, and without a community to recognize it. In the South, then, as in Africa, to be without kinship was to be socially dead. In such societies a stigma was affixed to anyone deemed "powerless and untrustworthy, having no relative to stand guardian, no dependent to be defended, a task that was a duty conferring honor." Slaves were paradigmatically honorless, and were viewed as unfit to swear the oaths by which voluntary (as opposed to coerced) bonds of fidelity, association, and kinship were established. By contrast, every family member, friend, and fellow officer could testify to the worth of a free man's word or the purity of a free woman's virtue. "[T]hose with numerous kinspeople were assumed to have moral stalwartness [but] [l]iving up to the familial ideals was... a common requirement."

Accordingly, white Southerners, like black Southerners "revered the dead"; yet the dead's social function was not so much magical protection, as instruction. "The living were the dead, the dead the living when old Southerners recalled the adventures and deceased heroes of their youth..." The demeanor, the valor, the social importance of the dead were invoked or invented by the old to impress and inspire the young.

Hence, the masters lived in an "oral society, where words

B. Davidson, supra note 80, at 48. Southern society, like African, was a constant competition for aristocracy among common men. Southerners hewed to the ever-receding frontier, not because they cared little for society, but in the hopes of establishing a society—perhaps populated mostly by their slaves—that cared for them. Along the way they invented the traditions they preserved, but what tradition isn't invented to substitute for past and place? Bonnie Menes Kahn tells us that the warm "village communities" recreated in New York's Little Italy and Boston's North End never existed in rural southern Italy. See B. Kahn, Cosmopolitan Culture: The Gilt-Edged Dream of a Tolerant City 231-37 (1987).

135 Courage in the old South... was a personal attribute, but it could not be wholly separated from the familial context. Therefore it was important to have kinsfolk who needed valorous protection and who could undertake justifiable revenge.... Without relatives one was helpless, and shorn of a major reason to exist.

B. Wyatt-Brown, Southern Honor 43 (1982).
and gestures counted [for] much." Ken Greenberg notes that "throughout the process of education antebellum South Carolinians made no real distinction between learning (moral and practical) and speech." A leading periodical of the antebellum South explained that "Virginia has a system of oral instruction which compensates for the want of schools—her social intercourse." What children were expected to absorb, however, were less the propositions debated, than the grace with which they were expressed. "Statesmen were supposed to deliver orations—not public speeches but orations. . . . What was different about an oration was that one of its primary functions was to inspire respect, even awe for the speaker in the minds of the listeners."  

Ancestor worship and oral testimony were just two firmaments in a Southern religious cosmos shared by black and white alike. Southerners of neither color were overly affected with asceticism. Southern worship, according to essayist James Dabbs, is "concern[ed] with the world as something valuable in itself." The Southerner "did not have to choose this world or another." While white Southerners lectured their slaves that slavery was an appropriate condition for hopeless sinners, their own sense of sin was nearly as attenuated as that of their slaves. Each believed that Christ had redeemed them from such slavery by honorably dying in their place. Where the slave sought in Christianity a spiritual restoration of honor lost, the master sought a talisman against the dread loss of honor he witnessed everywhere around him. He was like the Ruandan noble, pledging his fealty to a still stronger master, for fear of being left alone, without protection.

141 Id. at 330. See also id. at 47 (white South an oral society).
143 B. Wyatt-Brown, supra note 135, at 47 (quoting 7 De Bow’s Review 312 (1849)).
144 K. Greenberg, supra note 142, at 12.
146 Id.
147 O. Patterson, supra note 17, at 75: [T]he masters, among themselves, could find both spiritual and personal dignity and salvation in [this] ethic of the justified and redeemed sinner. The crucified Jesus as redeemer and liberator from enslavement to sin supported a proud, free group of people with a highly developed sense of their own dignity and worth. Similarly, the slaves in the silence of their souls and among themselves with their own preachers, could find salvation and dignity in this same interpretation of the crucified Lord.
148 See E. Morgan, supra note 3, at 376 (masters developed their conception of liberty in reaction to the spectacle of slavery).
A. Dueling, Honor, and Social Death

Like praising Jesus or raising the genteel dead, dueling was a symbolic ritual that masters employed to reassure themselves of their honor. Ken Greenberg sees the duel as Hegel’s primal struggle-to-the-death to avoid the loss of honor associated with the cowardly contract.

Masters in virtually all slave societies think of slaves as having chosen a subservient life—a life without honor, a social death—in order to avoid a real death. It is the slave's fear of actual death that (according to the mythology of masters) makes him a slave. Masters on the other hand do not have this fear. And, of course, the duel perfectly demonstrates this. After facing death, the duelist is reborn into the world ready to assume his position as a master.149

All masters tended to imagine the slave as all they felt they were not.150 White Southerners imagined the slave as one who preferred social death to actual death because social death was what the master feared above all: “the most pressing Southern fear was not death so much as dying alone,” concludes Wyatt-Brown.151

Dueling, though it involved the risk of death, insured that one would not die in isolation and disrepute. “Duelists were in a common club,” reasons Greenberg, “a club of self-professed gentlemen. To duel was to join the club.”152 While the duelists automatically incurred each other’s respect,153 they sought and got the esteem of a much wider company. Dueling affirmed the master’s status as fit to master slaves and to participate in politics, and “yet, each [of the parties in a duel] depended on community opinion to confirm his status.”154 Gaining recognition as a duelist required the cooperation of aggrieved parties, seconds, note bearers, kin, witnesses to the original insult, witnesses to the subsequent negotiations, witnesses to the duel itself, and often readers of newspapers and posters.155 Hence Wyatt-Brown speculates that duels and other less overtly hostile encounters “helped Southerners determine community standing and reaffirm their membership in the immediate circle to which they belonged. In all of them honor and pursuit of place muted the threat of being alone and provided the chance to enjoy power in fellowship.”156

149 K. Greenberg, supra note 142, at 40 (footnotes omitted).
150 O. Patterson, supra note 17, at 84-85 (Fulani of Upper Volta region).
151 B. Wyatt-Brown, supra note 135, at 329.
152 K. Greenberg, supra note 142, at 33.
153 Id. at 37.
154 Id. at ix.
155 Id. at 25.
156 B. Wyatt-Brown, supra note 135, at 331.
It was this constant, anxious competition for "power in fellowship"—a quest for self, utterly dependent on a collectively constructed community always dissolving into dust, heat, and violence—that the masters exalted as their freedom. It was not that they eschewed the republican obsession with independence shared by their heroes in colonial Virginia and their enemies in the antebellum North. After all, one secessionist defined liberty as "'[t]he Right every man has... to enjoy the fruits of his own labour, art and industry; to work for his own profit and pleasures and not for others.'" Yet they recognized, as their Northern neighbors did not, that such economic independence could not be universalized in a market society, that it was dependent on exploitation. They recognized, moreover, that the independence even of masters was limited by their need for community. This recognition is rendered visible by Genovese's penetrating analysis of the proslavery ideology of George Fitzhugh. Genovese characterizes Fitzhugh's conception of human nature as essentially social:

The most helpless of animals, thought Fitzhugh, was the isolated, "individualized" man. In Sociology for the South, he denounced Locke's theory of social contract and argued that man was naturally a slave of society and had no rights to surrender to it. "Man is born a member of society and does not form society." My contention is not that Southerners realized Fitzhugh's fantasy of a harmonious and organic society; it is that they found this fantasy appealing because they lived in desperate fear of the isolation that rural life often entails.

The comings and goings of relatives and friends, the thin excuses to go up to the courthouse, the interminable "friendly" games, and the personal contests of arms and fists attested not only to Southerners' desperate need to conquer ennui but also their compulsion to find social place in the midst of gatherings. That was the great charm of the South, the willingness to create good times with others, but behind that trait was fear of being left alone, bored, and depressed.

Despite their greed, pride, mobility, and physical isolation, Southerners neither aspired to stand alone, nor admired those who did.

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157 K. Greenberg, supra note 142, at 87 (quoting an unnamed secessionist).
158 E. Genovese, The World the Slaveholders Made 158 (1969) (quoting G. Fitzhugh, Sociology for the South 25 (1854)).
159 B. Wyatt-Brown, supra note 135, at 329.
B. Independence and Community

For Greenberg, Southern culture was driven by a contradiction between the republican desire for independence and the timocratic desire for power and esteem. The solution was the sentimental description of the South as an organic community striving for collective independence from the grasping, competitive North. "Slavery provided the social setting that permitted the imagination of a 'community,' both for masters and for slaves."\(^{160}\) Masters wanted to imagine Southern society as the sort of hierarchical but nonetheless democratic, communal, and humane society that—unbeknownst to them—characterized Africa before the advent of the mass slave trade. Their self-images required their membership in a community; their political rhetoric insisted upon their independence. Their solution to this contradiction was an awkward synthesis described by Charles Sellers. Never discarding the ideal of independence, the masters "transformed it, substituting for the old emphasis on the natural rights of all men a new emphasis on the rights and autonomy of communities."\(^{161}\) Accordingly, in seceding, slaveholders could collectively reject what they insisted was a cowardly contract with the North: "'I would rather my state should be the graveyard of martyred patriots than the slave of northern abolitionists,'" proclaimed one son of South Carolina.\(^{162}\)

Greenberg sees Hegel's dialectic of master and slave as providing a powerful metaphor for this predicament of the masters. "Masters are always in search of power and independence," but because power inevitably involves dependence on others, masters also "create conditions that constantly make them aware of their dependence."\(^{163}\) According to Greenberg, this contradiction was expressed in Southern political culture as ambivalence about republicanism.\(^{164}\) My own view is that republicanism was itself highly ambivalent about independence and had a long history of privileging communal over individual autonomy.\(^{165}\) Regardless of their precise understanding of republicanism, the masters had little respect for the independence of their fellow citizens. Here, too, they aspired to mastery: while they some-

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160 K. Greenberg, supra note 142, at 84.
162 K. Greenberg, supra note 142, at 86 (quoting Lawrence M. Keitt).
163 Id. at viii.
164 Greenberg argues: "To the extent that a search for honor involves a concern for personal autonomy and a distrust of power, it is compatible with the republican tradition. But since, the search for honor equally involves the assertion of power over others, it is also in tension with republicanism." Id. at xi (citing Orlando Patterson).
times described their political participation as "service," they also viewed it as governance. Hence "the statesman was a kind of teacher, perhaps even a kind of father, whose function involved guiding the masses in the direction of their true interests."\textsuperscript{166} At the same time, Southern statesmen recognized that their authority to govern proceeded from their honor, that is, the esteem of their community. Upon his retirement from politics, John Randolph expected to "return to the bosom of my constituents . . . and receive from them the only reward I ever looked for, but the highest man can receive—the universal expression of their approbation and thanks."\textsuperscript{167}

The masters sought to exercise a similar form of authority over their slaves.\textsuperscript{168} Just as they congratulated themselves on their instruction and protection of their constituents, they reassured themselves that their helpless slaves could hardly survive without them. Accordingly, Southern ideologues defended slavery as a kind of benevolent governance involving "political obligations" to act in the interests of the slaves and keep the peace among them. One Baptist minister rhapsodized "that slaves 'become part of his [master's] family, (the whole, forming under him a little community).'"\textsuperscript{169} Propagandist Henry Hughes developed his own delicate euphemism: "Warrantors and warrantees are wedded in interest. The sovereign warrantor is therefore, the petitioner for redress of all grievances by others than himself."\textsuperscript{170} Such encomiums gratified the masters because they could not openly solicit the esteem of their slaves. Still, argues Greenberg, "masters, like statesman, . . . sought honor. They aimed to exercise authority through the public display of superior virtue and intelligence. They constantly wanted to win the respect and admiration of their 'people.'"\textsuperscript{171}

For Southern whites, to be free was to exercise sovereignty, and to exercise sovereignty was to be master. For Southerners then, as for their Northern neighbors, freedom required exploitation, but it did not ultimately require independence. It was his very immersion in a network of kinship and community that fitted the master to rule.

The white Southerner's identification of freedom with political and social community is illustrated by three famous Supreme Court opinions by Southern justices—one of them, justly the most reviled in

\textsuperscript{166} K. Greenberg, supra note 142, at 6; see also id. at viii-ixm 3 (statesman as master).
\textsuperscript{167} B. Wyatt-Brown, supra note 135, at 45-46 (quoting John Randolph).
\textsuperscript{168} K. Greenberg, supra note 142, at 97.
\textsuperscript{169} Id.
\textsuperscript{170} Id. at 98.
\textsuperscript{171} Id. at 21-22.
Supreme Court history, the other two, justly among the most celebrated.

In his famous Dred Scott opinion, Roger Brooke Taney offered a "sectional credo no less revealing than Lincoln’s House Divided address or a series of Greeley editorials. It is not only a statement of southern assumptions and arguments but also an expression of the southern mood . . . in the late stages of national crisis." That credo held that the enslavement of some blacks could only be justified by the noncitizenship of the entire black people, whether slave or free. Justice Taney found that noncitizenship was exemplified by a host of legal disabilities facing free blacks in Northern states at the time of the framing of the Constitution, including the denial of "political" and "social" rights—military service, education, and marriage—that continued to be denied or limited after emancipation. While white women and children suffered many of these same civil disabilities, Taney included them as members of "the political family," a status blacks were clearly denied, Taney felt, by antimiscegenation statutes:

They show that a perpetual and impassable barrier was intended to be erected between the white race and the one which they had reduced to slavery, and governed as subjects . . . and which they then looked upon as so far below them in the scale of created beings, that intermarriages . . . were regarded as unnatural and immoral.

For Taney, subjection without kinship, exclusion without sovereignty, constituted a condition of social death. Only people who were utterly

173 Taney, born in 1777, was a Maryland Democrat from an old Catholic tobacco planting family. He served on the Court from 1836 until his death in 1864. “Taney joined the colonization society and freed those slaves he inherited. Yet he would not support any proposals which called for the federal government to limit the institution.” Gatell, Roger B. Taney, in 1 The Justices of the United States Supreme Court 1789-1969, at 635, 637 (L. Friedman & F. Israel eds. 1969).
175 60 U.S. (19 How.) at 408, 409, 413, 416 (marriage); id. at 414 (education); id. at 415 (military service).
176 Id. at 422.
177 Id. at 409. Distaste for miscegenation is the recurring theme in the statutory language quoted by Taney. Taney quotes a Maryland statute, dealing exclusively with intermarriage, id. at 408, and a Massachusetts "act for the better preventing of a spurious and mixed issue." Id. Later, while detailing other civil disabilities he twice returns to the subject, quoting a later Massachusetts statute, id. at 413 and a Rhode Island statute, id. at 416. For a similar reading of these aspects of Taney’s opinion see Ray, The Figure in the Judicial Carpet: Images of Family and State in Supreme Court Opinions, 37 J. Legal Educ. 331, 334-38.
isolated, outside of any network of protection could be enslaved—and such persons could not be considered citizens.

Thus, while native Americans were also subject to civil disabilities, Taney did not forever banish them from “the political family.” Instead, he viewed them like white children, as in a state of “pupilage.”\footnote{178} Unlike Afro-Americans, Taney argued, native Americans could be naturalized into citizenship because they were members of a “free and independent people, associated together in nations or tribes, and governed by their own laws.”\footnote{179} For that reason also, he implied (without much historical accuracy) that native Americans could not be enslaved.\footnote{180} Having “formed no part of the colonial communities, and never amalgamated with them in social connections or in government,”\footnote{181} native Americans were not, as yet, members of the white political family. Nevertheless they were potentially admissible, by statute rather than constitutional amendment, because they were members of their own self-governing association—their own political family.

In drawing this distinction, Taney expressed the sentimental image of native Americans as sturdy republicans that warmed many a Southern heart. One colonial Virginian described the Chickahominies as a “‘stout, daring and free People, . . . governed in a Republican Form.’”\footnote{182} Even slaves sometimes imagined the tribes as utopias beyond the reach of white authority, where they could aspire to membership and mastery. One popular slave song went:

Harper's creek and roarin ribber
Thar my dear, we'll live forebber
Den we'll go to de Ingin nation
All I want in dis creation
Is pretty little wife and big plantation.\footnote{183}

\footnote{178} 60 U.S. (19 How.) at 404.
\footnote{179} Id. at 403.
\footnote{180} “[T]he traffic in slaves in the United States had always been confined to [Africans].” Id. at 411. Yet native Americans had enslaved one another before contact with Europeans. Like African slavery, however, native American slavery was not traditionally commercial or even economic in function. See O. Patterson, supra note 17, at 84 (Northwest coast tribes); J. Oakes, supra note 68, at 45 (Cherokee). There were isolated instances of European settlers enslaving native Americans or purchasing them as slaves. See E. Morgan, supra note 3, at 99-100 (enslavement of native Americans in colonial Virginia); J. Oakes, supra note 68, at 45 (purchase of Cherokee slaves). In general, because native American slaves were more skilled at escape than at agricultural labor, they were soon replaced with African slaves. V. Harding, supra note 38, at 7. Ultimately many Cherokee purchased Africans after being induced to settle on farms. J. Oakes, supra note 68, at 45-47.
\footnote{181} 60 U.S. (19 How.) at 403.
\footnote{182} E. Morgan, supra note 3, at 372.
\footnote{183} Slave song, reprinted in L. Levine, supra note 38, at 14. Free blacks in fact owned slaves
Taney was not alone among Southerners in defining freedom as participation in both sovereignty and society, and in understanding slavery as exclusion from both.

One other Southerner who shared these conceptions of freedom and slavery was the first Justice Harlan. Himself a slaveholder, Harlan was a proslavery unionist during the Civil War, who opposed ratification of the thirteenth and fourteenth amendments because he understood them to require full integration of blacks into Southern society. Nevertheless, he later became the author of dissenting opinions in the Civil Rights Cases and Plessy v. Ferguson, which remain the most ambitious interpretations of the emancipation amendments to ever find expression on the Supreme Court. Viewing these amendments as a constitutional response to the *Dred Scott* decision, Harlan read them to create a national obligation to reverse the exclusion of blacks from sovereignty and society that, according to Taney, made slavery culturally possible. Thus in Harlan’s view, emancipation not only automatically entailed the citizenship denied by Taney, but it also decreed thereby that “there cannot be, in this republic, any class of human beings in practical subjection to another class.”

In his *Plessy* dissent, Harlan repeated that the Civil War amendments were designed to eradicate the social conditions celebrated in *Dred Scott*. “The destinies of the two races, in this country, [were] indissolubly linked together” by the “legitimate results of the war,” in which blacks “risked their lives for the preservation of the Union.” Having thus entered “the political community,” their

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185 109 U.S. 3, 26 (1883) (Harlan, J., dissenting).
186 163 U.S. 537, 552 (1896) (Harlan, J., dissenting).
187 The Civil Rights Cases, 109 U.S. at 30-33 (discussion of the *Dred Scott* case); id. at 36-37 (emancipation required eliminating social inferiority on which slavery rested); id. at 46 (national power to create affirmative condition of citizenship); see Kinoy, The Constitutional Right of Negro Freedom, 21 Rutgers L. Rev. 387, 393-96 (1967).
188 The Civil Rights Cases, 109 U.S. at 36 (noting that the Civil Rights Act of 1866, recognizing black citizenship, was passed pursuant to the enabling clause of the thirteenth amendment).
189 Id. at 62.
190 Plessy v. Ferguson, 163 U.S. at 560.
191 Id. at 561.
192 Id. at 563.
exclusion as inferior became "inconsistent with . . . a republican form of government."\(^{193}\)

Harlan’s interpretation of emancipation as the full integration of blacks into American society reflected a Southern understanding of slavery as a form of "social death." For Harlan, freedom involved inclusion rather than independence. He emphatically rejected his colleagues’ conclusions that progressive labor legislation made workers "wards of the state" and that civil rights legislation made blacks "wards of the government."\(^{194}\) Given the historical reality of slavery known to Southerners like Harlan, emancipation entailed an aggressive role for government in fostering the social conditions for full political membership in society. Nothing less would occasion the cultural transformation throughout the South that Harlan’s own odyssey exemplified. Yet Harlan’s odyssey had not been a long one: his transformation into the most radical of republicans was as swift and sudden as crossing the railroad in a sleepy Southern town, or stepping from the parlor into the kitchen of his own home. Accustomed to the freedom claimed by the masters, he had little difficulty appreciating the freedom demanded by the slaves.

VII. THE MASTERS MASTERED: HOW THE SLAVES CIVILIZED THE SOUTH

It is no accident that Southern whites shared a communitarian conception of freedom with Afro-Americans. Eugene Genovese has argued that the slavemasters borrowed much of their cultural values from the slaves. The work rhythms of Southern society were not simply imposed from above but reflected compromises in an ongoing and uneasy struggle.\(^{195}\) The paternalism that characterized Southern society was such a product as well. Demeaning as that paternalism might have been, it served the slaves in several ways: it obligated masters to support their slaves in old age,\(^ {196}\) to side with their slaves against unusually abusive overseers,\(^ {197}\) and to accede to demands if couched as humble appeals for favors.\(^ {198}\) Even paternalism’s revolting corollary—that slaves were high-spirited, if irresponsible chil-

\(^{193}\) Id. at 564.

\(^{194}\) Compare dissents by Harlan with majority opinions in Lochner v. New York, 198 U.S. 45, 65 (1905) (majority finds maximum hours law would make workers wards of the state) and Hodges v. United States, 203 U.S. 1, 20 (1906) (majority finds federal prohibition on private interference with labor contracts would make black workers wards of government).

\(^{195}\) See E. Genovese, supra note 38, at 285-324.

\(^{196}\) Id. at 521.

\(^{197}\) Id. at 17-21.

\(^{198}\) Id. at 91, 146-48; B. Wyatt-Brown, supra note 135, at 408-09.
dren—had advantages. It provided an arsenal of excuses to escape punishment for resisting the slave regimen. It also lulled whites into carelessness. Behind its protective camouflage, slaves could meet, plan, learn, worship, resist, sabotage, steal, shirk, escape, or even kill. What made paternalism capable of working to the slaves’ advantage is that for the masters, at least as much as for the slaves, it provided an identity. Masters were psychologically invested in their view of the slaves as children as well as their view of themselves as benevolent patriarchs. They justified slavery on the grounds that their slaves needed them, and they justified their own power among whites on the grounds that they showed virtue and responsibility in the treatment of their slaves.

These values were learned in part from their slaves whose forebears had come from the “personalistic” societies described by Patterson.\(^9\) Possibly the slaves viewed paternalism as a more desirable form of subjection than others; more likely the masters observed, admired, and envied the way that their slaves honored one another, particularly those whom they esteemed or invested with authority.\(^200\) It seems probable that it was precisely because they did recognize their slaves that masters craved and demanded such recognition from them.

The claim that Southern whites derived their values of honor, responsibility, and community—the very qualities that they identified with mastery—from their slaves seems paradoxical. Few of us are wholly unaffected by the lengthy tradition of styling the masters as wise and benevolent educators and civilizers of their slaves.\(^201\) Under the influence of this tradition, many white chroniclers have attributed cultural similarities among Southern whites and Southern blacks to white influence on blacks, without even considering the opposite explanation.\(^202\)

The conclusion that slaves “must have” imitated masters is certainly supported by the reasonable assumption that racism would have inhibited masters from openly imitating their slaves. Nevertheless, it is belied by the reality that considerations of both pride and prudence also operated to inhibit slaves from openly imitating their

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199 See supra text accompanying note 83.
200 E. Genovese, supra note 38, at 118 (slaves treated each other with impressive courtesy); id. at 339 (slaves admired house servants as genteel); L. Levine, supra note 38, at 139 (chief role models for slaves were other blacks).
201 D. Davis, supra note 28, at 200-06, 217; D. Davis, Slavery and Human Progress 60, 129 (1984); E. Genovese, supra note 38, at 75-86; H. Gutman, supra note 38, at 531-44.
202 H. Gutman, supra note 38, at 31-32 (describing tradition of attributing similarity to white influence); L. Levine, supra note 38, at 20-21.
masters. The existence of white racism does not justify the assumption that masters could not have learned from slaves. It does, however, suggest that such learning will seldom have been openly acknowledged. Yet, an abundance of indirect evidence indicates that Southern whites were capable of appreciating and absorbing the cultural gifts of their subject people.

Opportunities abounded for antebellum whites to absorb black culture. Accustomed as we are to life in a racially segregated society, we may easily assume that the caste society of the old South allowed little social interaction between the races. While there were certainly slaves that had little contact with whites, most Southern whites had some contact with slaves. During the half-century preceding the Civil War, a majority of Southern whites held, hired, or drove slaves at one time or another. Although as many as half of all slaves may have been held by "planters," most slaveholders were small farmers exploiting the services of a handful of slaves. On small farms, slaves and owners were in constant contact, sharing tasks, living quarters, and food. On larger plantations, slaves had primary responsibility for raising the master's children and accompanied him and his family constantly, even while they slept. White children grew to adulthood playing with slaves, following the direction and admonitions of slaves, sharing their confidences with slaves, soliciting advice from their slaves on the choice of a dress—or a mate. Nor were their parents immune from similar influence. Especially in the cities there were many sexual liaisons between the races, some romances, and a few marriages. While Stanley Elkins's claim that masters constituted most slaves' only "significant others" must be discarded, slaves clearly provided significant others for most whites in the antebellum South.

When it served their economic interests, whites were not too
proud to learn from slaves. Slaves brought unique agricultural, artisanal, and metallurgical skills with them from Africa,\footnote{B. Davidson, supra note 80, at 17; E. Genovese, supra note 38, at 389.} which helped shape Southern economic development. Especially during the colonial period, some regions were entirely dependent upon slaves for the performance of skilled labor.\footnote{E. Genovese, supra note 38, at 388; Macleod, Toward Caste, in Slavery and Freedom in the Age of the American Revolution, supra note 3, at 227; Quarles, supra note 3, at 286.} Sometimes slave artisans were asked to teach their skills to whites.\footnote{E. Genovese, supra note 38, at 395.} In agriculture, slaves collectively influenced the rhythms of work,\footnote{Id. at 285-309.} the organization of labor,\footnote{H. Gutman, supra note 38, at 309-11; Morgan, supra note 97, at 125.} and sometimes techniques of cultivation. In South Carolina, for example, the cultivation of rice was made possible by the use of African techniques.\footnote{F. Boney, supra note 38, at 150; J. Oakes, supra note 68, at 24.} Often favorite individual slaves were consulted on the overall management of some plantations.\footnote{E. Genovese, supra note 38, at 313, 347, 366, 381.}

Yet Afro-American influence on the lives of Southern whites was not circumscribed by their economic significance. It permeated the way Southern whites talked, the food they ate, the music they enjoyed, and the stories they heard as children.\footnote{Id. at 540-43 (African origin of such favorite Southern dishes as “barbecue”); id. at 364 (folklore, speech patterns); F. Boney, supra note 38, at 150-51 (folklore, phrases); W. Cash, supra note 210, at 51 (accent).} If constant contact with slaves influenced the tastes to which Southern whites accustomed themselves, can we conclude that Afro-American influence on Southern culture extended to its most deeply held values?

We can. Evangelical Christianity, the central matrix of Southern values, was as much a black creation as a white one. During the eighteenth-century “Great Awakening” of evangelism in America, blacks “were commonly present at religious revivals and regular church services alongside whites throughout the South.”\footnote{L. Levine, supra note 38, at 21.} The “small, voluntary, religious societies,”\footnote{Raboteau, The Slave Church in the Era of the American Revolution, in Slavery and Freedom in the Age of the American Revolution, supra note 3, at 194-95, 200.} generated by the eighteenth century spread of Baptism and Methodism were biracial, creating opportunities for “shared emotion and ecstatic behavior.” But if the charismatic ethos of these movements stimulated interracial community, that ethos was a black innovation, which sometimes “startled white onlookers.”\footnote{E. Genovese, supra note 38, at 238; see also id. at 233-34, 240 (slaves rarely allowed white onlookers to witness the true frenzy reached in their prayer meetings); L. Levine, supra note 38, at 21.} As one slave insisted, “‘the angels shout in
heaven.... The Lawd said you gotta shout if you want to be saved.”

Whites found the joyous community created by their black coparishioners irresistible. The renowned diarist Mary Boykin Chestnut recalled that one such interracial service was “‘a little too exciting for me. I would very much have liked to shout too.’” The wealth of such accounts “make[s] it clear that even outsiders had difficulty resisting the centripetal pull of black religious services and song.” White Southerners were especially impressed with black religious music and borrowed it enthusiastically. The characteristically African verse forms and rhythms of many spirituals sung by nineteenth-century Christians of both races shows their Afro-American composition. “‘Who are the true rulers?’” asked a Northern journalist in 1845. “‘The negro poets to be sure.... Let one of them, in the swamps of Carolina, compose a new song, and it no sooner reaches the ear of a white amateur, than it is written down, amended (that is, almost spoilt), printed and then put upon a course of rapid dissemination . . . .’”

For white Baptists and Methodists, slaves were often more than inspiring coworshippers. Albert Raboteau tells us that in evangelical movements, “slaves achieved new status as active and frequently founding members of churches.” In addition, blacks preached to mixed and even all white congregations, where their eloquence and fervor were much admired. The similarly charismatic style eventually developed by white evangelists was regarded by W.E.B. Du Bois as a “plain copy” of black preaching. As the most oft-heard form of oratory in the antebellum South, “[i]t is impossible to believe,” that sermons— influenced by Afro-American styles of speech and worship—“did not . . . add much to that great tradition of southern oratory ordinarily attributed solely to white men of power and standing.”

Any resulting similarity between black religious and white polit-

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\textsuperscript{225} E. Genovese, supra note 38, at 238.
\textsuperscript{226} L. Levine, supra note 38, at 28 (quoting Mary Boykin Chesnut).
\textsuperscript{227} Id. at 29. For more such accounts, see id. at 27-28, 38.
\textsuperscript{228} Id. at 20-22.
\textsuperscript{229} E. Genovese, supra note 38, at 250 (quoting J. Kennard); see also F. Boney, supra note 38, at 150 (describing influence of slave music and folklore upon white culture).
\textsuperscript{230} Raboteau, supra note 223, at 202.
\textsuperscript{231} Id. at 203-04. E. Genovese, supra note 38, at 260-61.
\textsuperscript{232} E. Genovese, supra note 38, at 239.
\textsuperscript{233} Id. at 262-67.
ical speech reflected more than a shared style—it reflected the common values of a culture that looked to oratory for demonstrations of character. If slaves responded "more readily to evidence of spiritual motivation in the preacher than they did to his argument," the political orator "could speak about any subject because each oration placed on view 'the whole man' for all to see." In a society ordered by personalistic authority, such public demonstrations of estimable character were "deeply cherished" by the assembled listeners. "What mattered was the sense of community and reconfirmed loyalties that such occasions aroused." Black preachers helped provide Southern statesmen with the means they used to demonstrate the honor and reap the esteem they held so dear.

Wyatt-Brown has argued that Southern conceptions of honor had ancient roots in the pre-Christian values of Celtic Europe. Yet the extent of African contributions to the Southern cosmos is suggested by the fact that they reached beyond the boundaries of Christianity. Rural blacks and whites in the slave South evinced similar magical beliefs. Frightened or frustrated whites were not too proud to seek the assistance of black conjurers. And the irreverent carnivals that Wyatt-Brown found particularly expressive of timocratic values in Southern culture also bore the stamp of African influence. Southern religion—Christian and animist—inculcated the values of honor, community, and responsibility among the masters, and yet Southern religion was largely a product of the slaves.

We have seen that slaves shaped the values of the society that esteemed the masters. But slaves may have played an even more direct role in creating the vaunted gentility of the master class: many Southern whites admired the demeanor and sought the esteem of the slaves with whom they had such intimate contact.

The reader may well be forgiven for scoffing at the suggestion that the affectations and refinements of the Southern aristocracy could have sprung from an impoverished, uneducated, and illiterate people. Yet this is the reality that she will have to accept. The supposedly aristocratic slaveholders shared precisely these characteristics with

234 Id. at 243; see also Raboteau, supra note 223, at 203 (sermons display character).
235 K. Greenberg, supra note 142, at 13; see also B. Wyatt-Brown, supra note 135, at 330-31 (orations display character).
237 Id. at 26-61.
238 L. Levine, supra note 38, at 59.
239 E. Genovese, supra note 38, at 217-18.
240 B. Wyatt-Brown, supra note 135, at 444. There is of course a bitter irony here: the lynchings and Klan rallies that came to symbolize Southern racism after the Civil War represent a less benign strand of this tradition. Id. at 435-61.
their slaves. As W.J. Cash first acknowledged a half-century ago, Southern notions of honor had little root in education, refinement, or aristocratic heritage, and required no great intellectual accomplishment to put into practice. Southern aristocrats were made, not born—and not very well made at that.

Perhaps because of their humble origins and limited refinements, Southern slaveholders often showed great status anxiety. How could they reassure themselves that they were what they pretended to be? No doubt they sought and got such reassurance from the less wealthy whites. But to a surprising extent they were also psychologically invested in what their slaves thought of them. During the Civil War, slaveholders insisted, in the teeth of their own misgivings, on the contentment and loyalty of their slaves. When emancipation finally came, "[e]x-slaveholders, on many pages of their diaries and letters, betray[ed] hunger for recognition and the need to be needed again." They evinced both bitterness and shock at the discovery of slave " ingratitude." One lamented that "‘I can’t get along without you,’ " while another complained that my ‘‘heart is pained and sickened with their vileness and falsehood in every way. I long to be delivered from the race.’ " Still others are reported to have attempted suicide or "died of grief." "The slaves, by withholding [gratitude], drove a dagger into their masters’ self-image." To a great extent, white Southerners were psychologically dependent on their slaves. After all, in the rough-hewn, uncultivated, and relatively egalitarian society of nineteenth-century rural America, masters could hardly remain aristocrats without them.

Yet slaves encouraged the South’s aristocratic ethos by more active means than simply occupying the lowest rung in a hierarchical society. As between two uneducated rural populations, the slaves—

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241 W. Cash, supra note 210, at 3-102. Cash’s conclusions hold up well. See J. Oakes, supra note 68, at 8 (Virginia slaveholding class emerged from indentured servitude); B. Wyatt-Brown, supra note 135, at 65-66. The only real question is no longer whether many Southerners possessed aristocratic refinements, but whether many of them even professed or aspired to them. See F. Boney, supra note 38, at 14-15; J. Oakes, supra note 68, at 192-224.

242 B. Wyatt-Brown, supra note 135, at 92, 94, 97-99 (anti-intellectualism of antebellum South). But cf. J. Oakes, supra note 68, at 57-59 (many large slaveholders were educated professionals).

243 B. Wyatt-Brown, supra note 135, at 88-89.

244 L. Litwack, supra note 121, at 16, 61.

245 W. Rose, supra note 205, at 78.

246 E. Genovese, supra note 38, at 97-112; W. Rose, supra note 205, at 86.

247 L. Litwack, supra note 121, at 188.

248 E. Genovese, supra note 38, at 106 (quoting Mrs. Mary Jones).

249 Id. at 98; L. Litwack, supra note 121, at 193-94.

250 E. Genovese, supra note 38, at 146.
coming from a more traditional society—may have been more likely than their masters to exemplify timocratic values. Certainly many white observers were impressed by the demeanor of slaves and, in later generations, black servants.

William Faulkner, who insisted that the slaves had always taken aristocratic values more seriously than their masters, recalled his own "Mammie" as "'brave, courageous, generous, gentle and honest . . . much more brave and honest and generous than me.'" One mistress describes her "mammy" as "'so superior, and as genuine a 'Lady' as I ever knew.'" A master recalled of his deceased black slave that "'no man white or black I have ever known was more exemplary in his conduct. He was kind—moral—sober—industrious, obedient—and honest—I never knew one who kept closer to the path of rectitude.'" Another master was particularly struck by his chief driver's bearing: "'Intelligence and understanding showed in his face, and force in his every movement. He looked indeed like one born to command.'"

As between Judge Seth Lewis and his manservant "Uncle Lea," Lewis's granddaughter thought "'it was hard to say which had the more personal dignity.'" Fanny Kemble praised her slaves' "'courtesy and affable condescension,'" while her daughter thought an educated but rude white man would do well to imitate their "'gentle and courteous . . . manners.'" Frederick Law Olmsted, on visiting Washington, found that "'there were many more well-dressed and highly dressed colored people than white . . . . Many of the colored ladies['] . . . walk and carriage was more often stylish and graceful than that of the white ladies who were out.'"

Some slaves made an even deeper impression. Benjamin Banneker, the black mathematician, impressed Jefferson as evidence of the creator's egalitarianism; but Banneker's grandfather, an African chief, impressed his owner more—she freed and married him. The Thomas Fosters, Senior and Junior, were uncultivated nouveau riche

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251 E. Genovese, supra note 158, at 6.
252 B. Wyatt-Brown, supra note 135, at 126 (quoting William Faulkner).
253 E. Genovese, supra note 38, at 359 (quoting Eliza Frances Andrews).
254 Id. at 349 (quoting diary of Everard Green Baker, 1860).
255 Id. at 367 (quoting Duncan Clinch Heyward).
256 Id. at 352 (quoting A. Watts, A Summer on a Louisana Cotton Plantation in 1832, in Pharr Book 96).
257 Id. at 116 (quoting Fanny Kemble, and her daughter); see also id. at 335 (Mary Boykin Chestnut, remarking on good manners of slaves).
258 Id. at 329 (quoting Frederick Law Olmstead).
planters, lucky enough to have acquired as their chief driver the Nigerian prince Abd-al Rashid Ibrahima, "whose sense of honor and dignity far outdistanced that of his master and his master's sons." To his father's everlasting shame, Thomas Junior abandoned his own wife to keep company with the driver's daughter, who "shared her father's aristocratic bearing." If the South's self-styled squires showed surprising anxiety for the good opinion of their slaves, it was because they often esteemed their slaves as discerning judges of gentility.

Genovese argues that some slaves made effective use of their role as exemplars of good manners and good taste. Some dignified retainers found that their gracious deference gratified masters even more than the sweat of their brow. Others raised their own status by exalting that of their master relative to other whites. Genovese describes a house servant carrying a message to the master's lesser neighbor. "Embarrassed, the neighbor pretended that he could not read the planter's handwriting. The indignant servant insisted that his master was too well educated to write poorly: 'You cannot read, Sir!'"

Some slaves used their role as guardian of their master's status to assert authority over their masters as well. One slave named Emily insisted that her mistress pack an evening dress when going to nurse the confederate wounded: "'I ain't goin' to let my Mistis be outshined by ... dem other ladies.'" "Mammy Harriet" kept her charges out of the kitchen by admonishing them to "'Sit in de parlor wid' er book in y'or hand like little white ladies,'" and taxed them for making their "'ma so mad, acting like sich po'r white trash.'"

Where they could, slaves deployed such influence over whites to fashion them into the benevolent despot's of legend. The culture, as well as the interests of the slaves, dictated a preference that their masters exercise personal authority. By exalting and flattering their masters, slaves endeavored to shame them into taking personal responsibility for conditions on the plantation. Especially during the last thirty years of slavery, masters increasingly assumed that kind of personal responsibility as "a duty and a burden" and, with much

260 B. Wyatt-Brown, supra note 135, at 323.
261 Id. at 323.
262 E. Genovese, supra note 38, at 335 (comments of Mary Boykin Chestnut).
263 Id. at 113; see also id. at 330 (slaves exalting masters' status relative to other whites).
264 Id. at 346.
265 Id. at 354.
266 Id. at 118-20.
267 Id. at 49-70.
self-pity and self-congratulation, erected identities on the sand of their slaves' flattery.\textsuperscript{268}

The Southern essayist James Dabbs sees the hand of the slave in the timocratic culture of his own homeland to this day:

As for the manners [of the South], he helped to create them. It is probable that he brought from the highly traditional life of Africa a strong feeling for the importance of form . . . . It is true, [whites] developed a racial etiquette to keep the Negro in his place. The Negro, with his traditional feeling for manners, accepted this and used it in part to keep the white man in his place; that is, to restrain the exploiter, to bring him under a degree of control. The white tended to accept this control, even though he often realized it was being imposed upon him.\textsuperscript{269}

If the patient reader remains skeptical that slaves provided their masters with modes of gentility, community, and honor, she need only reflect on the South as we have witnessed it in our lifetimes, the South of the civil rights struggles. Which side in those struggles exhibited the courtesy, dignity, courage, and refusal to brook insult that we associate with Southern gentry? Who, in those confrontations of barbaric violence with disciplined nonviolence, civilized whom?\textsuperscript{270}

Similarly, the slaves used paternalism, in part, to invest their masters with some of the qualities that they valued themselves. The slaves understood that they were deprived of freedom in Southern society; but Southern society was partially of their own making and part of the freedom prized by their masters was the freedom to develop and express those traits of character esteemed by the slaves. Thus freedom to the slaves as well as the masters meant taking responsibility for others and receiving in return the esteem of a community. These values were distorted in the behavior of the masters and purchased at the price of others' freedom and dignity—but they were the values of the slaves, who understood that their freedom could never be achieved by individual escape.

VIII. AN HEGELIAN APPROACH TO EMANCIPATION

The premise of this essay is that freedom can only be understood as the negation of slavery—and that we see its attributes better in societies that mark some of their members as slaves than in those that congratulate themselves that their exploitation has taken some other

\textsuperscript{268} Id. at 75-86.
\textsuperscript{269} J. Dabbs, supra note 145, at 352.
\textsuperscript{270} See id. at 357-58 (nonviolent civil rights movement replicated traditional Southern phenomenon of blacks teaching whites manners).
form. Patterson's analysis of West African and other traditional slave societies offers a critical perspective on the Western ideals of independence and individualism that are expressed in market society. From this perspective, the modern market ideal of being masterless or utterly autonomous is social death. Paradoxically, it puts the modern free laborer in a social position similar to that of the slave in traditional society. In some ways, the free laborer in a market society is like the even more unfortunate African slaves displaced to America. Not only are such laborers without a network of social protectors and admirers, but they are without the social milieu—a community—in which such a network would be possible and meaningful.

It is remarkable that Southern proslavery ideologues made similar critiques of free labor—critiques sufficiently trenchant that the Marxist Genovese has analyzed them in loving detail, noting where appropriate, their divergences from Marx's own critique. So that where Patterson implies that the wage laborer in modern market society—even if possessed of great wealth or status—is socially dead, Genovese gleefully reminds us that Southern critics of Northern society saw free laborers as "slaves without masters."272

When Northern republicans looked at slavery they saw a society that, in eschewing free labor, had turned its back on the ideal of independence. In such a society, they reasoned, no one was truly free. Accordingly, they equated emancipation with the atomization of society. Yet when white Southerners looked at themselves, they had no doubt that they were free, and the evidence was their political and social authority within an organic community. And when their slaves looked at themselves, they did not see laborers disabled from making wage contracts. They saw men and women excluded not only from authority, but even from membership in that organic community. More significantly, they saw a group of people prevented from estab-

271 See E. Genovese, supra note 158, at 118-93. Genovese rejects, but hardly refutes the charge of using the "hero" of this work, George Fitzhugh, "as a pawn in a game of épater les bourgeois." Id. at 119; see also id. at 182-84 (relationship between Fitzhugh's work and Marx's).

272 See id. at 179-84 (analyzing G. Fitzhugh, Cannibals All! or Slaves Without Masters (1960)).

273 In the era of the civil rights movement, James Dabbs wrote:

[T]he Southern Negro wants more than justice . . . . He wants to belong completely to the community. . . . Always occupying an unjust and unhonored position in the community, he has not yet been a part of it. He wishes now to be more completely a part. . . . This mood can be seen in all the attempts of Negro demonstrators to come to peaceful terms with the whites, to leave them a chance to save face as they necessarily retreat, to improve the common community, not to destroy it.

J. Dabbs, supra note 145, at 356.
lishing and governing a community of their own. The freedom slavery deprived them of was not the independence offered by Northern free labor society.

What meaning can we give emancipation in light of this history? It is here that Hegel's dialectical strategies provide useful models. Hegel's dialectical logic models a world in which particulars cannot exist independently of the whole. It is premised on the notion that concepts cannot be maintained independently of one another or of their historical context. Thus we cannot conceive of freedom except in relation to some correlative conception of slavery; and we cannot imagine emancipation without reference to a specific historical experience with slavery. A further implication of the premise that particulars cannot exist independently is to require us to place the institution of slavery in the context of an entire society. Thus a dialectical approach to emancipation emphasizes that negating slavery would require changing the culture, and society that made slavery both possible and meaningful. Yet the great appeal of the dialectical approach is that it recognizes the complexity of this task. Emancipation is an example of what Hegel called "Aufhebung"—a negation that also preserves. While we cannot root out slavery without uprooting its culture we can only give meaning to emancipation in a culture that remembers slavery. Perhaps we can remember slavery without condoning it, by identifying with the dream of human freedom envisioned by the slaves. That ideal can only be grasped by listening to the testimony of the slaves and of the masters as to what slavery was—what it was and is in our history that we would negate, but not forget; that we must transcend, but can never finally abolish.

IX. EMANCIPATING HEGEL

We have interpreted Hegel's dialectic of master and slave as a critique of independence rather than an analysis of slavery. In using Hegel's thought as a means to imagine an emancipatory future rather than understand a slave past, we have taken liberties. Hegel, after all, was a racist, as were most Western intellectuals of his time, believing that Africans were "wild" and "sensual" cannibals, with no culture and no history. From this "merely isolated sensual existence," slavery was, for Hegel, an advance . . . a phase of education—a mode of becoming participant

275 See, e.g., Phenomenology of Mind, supra note 1, at 222 (Aufhebung translated as "sublation").
in a higher morality and . . . culture . . . Slavery is in and for itself injustice, for the essence of humanity is Freedom; but for this man must be matured. The gradual abolition of slavery is therefore wiser and more equitable than its sudden removal.277

We might console ourselves that Hegel’s racism had less influence than his abolitionism, but the quoted passages were in fact taken seriously by Hegel’s readers. At an 1890 conference on “The Negro Question,” William Torrey Harris, U.S. Commissioner of Education and a leading American Hegelian, expressed concern that emancipation was leading to a “‘reversion to the former low state of spiritual life.’”278 Another conference participant, using language reminiscent of Hegel’s own, described freedmen as “‘the product of [their] sad and dismal past’” and as “‘wild, naked . . . man-eating savages’” with “‘no history.’”279 At least some of Hegel’s American followers found his contempt for slaves more appealing than his condemnation of slavery.

Others influenced by Hegel accepted his attack on slavery while rejecting his racism. Marx, in a letter to Lincoln drafted on behalf of the International Workingmen’s Association, ridiculed the notion that slavery was “a beneficent institution,” and complained of the racial divisions slavery had imported among workers. The “white-skinned laborer” would never achieve “true freedom,” Marx complained, by “boast[ing]” that he could “sell himself and choose his own master” while blacks were “mastered and sold without [their] concurrence.”280 August Willich, the left-Hegelian who played a leading role in introducing Marx’s political economy in America, insisted in 1860 that “[n]o man has a real right of possession either of men or of the control of the state—men are born equal and remain equal in rights.”281

I think we, too, are authorized to use our judgment in determining which of Hegel’s contradictions we valorize as “dialectical” and which we dismiss as merely hypocritical. I believe that it is ultimately more Hegelian to use him in discovering our own values, than to remain faithful to his.

The St. Louis movement, portrayed in The Rebel’s Daughter, turned to Hegel for help in interpreting the immense cultural conflict

277 Id. at 99 (emphasis in original).
278 H. Gutman, supra note 38, at 540 (quoting William T. Harris).
279 Id.
280 K. Marx & F. Engels, The Civil War in the United States 280 (1937); see also id. at 283 (Marx acknowledges authorship).
represented by the Civil War. Denton Snider, the Dr. Taylor of Woerner’s novel, commented:

A great world-historical deed had been done with enormous labor and outer panoramic pageantry. What lay in it for us and for the future? So we began to grope after the . . . pure Essences . . . as they are called by our philosophic authority. These transcendent energies of man and of the world were said to be collected and ordered in one book—Hegel’s Logic.282

It is with an awareness that Hegel’s thought was the true constitution of this peculiar community that we should read the constitutional views expressed by the odious Professor Rauhenfels in Woerner’s novel. Arguing against the constitutionality of abolition, Rauhenfels bids us

Be warned by the fate of Antigone: She obeyed what she felt to be the law written in her breast by the gods themselves in preference to the king’s decree, and perished, because Institutions are valid, though individuals deem them cruel or absurd. So shall they perish, who lay sacrilegious hands on the constitution . . . .283

Yet, as Professor Thomas teaches us, the lesson Hegel himself draws from “the fate of Antigone” bodes ill for Professor Rauhenfels’s rigid constitution: “[T]he public spirit . . . learns that its supreme right is supreme wrong, its victory rather its own defeat. The slain, whose right is injured, knows, therefore, how to find means of vengeance which are equally as real and strong as the power at whose hands it has suffered.”284 Much to be preferred, and truer to the spirit of Hegel, are the constitutional views expressed by the character of the Dominie in an earlier dialogue from The Rebel’s Daughter:

“[A]n individual cannot be permitted to set up his own opinion as the standard of right and wrong,” [said the colonel]. . . . [T]he constitution is good enough for me, and . . . I do not propose to sit in judgment on its morality.”

“That is a thing that you cannot help doing, sir,” said the Dominie amid the breathless attention of the others. . . . The humblest citizen does this every time he performs his duty at the polls: how much more yourself, who are called on, as an illustrious statesman, to guide the ship of State. You certainly know it to be your duty to actively assist in amending the constitution so as to

282 Snider, Starting from St. Louis, in The American Hegelians, supra note 281, at 31.
283 J. Woerner, supra note 42, at 429-30.
purify it from any defect that has become apparent to you. Is not that a judgment against its adequacy? Or you may oppose any suggested amendment, or simply remain inactive. Is not that a judgment in its favor? In this way every human being that owes allegiance to our government continually passes judgement on the sufficiency of the constitution."

"And in doing so," Dr. Taylor interjected, "they have no higher criterion than their conscience."

The Dominie goes on to argue that no constitution is an exhaustive expression of the will of the people whose sovereignty it embodies, and so every constitution requires perpetual amendment. So we scholars of Hegelian legal theory may also count ourselves a political community, and Hegel's thought our constitution. We are duty-bound to interpret and even to amend it to conform to our collective conscience and the needs of our time. We show truer allegiance to the Hegelian project by thus perpetuating its meaningfulness than by piously preserving its original meaning for a society whose crimes we have yet to overcome.

If learning from history requires that we invoke worthy ancestors, it also requires that we invent them. So too, in learning what Hegel has to teach about human liberation, it has been necessary for us, in part, to invent him—to detach him from his own past and apply him to our future. Had we been truer to Hegel, we would have been less good to him—and he little good to us.

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286 Id.