

## The United States and Its Use of the People

It was an unlikely scene: on an early fall day in 1861, people crowded into the U.S. sub-treasurer's office in New York City to buy treasury notes. Describing the event, a *New York Herald* reporter rolled out a parade of characters worthy of Dickens. There was a "short, stout, broad-faced gentleman ... with a gold-headed cane, gold spectacles, and a general banking air about him"; an "old woman, poorly dressed, bent down by age, and looking like the keeper of an apple stand or corner grocery of peanuts and dirty candies"; a "veritable Bridget" ("How in the world could she know of the loan and of its advantages?"); a "former comptroller of the city, now totally blind, and led in by his daughter"; a "negro, colored man, an African, or whatever he prefers to be called"; a "lady sweeping her long trail past you, and displaying rich diamond rings"; a clerk "who subscribes thousands of dollars for his employers, and then, after a moment's hesitation, \$100 for himself"; an elderly gentleman who "has not left his native town in New Jersey for five years, but has taken this long and fatiguing journey because he thinks his country needs his savings"; a lady from the backcountry who "wants to know how she is to invest her money to aid the country"; the "inevitable Irishman and German, who say exactly what they do not mean, but whose business the quick clerks dispatch before the inexplicit, episodic, and curiously intertangled story of the depositors is half finished"; and a clergy man "who says ten words about his business and fifty about his determination to sustain the government." Many insisted on seeing Mr. Cisco, the sub-treasurer, even though it was unnecessary and slowed the process to a snail's

pace. But, as the reporter explained, everyone waited patiently. They “feel that by showing themselves personally to the Sub-Treasurer they are, in some sort, giving aid and comfort to the government of which he appears to them the representative.”<sup>1</sup>

The reporter’s point was as obvious as his characters were overdrawn. All these people – men and women, rich and poor, white and black, native-born and immigrant – made up the United States. Less obvious was the mechanism that drew them all together and into a direct relationship with the federal government, namely the economic policies of the Republican Party. Upon taking office, Treasury Secretary Salmon P. Chase faced a difficult truth: the United States could not cover current expenses, let alone the cost of a protracted war. Chase had little experience in finance, other than what he had obtained growing up in the school of hard knocks. His mother was widowed with ten children when Chase was nine years old. Chase, who was supporting himself by age sixteen, eventually left New England to make his home in Cincinnati, where he began his career defending fugitive slaves and ended up as one of the Republican Party’s founders. Never, though, had Chase been asked to conjure money out of thin air, which was basically what was required of him as treasury secretary. He first turned to conventional funding sources, negotiating with the banks for loans. But he found them unforthcoming. Equally disappointing were his overtures to European powers, which were still smarting from the repudiation of Revolutionary-era debts and unwilling to consider a repetition of that experience. Desperate, Chase got creative: he turned to the American people. In the summer of 1861, he constructed a scheme that tapped the savings of ordinary Americans to fund the war: \$25 million in three-year treasury notes that paid 7.3 percent interest and were quickly (and affectionately) dubbed seventy-thirties. The response was overwhelmingly positive, as the *Herald* article suggests. In fact, the notes proved so popular that the federal government issued more, at various terms, throughout the war.

<sup>1</sup> “Taking of the Popular Loan,” 14 September 1861, *Scientific American*, vol. 5, no. 11, p. 171, available at American Periodical Series Online, <http://search.proquest.com/docview/126564000?accountid=10598>.

The seventy-thirties capture central elements of legal change in the United States during the Civil War. “Suppose,” the *Milwaukee Daily Sentinel* mused, “that from Maine to California the bonds of the government formed the only basis of circulation, would not every man’s immediate pecuniary interest make him wakeful of the slightest danger to the perpetuity and integrity of the government?”<sup>2</sup> The elision between war bonds and the bonds between the American people and the nation described the ambiguities of people’s changing relationship to the national government. During the Civil War, Americans gave the nation their labor, their earnings, and their lives. All that might have become sacrifices necessary in the crisis of war, but of no lasting import in terms of fundamental change to the nation’s legal order. Yet wartime policies did carry broader, more permanent meanings, precisely because Republican Party leaders framed them as something more than temporary wartime measures. They justified the expansion of the federal authority in terms of the national government’s essential relationship to “the people.” The rhetoric did not accurately reflect legal change: it ignored the limited reach of federal power, the conflicts of interest those policies generated, and the inequalities they affirmed. It, nonetheless, fueled expectations that the federal government would do – and should do – more for all the people than it had in the past. Americans began looking to the federal government, not just state or local governments, to protect, support, and further their interests. And those expectations did fundamentally alter the imagined legal landscape, clearing the way for a new legal order that was national in scope and composed of citizens who were equal in theory, but unequal in practice.

#### THE WAR EFFORT, FEDERAL EXPANSION, AND THE AMERICAN PEOPLE

Political tensions erupted in armed conflict with astonishing speed in the spring of 1861. States in the Deep South – South Carolina,

<sup>2</sup> “A Bond of Union,” *Milwaukee Daily Sentinel*, 22 January 1863, issue 17, col. A, available at 19th Century U.S. Newspapers, [http://infotrac.galegroup.com.proxy.lib.duke.edu/itw/infomark/891/644/195714751WI6/purl=rc1\\_NCNP\\_0\\_GT3002871135&dyn=12!xrn\\_1\\_o\\_GT3002871135&hst\\_1?sw\\_aep=duke\\_perkins](http://infotrac.galegroup.com.proxy.lib.duke.edu/itw/infomark/891/644/195714751WI6/purl=rc1_NCNP_0_GT3002871135&dyn=12!xrn_1_o_GT3002871135&hst_1?sw_aep=duke_perkins).

Georgia, Alabama, Mississippi, Louisiana, Texas, and Florida – left the United States after Lincoln's election, certain that it meant the end of slavery. In February 1861, secessionists formed the Confederate States of America. Just weeks later, on April 12, 1861, the South Carolina militia fired on Fort Sumter. The fort's token crew surrendered the next day. In response, on April 15, Lincoln ordered the states to raise militia units, totaling seventy-five thousand troops, to stop what he identified as a rebellion against the United States. Anticipating this scenario, some state leaders had been readying their militias and immediately dispatched troops to Washington, D.C. Lincoln then declared a blockade of all Confederate ports on April 19. But it was the call for troops that proved particularly decisive, because it forced the remaining slave states to choose between the Confederacy and the United States. Within two months, the Upper South states of Virginia, North Carolina, Tennessee, and Arkansas seceded.

The efforts of Confederate sympathizers in Maryland, Kentucky, and Missouri might have succeeded as well, if not for the proximity of federal soldiers. In March, Missouri voted to remain in the United States by an overwhelming majority. Days after Lincoln's call for troops, however, the pro-Confederate governor ignored that vote and ordered the state militia to seize federal arsenals. The plot was foiled when federal troops chased the governor to the southwestern corner of the state and martial law was declared. In Maryland, rioters attacked a Pennsylvania regiment traveling through Baltimore on its way to Washington, D.C. In the riot's aftermath, Confederates destroyed telegraph lines and railroad bridges, exposing the vulnerability of the nation's capital by cutting it off from the rest of the United States. Lincoln sent in militia units, which quelled the rebellion and occupied Baltimore. In the wake of events in Missouri and Maryland, Lincoln called for about forty-two thousand additional volunteers to augment federal forces. Armed conflict followed quickly. In July, Union forces were routed at the First Battle of Bull Run. The United States and the Confederacy were at war.

As Americans responded with a surge of patriotism, Lincoln made creative use of his presidential powers. Insisting on the sovereignty and indissolubility of the United States, Lincoln identified secession as a hostile, aggressive act that necessitated an immediate response. Based on that legal view, Lincoln took the country to war, calling up

troops, declaring a naval blockade, and extending federal authority over the civilian population through martial law and the suspension of *habeas corpus*. He did all this, moreover, while Congress was out of session. Consistently elevating federal authority over that of state and local governments, Lincoln also set in motion a conceptual shift that fundamentally altered how Americans thought about the location of legal authority.

The use of martial law is a key example of the expansion of the federal government's legal authority. In the U.S. context, martial law was defined as temporary and limited, confined to a particular geographic area in immediate danger and lasting just as long as that threat persisted. Only in those circumstances could military authority replace civilian authorities – at least in theory. Throughout the Civil War, however, federal commanders deployed much more capacious interpretations of martial law. Its first controversial use came from John C. Fremont, who commanded federal troops in Missouri. After removing the state's secessionist governor, Fremont declared martial law in the entire state without obtaining Lincoln's permission. He then used those powers to abolish slavery and confiscate secessionists' property, also without Lincoln's permission.

It was not so much the declaration of martial law as what Fremont did with it that caused trouble. Fremont was an ambitious man with a taste for power. The Republican Party's first nominee for the presidency in 1856, he was disappointed not to receive the nod again in 1860. In 1864 he would challenge Lincoln's nomination, causing a split in the Republican Party. He was also a strong opponent of slavery, not just in the territories, but also in states where it already existed. No wonder that Lincoln did not take kindly to Fremont's efforts to supplant his authority and his political agenda, which promised to leave slavery alone so as to keep Border States in the Union. The showdown ended when Lincoln removed Fremont from command. While Fremont left, martial law stayed. Lincoln made that clear to Fremont's replacement, directing him to exercise martial law at his "discretion to secure the public safety and the authority of the United States."<sup>3</sup>

<sup>3</sup> Dennis K. Boman, *Lincoln and Citizens' Rights in Civil War Missouri: Balancing Freedom and Security* (Baton Rouge, LA, 2011).

While Lincoln did monitor military commanders' use of martial law to intervene in slavery, he allowed them considerable discretion in other areas. Federal commanders used martial law to silence political opposition in occupied territory. They also used martial law to keep the peace in places under their control. In some instances, military authorities ended up either overseeing or replacing civilian courts and adjudicating a wide range of offenses that usually fell within state or local jurisdiction. That situation obtained not just during the Civil War, but also afterward, during Reconstruction. In fact, the use of martial law was so broad and so varied that people then and historians later have had difficulty defining it.<sup>4</sup>

The suspension of *habeas corpus* paralleled the imposition of martial law. On April 27, 1861, as the uprising in Baltimore fed fears of Washington, D.C.'s strategic vulnerability, Lincoln authorized the suspension of *habeas corpus* on the railway corridor between the capitol city and Philadelphia. *Habeas corpus*, a legal action that allows detainees to challenge unlawful imprisonment, had a long history in English common law as a means of limiting the state's – particularly a monarch's – power. It was intended for instances in which people were imprisoned under questionable charges or without being charged at all. By filing writs of *habeas corpus*, prisoners forced state officials to name the legal charges, justify them, and proceed with the case, instead of detaining them indefinitely. *Habeas corpus* had acquired political resonance during the American Revolution as one of the fundamental English rights that had been denied the colonists. It was important enough to make it into the U.S. Constitution, which did not go so far as to affirm it as a positive right, but did prohibit Congress from denying it, except “in Cases of Rebellion or Invasion the public Safety may require it.” Lincoln invoked that constitutional language in suspending *habeas corpus* in Maryland. “You are engaged in repressing an insurrection against the laws of the United States,” Lincoln wrote in his order to Winfield Scott, the Commanding General of the Army of the United States. “At the point that resistance occurs,” Scott and any of his officers should suspend the writ. The order provoked

<sup>4</sup> Gregory P. Downs, “The Ends of War: Fighting the Civil War after Appomattox,” unpublished manuscript.

heated opposition because many thought only Congress had the power to suspend *habeas corpus* – and Congress was not in session when Lincoln issued his order, although he called legislators back in order to affirm it and his other war measures.<sup>5</sup>

Challenges to Lincoln's order arrived even before Congress could convene. Among the secessionist leaders who had been rounded up and jailed at Fort McHenry in Baltimore was John Merryman. Arrested on May 25, his lawyers petitioned the U.S. Circuit Court for a writ of *habeas corpus* on May 26. On May 27, Chief Justice Roger B. Taney, who heard the case in his capacity as a federal circuit court judge, granted the request, arguing that the power to suspend *habeas corpus* lay with Congress, not the president. While Taney's decision had support in the legal profession, it had no practical effect, because Lincoln flatly refused to support it. Cleaving to his view of secession, Lincoln maintained that the president could suspend *habeas corpus* to protect the Union. "It cannot be believed," Lincoln argued, that "the framers [of the Constitution] intended, that in every case, the danger should run its course, until Congress called together."<sup>6</sup> That was particularly true in this case, where the prisoners' actions could have prevented Congress from convening at all. Attorney General Edward Bates affirmed Lincoln's position, although he backed off Lincoln's broad rendering of the issue by casting it in terms of the president's ability to override writs of *habeas corpus* (rather than suspending the right altogether).<sup>7</sup>

Lincoln used established powers given to the federal government when he invoked martial law and suspended *habeas corpus*. In theory, he did not alter the nature of federal authority. In practice, however, his reliance on those powers extended the legal authority of the federal government into areas of law that had been controlled by states and localities. The first applications of such policies, in 1861, might be dismissed as temporary aberrations that

<sup>5</sup> Lincoln's Suspension of Habeas Corpus, 27 April 1861, in Christian G. Samito, ed., *Changes in Law and Society during the Civil War and Reconstruction: A Legal History Documentary Reader* (Carbondale, IL, 2009), p. 63.

<sup>6</sup> Lincoln's Message to Congress, 4 July 1861, in *ibid.*, p. 68.

<sup>7</sup> Opinion of Attorney General Bates on the Suspension of Habeas Corpus, 10 Op. Att'y Gen., 74 (July 5, 1861), in *ibid.*, pp. 72–9. Mark E. Neely, Jr., *The Fate of Liberty: Abraham Lincoln and Civil Liberties* (New York, 1991). Subsequent court decisions did not uphold Lincoln's interpretation.

addressed particularly volatile crises. In Missouri and Maryland, civil order had already deteriorated to the point of chaos. The secession of those states, moreover, could spell disaster for the rest of the United States. Yet the use of martial law in these and other occupied areas effectively substituted federal jurisdiction for state and local jurisdictions in civil and criminal law – a situation that continued in many areas during the Civil War and well into Reconstruction. And the use of federal powers did not stop there. During the war, Lincoln extended federal authority to people and places not in open rebellion against the United States. In 1862, one year after the onset of war, he began applying martial law to anyone who resisted the draft, discouraged others from enlisting, or was deemed disloyal to the Union war effort. He also suspended *habeas corpus* for all those arrested under that application of martial law. Historians remain divided on the implications for Americans' civil rights. The traditional interpretation is that Lincoln's administration went too far, using federal authority to muzzle individuals who were critical of the war, shut down dissident newspapers, and shape editorial policy. Other historians, however, argue that such a view is not grounded in the documentary evidence, but in an assumption, characteristic of early-twentieth-century scholarship, that Lincoln was a wartime dictator – a view largely abandoned in the historiography today. Even if Lincoln's policies did not limit individual rights to the extent one thought, it is nonetheless clear that the imposition of martial law and the suspension of *habeas corpus* significantly amplified federal authority, by bringing the federal government into legal matters that traditionally had been the responsibility of states and localities.<sup>8</sup>

Congress formally affirmed presidential purview over *habeas corpus* in 1863, despite vigorous political and judicial opposition. The Habeas Corpus Act extended not only presidential authority, but also the jurisdiction of the federal courts. Even the act's procedural safeguards for prisoners, which were meant to address

<sup>8</sup> Lincoln's Suspension of Habeas Corpus, 24 September 1862, in Samito, ed., *Changes in Law and Society*, p. 80. Habeas Corpus Act, 12 U.S. Statutes at Large 755 (1863). For the connection between politics and historiographical debates over the interpretation of martial law and the suspension of habeas corpus, see Neely, *The Fate of Liberty*, pp. 223–35.



concerns about civil rights and place limits on presidential authority, had the effect of institutionalizing the federal judiciary's expansion. Congress duplicated the pattern when, in the same year, it created the Court of Claims, which handled claims against the U.S. government that had formerly been settled in Congress. To be sure, this act addressed practical considerations. Claims on the federal government had multiplied exponentially as a result of the war, making it impossible for Congress to keep up. But here, again, Congress delegated its power in a way that institutionalized the extended jurisdiction of the federal courts.<sup>9</sup>

The Habeas Corpus Act highlighted a general change of direction, as Congressional Republicans followed down the path blazed by Lincoln and enhanced federal authority in ways that were, potentially, more substantive and more permanent. The Republican Party was inclined in this direction, given its vision of a nationally integrated economy and federal support for policies that opened up economic opportunities for a broad range of Americans. The exigencies of war forced the issue, exposing the gap between what was required of the government and what its current structure could support. To be sure, many Republicans went along with wartime policies because they saw them as temporary measures to address the immediate crisis, not because they favored centralization. Even so, wartime policies ultimately had that effect. They extended the federal government's reach in the lives of the American people in ways that would be impossible to negate or overturn at the end of the war.<sup>10</sup>

One of the first to struggle with the need for increased federal power was Treasury Secretary Salmon P. Chase, who found himself scrambling to pay for the conflict at the very beginning of the war. His solution, war bonds, was only the first of an ambitious plan to fund the war that, ultimately, ended up overhauling the nation's financial

<sup>9</sup> Habeas Corpus Act (1863). Harold M. Hyman, *A More Perfect Union: The Impact of the Civil War and Reconstruction on the Constitution* (New York, 1973), pp. 245–62. For the limitations, see Jonathan W. White, *Abraham Lincoln and Treason in the Civil War: The Trials of John Merryman* (Baton Rouge, LA, 2011).

<sup>10</sup> Richard Franklin Bensel, *Yankee Leviathan: The Origins of Central State Authority in American, 1859–1877* (New York, 1990).

structure and consolidating federal authority over it. Republican Party leaders rooted wartime changes in the financial system, at least rhetorically, in the labor power of the American people. The 1861 issue of treasury notes – or war bonds – was one of many such sales, by which the American people loaned their savings to the government to fund the war effort. To sell bonds, Chase relied on Philadelphia banker Jay Cooke, who set up a nationwide system to sell them on commission. Cooke advertised in local papers, educating the public on the terms, advantages, and availability of bonds. He also opened offices all over the country with locations and hours to accommodate working people. He even targeted women as customers. By the end of the war, the American people had funded a national debt of more than 2.5 billion dollars.<sup>11</sup>

But bonds, alone, were not sufficient to meet the war's expenses. To augment funding streams, Chase proposed the issue of paper currency – greenbacks – unredeemable in specie. Many in Congress balked, including Republicans who generally supported the Lincoln administration. The notion of currency – any currency – issued by the federal government was extremely controversial. In practical terms, the issuance of paper currency represented a significant increase in federal authority and a significant departure from the current system. At the outset of the Civil War, the federal government had virtually no institutional involvement in the nation's financial system. It did not issue its own currency or influence monetary issues through a national bank, which had been demolished with the demise of the Second National Bank in 1836. The existing financial system was thoroughly decentralized, operating through state-chartered banks that issued their own notes and decided what value to assign to other notes they received. A new federal currency meant the insinuation of federal authority into this system, an idea that many found problematic.

The whole concept of paper currency unredeemable in specie, however, also generated moral opposition that went well beyond practical discussions of government involvement in the financial system and that is difficult to grasp today. Such notes, opponents

<sup>11</sup> Heather Cox Richardson, *The Greatest Nation of the Earth: Republican Economic Policies During the Civil War* (Cambridge, MA, 1997); debt figure from p. 63.

argued, had absolutely no value. Flimsy and ephemeral, they were nothing more than an unfulfilled contract, the promise of future payment that, without backing, was entirely empty. Paper notes had to represent something of actual value. They had to be redeemable in something real. If not, then paper notes were just so much worthless paper. As such, they carried the entire country into dangerous economic waters. Printing notes was to make something of nothing, encouraging extravagance, indolence, and licentiousness. While an economy floated on paper might be sustainable in the short run, the bubble would ultimately burst and destroy the value of hardworking people's property in the process. In that sense, paper currency could result in chaos.

Proponents at the time countered with the logic of nineteenth-century political economy, which emphasized labor as the source of all value and, like Adam Smith, connected a nation's economic power to the productivity of its people. Paper currency, they argued, would reduce the nation's reliance on bankers and place its financial future in the hands of its people, who would always be able to create value by working. Maine Senator William Pitt Fessenden, who helped shepherd wartime financial measures through Congress, articulated that connection clearly. As he maintained, the best capital America could have was the labor of its people: "the power and the will to work; and the disposition, the desire, the anxiety, the policy to make that labor more productive by educating it; under which policy of educating labor and thus increasing the power of production, the country has grown up with such unexampled, unparalleled rapidity." The argument capitalized on the unpopularity of banks, the reputations of which had plummeted to new lows because of their well-publicized reluctance to fund the war. As one senator from Ohio put it, "We are all in favor of the citizens of the Republic becoming its *creditors*, rather than the *debtors* of the bankers and capitalists." But this conception was difficult, demanding that Americans make a leap of faith into an unfamiliar and uncomfortable level of abstraction.<sup>12</sup>

The problem, though, was not just the issuance of greenbacks. For those greenbacks to be a truly national currency, they had to

<sup>12</sup> Fessenden quote from *ibid.*, pp. 79–80; Ohio Senator quotation from p. 74.

be legal tender, meaning that the federal government had to compel their acceptance for all debts. Unless that was the case, greenbacks were only one currency among many – one that, like any other currency, could be discounted or refused by the banks. Given the varied circumstances of different banks and the power that individual state banks held, the value of commonly denominated state notes varied widely. A ten-dollar note issued by one state bank might be valued at only five dollars in another state. The value of notes from one state bank might sink so low that other banks would refuse to accept them at all. To complicate matters, counterfeit notes flooded the system, making it even more difficult to determine the value of any given bank note. When greenbacks, which were not backed by gold, entered this system, their value began to fluctuate as well.<sup>13</sup>

That situation is captured in a short satirical article critical of greenbacks. It begins with a well-meaning passerby who sees that several young boys are using a treasury note to make a kite. The connection between the kite and paper currency would have been obvious to nineteenth-century readers. Kiting was a well-known method of fraud, in which a series of notes were floated to create the appearance of more credit than was actually the case. If the delicate balancing act collapsed, those who accepted the notes found that they were worthless. To the opponents of unredeemable paper currency, greenbacks were akin to kiting: they were, essentially, worthless notes floated by the federal government to make it seem like there were resources where there were none. Trying to discover the owner of the note, the passerby took possession of it and escorted the boys to their home. There he found that a woman associated with the household had found the note in the street and, not knowing what it was, “picked it up because there were pretty pictures upon it.” Given that those “pretty pictures” were Republican officials, the satire was hard to miss. Eventually, the bond was returned to its owner, bringing it back down to earth, so to speak. Besides its political critique, this story underscores both the instability of the country’s currency as well as its scarcity. The humor depended on the fact that the value of bank notes fluctuated

<sup>13</sup> Stephen Mihm, *A Nation of Counterfeiters: Capitalists, Con Men, and the Making of the United States* (Cambridge, MA, 2007).

so widely. In fact, it was difficult to determine the value of any given note in the nineteenth century. It was entirely possible that a note's best use might be as material for making actual kites.<sup>14</sup>

The kite also describes the federal government's financial position without a national currency that was also legal tender. It would be tossed about by prevailing economic winds as long as it did not control its currency and, therefore, the value of its debt. Banks could either discount greenbacks to the point where they were no longer viable or refuse to accept them altogether, which bankers threatened to do in retaliation for Chase's efforts to exert more control over the nation's finances. Congress addressed those concerns in 1862 with the Legal Tender Act, which required that greenbacks be accepted for all debts, private and public. That requirement fundamentally transformed the federal government's relationship to the financial system. It essentially restructured all existing debts, substituting greenbacks (that were not redeemable in gold) for payment of specie. All current and future economic transactions were tied to the circumstances of the United States – or, as many Republicans would have expressed it, the labor of its people.<sup>15</sup>

For opponents, the Legal Tender Act was tantamount to theft. It allowed debts that had been contracted in specie to be paid back in fluctuating paper currency of lesser value. Even wartime proponents of paper currency found that taint of immorality hard to shake. Most notable was the about-face of Salmon Chase. In 1870, when serving as Chief Justice of the U.S. Supreme Court, Chase wrote the majority opinion in *Hepburn v. Griswold*, which struck down the wartime Legal Tender Acts that he had pushed to pass. At issue was whether debts contracted in specie could be paid in paper notes. Ultimately, Chase thought not. His opinion brimmed with the kind of moralistic language that opponents of his financial measures had so recently used against him. “It certainly needs no argument,” he wrote, “to prove that an act, compelling acceptance

<sup>14</sup> “How a Five-Twenty Bond Escaped a Rise,” 1 August 1864, *Boston Daily Advertiser*, issue 26, col. C., available at 19th Century U.S. Newspapers, [http://infotrac.gale-group.com.proxy.lib.duke.edu/itw/infomark/251/323/195719032w16/purl=rc1\\_NCNP\\_o\\_GT3006394100&dyn=9!xrn\\_3\\_o\\_GT3006394100&chst\\_1?sw\\_aep=duke\\_perkins](http://infotrac.gale-group.com.proxy.lib.duke.edu/itw/infomark/251/323/195719032w16/purl=rc1_NCNP_o_GT3006394100&dyn=9!xrn_3_o_GT3006394100&chst_1?sw_aep=duke_perkins).

<sup>15</sup> Legal Tender Act, 12 U.S. Statutes at Large 345 (1862).

in satisfaction of any other than stipulated payment, alters arbitrarily the terms of the contract and impairs its obligation.... Nor does it need argument to prove that the practical operation of such an act is contrary to justice and equity." Nothing could justify "the long train of evils which flow from the use of irredeemable paper money."<sup>16</sup>

In 1862, though, Chase followed the Legal Tender Act with a series of measures that solidified federal control of the currency. New legislation instituted a national banking system, creating incentives for state banks to join and taking away their power over the currency by taxing state bank notes out of existence. The centralization of financial policy proved complicated in practice and generated additional revisions over the course of the Civil War. Despite the problems, however, Chase's efforts legitimated the concept that federal involvement in the financial system constituted a necessary aspect of the nation's interests. Even his decision in 1870 in *Hepburn v. Griswold*, which was reversed the following year, could not dismantle what was put in place during the war years.<sup>17</sup>

Greenbacks and treasury notes brought the federal government into Americans' lives in immediate and intimate ways. They relieved a long-standing need for currency that reached back to the colonial period and that had made life extremely difficult for small producers and working people who had trouble obtaining notes of credit that wealthier people used as currency. Greenbacks quickly became a common – if not the most common – medium of exchange, because they were plentiful and dependable, despite their fluctuating value. Their practicality also imbued them with symbolic meaning. In fact, greenbacks and treasury notes literally brought the federal government directly into Americans' daily lives. When people pulled them out of their pocketbooks, they saw the United States – literally, engraved in large letters and personified in the solemn figures of federal officials. People, moreover, pulled them out

<sup>16</sup> *Hepburn v. Griswold*, 75 U.S. 603 (1870); quotes from 609 and 621. The opinion was overturned in the next term, *Legal Tender Cases*, 79 U.S. 457 (1871).

<sup>17</sup> National Currency Act (National Bank Act), 12 U.S. Statutes at Large 665 (1863).

often, with the faith that others would recognize and accept them. They were not disappointed, a marked contrast from the situation with other bank notes. With every transaction, every day, all across the country, Americans learned to associate the economy with the federal government.<sup>18</sup>

The federal government also raised revenue through new taxes. Congress laid direct taxes on a range of manufactured goods and passed an income tax in 1862. The income tax proved surprisingly popular, because it recognized sources of wealth that had become increasingly important as the economy developed in the nineteenth century. Until the income tax, taxes on land and goods provided the primary sources of revenue at the local, state, and national levels. It was a situation that placed the burden of taxation on farmers and small business owners, not those who were making fortunes in the form of salaries and other income in new segments of the economy. Those people also stood to gain from the war, given the demand for goods and services. So it only seemed fair that they, too, should contribute to the war effort. The income tax's graduated scale contributed to that sense of fairness, because only top earners ended up paying.<sup>19</sup>

The idea of the income tax also bolstered people's confidence in the nation. The American people could support the war effort without depending on foreign powers, self-interested banks, or other schemes that compromised their national independence. An article from the San Francisco *Daily Evening Bulletin* expresses the sentiment. Mixing an explanation of the practicalities of the tax with its ideals, and conveniently ignoring the fact that most of its readers would never pay the tax, the newspaper concluded that "every man may sit down at once and calculate to-night how much he must pay" for "the preservation of our liberties and our Union without which we can expect no permanent peace." "Let it be sacredly laid aside, as an offering on the altar of our country. It would be shameful to haggle about it, or to try to swear it down, or to postpone

<sup>18</sup> For the popularity of greenbacks, see Gretchen Ritter, *Goldbugs and Greenbacks: The Antimonopoly Tradition and the Politics of Finance in America* (New York, 1997).

<sup>19</sup> Revenue Act, 12 U.S. Statutes at Large, 432 (1862).

payment.” In fact, the tax was so popular that there were protests when it was ended in 1873.<sup>20</sup>

Changes to the financial system unfolded at a certain remove from the American people, despite their popularity and the effect of tying them more closely to the federal government. Military mobilization, by contrast, required their physical participation. By the end of the Civil War, between two million and two and a half million men had served in the Union Army. The technology and tactics of the Civil War took all those who served to new places of horror. Military service also strengthened many soldiers’ attachments to the nation. The men who made up the Union Army might disagree as to the substance of national values, but they all developed a common sense of themselves as American citizens through their experience as soldiers.<sup>21</sup>

The vast majority of the Union’s troops were volunteers. Their numbers, however, ebbed and flowed. To keep recruits coming, the Union Army employed the carrot and the stick. The carrot took the form of bounties. By some estimates, bounties totaled \$750 million – as much paid in regular salaries to the troops. The stick was conscription. The first effort came in 1862, when Congress authorized states to conscript troops to fill their militia quotas. This initial conscription effort ended in failure and had little impact on the lives of most Americans. It was not until 1863 that Congress created a national draft that applied to all men aged twenty-five to forty. Even then, the system had limited reach, particularly in comparison to Confederate policies. It conscripted only one soldier per family and offered a range of exemptions for health and family reasons. Some historians have described the system as a tax, because it exempted anyone who paid a \$300 fee to the government (until the summer

<sup>20</sup> Quote from the San Francisco *Daily Evening Bulletin*, 12 January 1862, issue 88, col. B, available at 19th Century U.S. Newspapers, [http://infotrac.galegroup.com.proxy.lib.duke.edu/itw/infomark/89/508/195722812w16/purl=rc1\\_NCNP\\_o\\_GT3000181676&dyn=4!xrn\\_1\\_o\\_GT3000181676&chst\\_1?w\\_aep=duke\\_perkins](http://infotrac.galegroup.com.proxy.lib.duke.edu/itw/infomark/89/508/195722812w16/purl=rc1_NCNP_o_GT3000181676&dyn=4!xrn_1_o_GT3000181676&chst_1?w_aep=duke_perkins). Richardson, *The Greatest Nation of the Earth*, pp. 115–38.

<sup>21</sup> Christian G. Samito, *Becoming American under Fire: Irish Americans, African Americans, and the Politics of Citizenship during the Civil War Era* (Ithaca, NY, 2009); Chandra Manning, *What This Cruel War Was Over: Soldiers, Slavery, and the Civil War* (New York, 2007).



of 1864) or who hired a substitute. Ultimately, African American volunteers, not draftees, met the demand for troops. Allowed into combat positions in 1863, black recruits from the United States and the Confederacy alleviated the need for more restrictive conscription policies. Only 2 percent of United States soldiers were draftees; 6 percent were paid substitutes.<sup>22</sup>

The draft, nonetheless, drew fire, because its exemptions were perceived as laying the burdens of service unevenly, demanding more of some than it did of others. While those with means could avoid service, poor people could not. Opposition to the draft used the rhetoric of slavery, a particularly powerful metaphor given the issues at stake in the Civil War. How could the U.S. government turn its white citizens into slaves to wage a war to free African Americans from slavery? Resentment exploded in the 1863 New York City draft riot, in which angry white mobs vented their ire on the city's African Americans: unable to punish the federal government, they destroyed the lives and property of those whom they identified as the beneficiaries of the war effort.<sup>23</sup>

#### ECONOMIC INDEPENDENCE AND THE LEGAL ORDER

All these wartime measures fit well within the Republican Party's larger political agenda, which emphasized labor as the source of all value and advocated policies that made labor more productive and more profitable. Republicans did not envision a change in the existing economic and legal order so much as an extension of it to the general population. Lincoln described it as "the right to rise": "When one starts poor, as most do in the race of life, free society is such that he knows he can better his condition; he knows that there is no fixed condition of labor, for his whole life." That goal was also evident in the Republican Party's slogan, "free soil, free labor, free men," which evoked a polity based on independent producers along the lines of the Jeffersonian ideal, although updated

<sup>22</sup> Conscription Act, 12 U.S. Statutes at Large 731 (1863). The figure on bounties is from Bensel, *Yankee Leviathan*, p. 138n82.

<sup>23</sup> Iver Bernstein, *The New York City Draft Riots: Their Significance for American Society and Politics in the Age of the Civil War* (New York, 1990).

to embrace the commercial expansion of the first half of the nineteenth century. In the Republican ideal, independent producers supplied their needs by selling goods to the market, instead of producing what they needed, as Jefferson envisioned. Yet Republicans still cleaved to the notion that free men owned the means of production (land, the tools of their trade, or – increasingly – their manufacturing enterprises), which allowed them to direct their own labor and to maintain their households. The economic independence of male producers grounded the legal order, because it entitled men to rights: access to the legal system through full civil rights as well as the ability to alter and create law through political rights. Economic independence thus secured the entire nation's future by ensuring a responsible, engaged citizenry, whose members were equal before the law.<sup>24</sup>

Republicans believed that government acted in the best interests of everyone by keeping economic opportunities open. As long as the system remained open, everyone's interests were of a piece: the interests of capital and labor aligned; so did the interests of business and government. Young men might labor for someone else for a time, but that would be a temporary stop on the way up the economic ladder. Some men might end up better off than others, but that was a result of their hard work. Their good fortune, moreover, redounded to the benefit of everyone else, by creating more opportunities for others to apply their labor. By promoting economic opportunities of all kinds, government encouraged the extension of this system, one that fostered a rough economic equality and a harmony of interests, rather than vast inequalities and endemic conflict.

Despite the rhetorical emphasis on equality, inequality was integral to the Republican Party's political vision. By the 1850s, most adult white men could vote and claim the full array of civil rights on the basis of their age, race, and sex. But for others, age, race, and sex resulted in inequalities. The legal status of male, independent producers, for instance, assumed the subordination of all domestic dependents – wives, children, and slaves – to a

<sup>24</sup> Quote from John G. Nicolay and John Hay eds., *Abraham Lincoln: Complete Works, Comprising His Speeches, State Papers, and Miscellaneous Writings* (New York, 1920), vol. 1, p. 625. Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York, 1970).

male head of household and the denial of rights to them.<sup>25</sup> Free African Americans were included in theory but not in practice. The free black population had increased in the decades following the Revolution, with abolition in northern states, the prohibition of slavery in many western territories, and individual emancipations in the South. Yet state and local governments had responded by replacing the disabilities of slavery with restrictions framed in terms of race.<sup>26</sup>

Even for free white men, the ideal of economic independence and legal equality never fully described reality. For those without access to capital, economic independence was difficult to achieve. Capitalist economic change in the antebellum period only accentuated that situation. At the same time, state legislatures uncoupled free white men's claims to rights from their ownership of productive property, eroding the long-standing association between economic and legal independence. While such changes protected the legal status of free white men who did not own productive property, they also affirmed permanent structural inequalities that made it impossible for all free white men to achieve the kind of independence promoted by the Republican Party. The rights enjoyed by free white men, moreover, did not always exempt them from various legal restrictions that applied to anyone without visible means of support and those who performed menial labor.<sup>27</sup>

The distance between the ideal and the reality troubled some in the Republican Party. That was particularly true when it came to the status of enslaved and free African Americans – which is the subject of Chapter 3. But the growing distance between those who benefited directly from commercial development and those who

<sup>25</sup> Stephanie McCurry, *Masters of Small Worlds: Yeoman Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Low Country* (New York, 1995); Jeanne Boydston, *Home and Work: Housework, Wages, and the Ideology of Labor in the Early Republic* (New York, 1990).

<sup>26</sup> Leslie M. Harris, *In the Shadow of Slavery: African Americans in New York City, 1626–1863* (Chicago, 2003); Joanne Pope Melish, *Disowning Slavery: Gradual Emancipation and “Race” in New England, 1780–1860* (Ithaca, NY, 1998). Also see Barbara J. Fields, “Slavery, Race and Ideology in the United States of America,” *New Left Review* no. 181 (1990): 95–118.

<sup>27</sup> Christopher L. Tomlins, *Law, Labor, and Ideology in the Early American Republic* (New York, 1993).

did not disturb some Republicans as well.<sup>28</sup> In economic matters, however, the party focused on using federal power to create conditions favorable to independent producers during the Civil War. The goal was to open opportunities so that anyone with ambition could take advantage of them – anyone, that is, who could make contracts and own property in their own names. More to the point, Republican policies assumed a polity made up of individuals who fit the liberal ideal – self-interested and profit maximizing, with universal traits that made them essentially interchangeable.

Wartime policies magnified those tendencies, as the federal government embraced a more individualized vision of private property. Those conceptions are exemplified in the Confiscation Acts, best known for establishing the freedom of escaped slaves. When it came to other forms of property, however, the Confiscation Acts strengthened individuals' property rights, limiting the federal government's ability to redistribute wealth or regulate economic activity in the name of the public good.<sup>29</sup> That kind of individualism was the party's greatest strength and its greatest weakness. It fueled the party's most idealistic policies, particularly its advocacy of African Americans' civil and political rights. But it also blinded many Republican leaders to structural inequalities that prevented some individuals from making use of the opportunities that were, in theory, open to all. That blind spot ultimately would transform the implications of the Republican economic agenda: instead of creating a republic of independent producers, Republicans lay the foundation for an industrial order. Indeed, the Civil War and Republican policies accentuated the economic problems of working people.<sup>30</sup>

Secession gave Republicans a decisive majority in Congress and the opportunity to act on their ideals, which they did, even as the war raged around them. They turned first to agriculture, which

<sup>28</sup> For one such Republican, see Michael A. Ross, *Justice of Shattered Dreams: Samuel Miller Freeman and the Supreme Court during the Civil War Era* (Baton Rouge, LA, 2003a).

<sup>29</sup> Daniel W. Hamilton, *The Limits of Sovereignty: Property Confiscation in the Union and the Confederacy during the Civil War* (Chicago, 2007), particularly pp. 20–81; David Syrett, *The Civil War Confiscation Acts: Failing to Reconstruct the South* (New York, 2005).

<sup>30</sup> Philip Shaw Paludan, *A People's Contest: The Union and the Civil War, 1861–1865* (Lawrence, KS, 1996).

they identified as the anchor of the economy. More than any other occupation, farmers personified the ideal of the independent producer because they could produce what they needed, rather than purchasing it from others. Contemporary economic theory also characterized agriculture as foundational to the economy in ways that manufacturing was not, because agriculture created value from the application of labor to the land, instead of just refashioning existing resources into different forms. These assumptions found expression in the “free soil” component of the Republican Party’s famous campaign slogan. Free soil referred to agricultural lands worked by free labor, not enslaved labor. It also referred to western lands that would be made available at little or no cost to those willing to work them.

Before the Civil War, Democrats from slave states had led the opposition to measures that made western lands available to settlement on favorable terms because they feared an increase in the number of free states. After secession, Democrats and eastern Republicans still had difficulty with the idea of giving land away instead of selling it, particularly given the desperate need for funds to pay for the war effort. But supporters carried the day by arguing that the nation’s future lay in its ability to encourage its people’s labor. The current system, they argued, stimulated speculation, which produced “land monopoly,” kept land out of the hands of hardworking people, and undercut the economic growth of the nation as a whole. Land monopoly, railed a senator from Kansas, “entered like an iron into the soul of the laborer” and “deadened his hopes and extinguished his aspirations to rise in the scale of society.”<sup>31</sup> Opening up lands for settlement at no cost would actually add to the federal government’s coffers in the long run by increasing the nation’s wealth. The result was the Homestead Act of 1862, which opened up new areas in the West for settlement and made land available to individuals who homesteaded for five years. The act also prohibited slavery in the new territories. Applicants had only to be a head of household or twenty-one years old, meaning that lands also were open to immigrants, African Americans, or unmarried women. To secure farmers’ success, Congressional

<sup>31</sup> Quote from Richardson, *The Greatest Nation of the Earth*, p. 142.

Republicans provided for the development and dissemination of new agricultural methods through the Land-Grant College Act and a new federal agency, the Department of Agriculture.<sup>32</sup>

Republicans then sought to tie all these individual farms together into a national network with the transcontinental railroad. This vision – a truly national market created through transportation – reached back to the early nineteenth century. It had been central to the Whig Party's platform, and members of that party had worked to build the necessary infrastructure at the local, state, and national levels. The centerpiece was a railroad that would enable the economic development of the nation's midsection and tie the coasts together into one vast market. Detractors had argued that state governments and, particularly, the national government should not be involved in the economy to such a degree. The escalating politics of sectional difference quashed the idea completely, particularly at the national level. Among other things, sectionalism made it impossible to settle on a route. But even if that problem could have been resolved, supporters of slavery increasingly saw any assertion of federal authority as a threat to the institution.

With southern states out of the picture, Congress acted quickly, passing the 1862 Pacific Railroad Act, which supported construction of a transcontinental railroad by giving away millions of acres of land and millions of dollars in subsidies. Construction moved from two directions. The Pacific Railroad began at Council Bluffs, Iowa, at the southwestern corner of the state. From there, it traveled west across the northern part of Nebraska through Omaha, Colorado Territory, and Wyoming Territory, ending at Promontory Point, Utah, where it joined the Central Pacific Railroad. Starting in Sacramento California, the Central Pacific went east over the Sierra Nevada Mountains through Nevada and into Utah. Completed in 1869, it was a stunning technological accomplishment.<sup>33</sup>

The railroad also signaled the Republican Party's territorial vision of the nation. Like the tracks of the railroad, the jurisdictional boundaries of the United States would extend, unimpeded,

<sup>32</sup> Homestead Act, 12 U.S. Statutes at Large 392 (1862). Coy F. Cox, *Justin Smith Morrill: Father of the Land-Grant Colleges* (East Lansing, MI, 1999).

<sup>33</sup> Richard White, *Railroaded: The Transcontinentals and the Making of Modern America* (New York, 2011).

east to west, across the continent. The new territories acquired in the Southwest and Pacific Northwest as well as areas in the continent's interior would become states, full members of the nation, with governing structures that mirrored those of existing states. The party's territorial ambitions ignored the presence of Indians, who claimed lands on the continent as their own. The conflict between Native people and the United States reached back to the Treaty of Paris, which had settled territorial claims following the Revolutionary War and in which Indians were not included. The transcontinental railroad only heightened existing tensions. Its tracks traversed territories occupied by various Indian tribes, who did not think the land was the federal government's to use or give away. More ominous to western Indian tribes was the implication that the federal government intended to bring all territory on the continent under its control. The result was violence. On the Civil War's far western front, the U.S. military engaged in a series of bloody efforts to subdue Indians and remove them from their lands. That part of the war, which was as much about the Republican Party's vision of national unity as the conflict to bring Confederate states back in the United States, stretched across the remaining decades of the nineteenth century.<sup>34</sup>

Although focused on agriculture, Republicans did not ignore manufacturing. Congressional Republicans passed protective tariffs intended to support the growth of industry. The war's insatiable appetite for materiel fueled manufacturing. Small firms expanded into large enterprises as they rushed to provide guns, ammunition, and other supplies. Wartime demand for goods also encouraged innovation that resulted in new products in related fields, such as agricultural implements, steel, textiles, and food processing.<sup>35</sup>

Republican economic policies were of piece, facilitating exchanges across the nation's vast expanses. At their most idealistic, Republicans hoped that their programs would enhance individual

<sup>34</sup> Alvin M. Josephy, *The Civil War in the American West* (New York, 1991); Heather Cox Richardson, *West from Appomattox: The Reconstruction of America after the Civil War* (New Haven, CT, 2007); Elliott West, *The Last Indian War: The Nez Perce Story* (New York, 2009).

<sup>35</sup> Alfred D. Chandler, *The Visible Hand: The Managerial Revolution in American Business* (Cambridge, MA, 1977); Harold C. Livesay, *Andrew Carnegie and the Rise of Big Business* (Boston, 1975).

rights, particularly those of free white male household heads. Yet, with the exception of western settlers, few ordinary farmers, artisans, and laborers benefited directly. Republican initiatives instead fueled a competitive, national economy that swallowed up small, independent producers. Railroad corporations gained most directly, absorbing millions of acres of public land and other federal incentives. The businesses that supplied the U.S. military or took advantage of wartime economic opportunities could not be the kind of small, independent producers posited in the Republican Party's ideal. The Civil War even transformed farmers, the most successful of whom presided over large, mechanized enterprises, sold most of what they produced, and bought most of what they consumed.<sup>36</sup>

The Republican Party's ideology made it difficult to acknowledge the increasing distance between the interests of industrialists and the rest of the population. Republicans assumed not only a rough equality among individuals, but also a harmony of interests among them and between their interests and those of the government. In the spring of 1861, when the banks refused to back government debt, Treasury Secretary Salmon P. Chase was genuinely dumbfounded, so certain was he that the bankers' interests aligned with those of the government and the people. That same sensibility marked the federal government's handling of various economic ventures, from the transcontinental railroad to military contracts. Even when facts on the ground suggested caution, officials did not anticipate the need for oversight, because they were confident that contractors and the government shared the same priorities. The businessmen working with the government, however, saw new opportunities to make a profit. Chase's disillusionment with the banks, for instance, opened up an opportunity for Jay Cooke, who made a fortune selling government bonds for commission. Many of the industrialists identified as robber barons in the late nineteenth century got their start in wartime government contracts, including Cornelius Vanderbilt, Andrew Carnegie, Leland Stanford, and Collis Huntington.

<sup>36</sup> Paludan, *A People's Contest*, emphasizes the connection between the wartime policies and capitalist transformation, arguing that the two are difficult to disentangle.



For most Americans, the economic future was one of wage labor, not independent production, despite wartime measures that opened up vast new areas of farmland. That created unforeseen contradictions, because the Republican legal order still envisioned a nation of independent producers, not of wage laborers. Wage laborers were included among the “free men” of Republican rhetoric, in the sense that they owned their own labor, could sell it at will, and could enjoy whatever they earned in doing so. If they were adult, white, and male, they also could claim full civil and political rights, at least in theory. But in practice, they were legally subordinate to their employers, who enjoyed rights as independent producers that wage workers did not. Property rights gave employers extensive authority over their factories. Those rights extended over laborers while they were on the job, where they could do little to alter working conditions on property that was not their own. In this context, the legal equality that wage workers theoretically enjoyed as citizens could actually compound their subordination. In law, Vanderbilt and his employees were contractual equals, even though they were clearly unequal in practice. As a property owner, moreover, Vanderbilt could do whatever he wished with his property, dictating the terms of labor to his employees, who had no recourse because of Vanderbilt’s property rights.

The reluctance of many Republicans to expand federal authority further beyond its traditional bounds accentuated these problems. They were comfortable using federal power to promote economic growth, the principle of equality before the law, and the Union. But they were unwilling to use it to address the inequalities that resulted in practice, whether economic or legal. Doing so, they argued, pushed centralization too far, and threatened individual liberty.

That stance shaped popular perceptions of the federal government during the Civil War. Wartime rhetoric promised much more than the Republican Party actually delivered. During the war, the party encouraged the American people to see themselves as the center of the nation, and many started to think this way. Americans gave freely and generously during the Civil War, eagerly supporting the nation and proud to be a part of it. Yet encounters with the federal government were not always positive, even for those who supported the war effort. Despite Republican intentions to distribute

existing economic opportunities and legal rights more broadly, most ordinary Americans actually experienced federal authority in terms of what the government asked of them: financial support and military service. The federal government did not give – it took. Many Americans, moreover, found it difficult to ignore growing inequalities that they saw all around them every day. To make their national vision work, Republican officials needed to close that gap between rhetoric and reality, to make the government reach the people. It was a tall order.