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## Secession and Slavery

by Scott McPherson

An interesting commentary, "[Lincoln, Secession, and Slavery](#)" by Tibor Machan, published by the Cato Institute on June 1, 2002, was recently brought to my attention. I should say at the outset that I have long been a fan of Machan, and have the utmost respect for his positions. I just think he got it way wrong here.

Machan writes that the secession of the Southern states was ultimately an illegitimate act because "there is that undeniable evil of slavery." Despite Lincoln's own racist views, he was allegedly acting in the interests of the slaves, who were "unwilling third parties" to the secession, and therefore was "a good American" for destroying the Confederacy and slavery.

According to Machan,

[W]hen one considers that the citizens of the union who intended to go their own way were, in effect, kidnapping millions of people — most of whom would rather have stayed with the union that held out some hope for their eventual liberation — the idea of secession no longer seems so innocent. And regardless of Lincoln's motives — however tyrannical his aspirations or ambitious — when slavery is factored in, it is doubtful that one can justify secession by the southern states.

So we can safely ignore Lincoln's motives — "however tyrannical" [!] — because the motives of the "Southern rebels" were allegedly worse?

"[S]omething had to be done about [slavery]," writes Machan. "And to ask the slaves to wait until the rest of the people slowly undertook to change the Constitution seems obscene." Machan acknowledges that the offending action was legal under the Constitution, but advocates and cheers an illegal and aggressive policy to rectify it because the normal, slow processes of constitutional change "seem obscene."

Doesn't that sound familiar?

In a habeas corpus proceeding in 1771, Lord Mansfield, Chief Justice of the King's Bench, ordered the release of a slave named James Sommersett who had accompanied his master on a

trip to England. Mansfield reasoned that while slavery was legal elsewhere, England had no law “so odious.” Nevertheless, it would be almost 40 more years before the slave trade was abolished in the rest of the British Empire, and slavery was not outlawed altogether until 1833.

Great Britain’s slaves were very much expected to “wait ... to change the Constitution.” Yet, slow as it came, change did come.

Following the wisdom of the Magna Carta reissued by King Henry III in 1225, which promised the benefits of legal custom to promote freedom, serfdom was eroded and eventually abolished completely over the course of 600 years by English courts.

On this foundation, Lord Mansfield took the same approach to slavery, stating that “Whatever inconveniences, therefore, may follow from the decision, I cannot say [slavery] is allowed or approved by the law of England; and, therefore, the black must be discharged.” With this ruling James Sommersett walked away a free man, as did other slaves held in bondage in England at that time. But, as stated above, this was only the beginning of the change. It would take sixty-two more years for England’s domains to be completely rid of the scourge.

The American colonies, and later the U.S. states, were following the same path. Throughout the 18th century attempts were made by colonial legislatures to limit slavery and the slave trade. The obstruction of these laws by the King and Parliament were among the grievances of the colonists.

After the Revolution, the Northern states gradually began abolishing slavery. In the South, where slavery was much more entrenched, the process was moving more slowly. But it was moving. Major reforms to slavery were debated in the Virginia legislature in 1830. More important, throughout the first half of the 19th century Southern courts were chipping away at the evil institution — just as English courts and legislators had chipped away at villeinage and slavery. Moreover, by allowing the Southern states to secede, the United States could have accelerated the demise of slavery by providing a haven for runaway slaves.

However, this isn’t good enough for Machan. To ask slaves to wait would have been “obscene.” So the obscenity of hundreds of thousands of dead Americans — whites and blacks alike — as well as the total undermining of our constitutional Republic and the horrible destruction of war is somehow justified.

According to Machan, the Southern states could not legitimately secede because they were taking along “hostages” who would have preferred to stay in a “union that held out some hope for their eventual liberation.” Yet it is clear that “eventual liberation” was already on its way.

Machan has backed himself into a difficult corner here. If liberation was coming too slowly, then what about the those slaves who would have preferred the presumably quicker liberation that was coming under the British government but who were nonetheless swept away as hostages to the American Revolution? If, as Machan states, “secession cannot be justified if it is combined with the evil of imposing the act on unwilling third parties,” then wouldn’t Lord

Mansfield's ruling, coming 5 years before the Declaration of Independence, mean that American independence in 1776 could not be justified either?

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