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JAMES OAKES
LINCOLN'S DILEMMA
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James Oakes
11-18-2020
Interviewed by Jackie Olive & Barak Goodman
Total Running Time: 01:48:52

START TC: 00:00:00:00

CREW MEMBER:

James Oakes interview. Take one. Marker. And color chart.

CREW MEMBER:

I got you.

CREW MEMBER:

Thank you.

Slavery in the U.S. economy

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JAMES OAKES:

By the 1840s, the slave economy is driven largely by the cotton economy. And the cotton economy has been... The amount of cotton being grown in the Southern states has been doubling every single decade since 1800 and, going into 1850s, the 1850s are going to be the largest single decade of growth for the cotton economy in the history of the South, really. And so it's enormously important.

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JAMES OAKES:

It constitutes well over half of all the exports that the United States sends overseas and the slave holders themselves are disproportionately represented among the richest Americans. The value of slaves by the 1850s is more than the value of all the railroads industries and like produced in the United States. So, it is enormously significant. It is, by the 1850s, the largest, wealthiest, slave society on Earth. It is quite possibly the largest wealthiest slave societies in the history of the world.

JAMES OAKES:

It is absolutely central to the slave system of the South, that the slaves were movable property, in legal terms, commodities. The slaveholders wealth was based more on their ownership of slaves, as property, as assets, then on the land that the slaves actually worked.

JAMES OAKES:

So, we think of slavery as a labor system, but it's important to understand that it's a labor system in which the slaves are the property of their owners. It's not like selling your labor power for wages. It's you are the physically movable property of the owner. And that changes everything and defines everything there is to know about the slave system.

JAMES OAKES:

Slaves are bequeathed, they are bought, they're sold, they are mortgaged. You know, if you want to buy more land, you mortgage a slave. If you have mortgages, you are committing yourself to producing enough of a cash crop every year to pay off the mortgage. If the cotton economy tanks, which it does

periodically, you will be foreclosed by the mortgager and you will have your slave seized and taken away and sold at public auction because the slaves are an asset. They are property and it's the property. It's not only the property that makes the system what it is. It's also what makes slavery controversial. The center of... The centerpiece of all... The central theme of all debates over slavery, from the time of the revolution through the civil war, is the legitimacy or illegitimacy of property rights in human beings.

The North as the engine: capitalism and slavery

00:03:42:00

JAMES OAKES:

Capitalism and slavery is the way we tend to discuss this, the issue of how slavery and capitalism... How slavery is tied to the North or not tied to the North. The most important thing to know about the relationship between Northern capitalism and Southern slavery is that, without the enormous growth of consumer demand for the product of slave labor, the slave systems are almost impossible to imagine, right?

JAMES OAKES:

Beginning in the 17th and 18th centuries, when a British consumers begin to develop a taste for sugar, which promotes the development of the big sugar economies of the Caribbean, Jamaica, Barbados, in the 18th century. Haiti, Saint Domingue.

JAMES OAKES:

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And in the middle of the 18th century, England begins to industrialize its already well established textile industry, established as mostly a woolman's industry, for example. And they move logically into a cotton textile industry. But, it's hard to get cotton. The largest producers of cotton in the 18th century are in the islands and the Caribbean.

JAMES OAKES:

Once it is possible for Southern plantation, Southern slave farms and plantations, to produce cotton within significant amounts, which happens with the development of an increase of an improved gin, ginning mechanism. The slave South is all of a sudden able to do what no other cotton producing area of the world could do, which is feed this increasingly voracious demand for cotton coming from a rapidly industrializing England, and then the North, right?

JAMES OAKES:

But it's the demand that's driving the slave economy of the South. It's not the South that's driving Northern capitalism, in that sense. It's capitalism and the demands of capitalism that are driving the growth of the slave economy.

When the demand collapses, the Southern slave economy goes into a tailspin, which it did several times before the Civil War. But one of the tests of the relationship between capitalism and slavery is what happens during the Civil War, right? The slave system collapses, and then Southern economy is dramatically transformed. The Northern economy does fine. It wants cotton. It doesn't care very much whether or not the cotton comes from slaves, indentured servants, wage laborers, as long as it can get the cotton.

JAMES OAKES:

The engine is England and the North, and not the slave economy of the South. That's the critical relationship, I think.

Lincoln's anti slavery politics

00:06:54:00

JAMES OAKES:

Lincoln says, and we have every reason to believe him, that he always hated slavery. He grew up in a family that was anti-slavery, his parents attended an anti-slavery church. And every time the issue arose as a politician, he took an anti-slavery position. He supported the abolition of slavery in Washington, D.C. He supported the restrictions on slavery and the Western territories. He believed that the Fugitive Slave Law of 1850 should be rewritten to recognize, to acknowledge the due process rights of slaves. So on issue after issue, his antislavery credentials are well-established before he is anything we can reasonably call an anti-slavery politician.

JAMES OAKES:

That's partly because he was a Whig and the Whig party is a party that has a strong Southern wing to it. And, therefore, is committed, like the Democratic party, to suppressing slavery in the national politics. But in the early 1850s, the Whig party collapses and the replacement for the Whig party in the North is the anti-slavery Republican party. Lincoln fits naturally with that party because he's always been anti-slavery. So in that sense, it's the disappearance of his beloved Whig party that forces him into another party that is

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exclusively focused on anti-slavery because it's exclusively a Northern party, right?

JAMES OAKES:

The issues that precipitate that dramatic transformation of the entire party system of the United States are primarily slavery. The Compromise of 1850 provokes a backlash in the North because of the Fugitive Slave Law in 1850. There are massive demonstrations in the North against the attempts to implement the Fugitive Slave Law.

JAMES OAKES:

Harriet Beecher Stowe writes her famous novel that inspires Northerners to hate the law even more and to hate slavery even more. The Southerners are responding with every evidence of growing Northern anti-slavery sentiment, the Southerners respond with increasingly aggressive demands for federal protection of slavery. And the precipitating event for Lincoln, and for many Northerners, was the repeal of the Missouri Compromise in 1854, as part of the Kansas-Nebraska Act.

JAMES OAKES:

Stephen Douglas, the Senator from Illinois, Lincoln's nemesis in many ways, adds the repeal of the Missouri Compromise, which restricted slavery in the Western territories to the Kansas bill, Kansas statehood bill, and provokes a ferocious reaction in the North. And in the state of Illinois, Douglas' home state, Lincoln takes the lead in the opposition to Douglas in the opposition to the repeal of the Missouri Compromise. Which was really the repeal of the ban on slavery in the Western territories. And Lincoln had semi-retired from

politics in 1849 after he leaves Congress. After his one term in Congress and focuses on his family, his law career, like that. But he didn't leave politics entirely.

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JAMES OAKES:

And it was really the enactment of the Kansas-Nebraska bill with the repeal of the restriction on slavery, in the territories that provoked the reaction across the North. And Lincoln is part of that reaction. Lincoln's re-entry into politics. But it's not just a re-entry into politics, it's a transformed Lincoln that enters politics because he is now, for the first time in his life, an anti-slavery politician. It is, he's not just a politician who, when the issue arises, as opposed to slavery. He is now a politician whose major issue, whose defining issue, is hostility to slavery.

The repeal of the Missouri Compromise

00:11:24:00

JAMES OAKES:

To understand why repealing the Missouri Compromise was so provocative to Northerners, especially to people like Lincoln and Republicans, anti-slavery Northerners, really, you have to understand that anti-slavery politics was focused on restricting slavery's expansion. That is, everyone accepted that the Constitution doesn't allow the federal government Congress to abolish slavery in a state. So anti-slavery politics was focused on getting at slavery in other ways. And the primary way of getting at slavery, for

anti-slavery politicians, even for abolitionists, was to strangle it, right? Close it in, prevented from expanding, on the assumption that slavery couldn't survive without expanding.

JAMES OAKES:

By repealing the Missouri Compromise, by repealing the restriction on slavery in the western territories, you have basically given slavery a new lease on life. And instead of putting it on a course of ultimate extinction, you've put it on a course of nationalization. You've, instead of making slavery strictly sectional, you've begun to say it's going to be national. And that was such a violation of what anti-slavery politicians had hoped for from the revolution on. It would be hard to imagine anything more provocative than reopening territories, that had been closed to slavery, to slavery.

State by state abolition

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JAMES OAKES:

It's important to understand what anti-slavery politics meant in the absence of a federal... In the absence of a Constitution that would have allowed the federal government to simply abolish slavery. It meant that the way slavery gets abolished, the way slavery has always gotten abolished in the United States, is one state at a time, right?

JAMES OAKES:

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Vermont's Constitution of 1777 is the first state to abolish slavery, in that sense. In the immediate aftermath of the revolution. Pennsylvania passed the first statute, abolishing slavery in 1780, right? Then you get Connecticut, Rhode Island, Massachusetts, eventually New York and New Jersey. You get a Northwest ordinance, the Ordinance of 1787, that banned slavery from the Northwest territories, will eventually lead to five new states abolishing slavery on their own. So the way you get slavery abolished is one state at a time. And, and coming out of the revolution, when it looked like slavery was more abundant than it was dying, the assumption anti-slavery people had was that eventually slavery would become so weak in the Southern states, beginning with the Southern states closest to the North, the border states, it would die there as well. Eventually, those states would realize that slavery is not efficient, not productive, not conducive to the prosperity of the people, that they would abolish... They would eventually abolish slavery.

JAMES OAKES:

Nobody was counting on a cotton economy that was going to kind of revive the fortunes of slavery in the upper South by giving upper South slaveholders an outlet for their surplus slave population, right? They've closed off the Atlantic slave trade. And the cotton economy is booming. And the northernmost slave states, Virginia, Kentucky, and then eventually the easternmost slave states begin to sell their surplus population to this booming cotton economy in Alabama, Mississippi, Louisiana, ultimately, Texas, right? So in that sense, the cotton economy reverses what everyone accepted or believed or hoped was the trajectory of the United States, right, toward the abolition of slavery.

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JAMES OAKES:

So state-by-state abolition is the goal of the anti-slavery movement. And again, even most abolitionists believed that that was the way it was going to happen. Politically, as the Northern economy turns out to be more dynamic, more productive, wealthier in per capita terms, then the slave economy was, the number of free states begins to outrun the number of slave states and the power of the slaveholders that they exercised in the federal government begins to be threatened, right? They lose the majority's there...The Southern states lose their majority in the House of Representatives by 1820. And a majority of Northern states are prepared to ban slavery entirely from the Western territory, all the way to the Pacific by then, and they know it.

JAMES OAKES:

They therefore have to cling to the Senate. And to hold onto the Senate, they need more slave states, okay? So the duel between the anti-slavery forces and the pro-slavery forces comes down to how many slave states versus how many free states are we going to have in this country, right? Because everyone understands that the power the slaveholders exercise in the federal government is ultimately going to depend on the number of slave states in the federal government, right? So think about it this way. In 1776, 13 slave colonies declared their independence from Great Britain and become 13 slave states.

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JAMES OAKES:

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By 1850, the number of slave states has gone from 13 to 15, but the number of free states has gone from zero to 15, right? And from that point on every new state added to the Union is going to tip the balance one way or another, right?

JAMES OAKES:

And the balance continues to shift in favor of the North, right? That is California is admitted as a free state. Oregon is admitted as a free state, right? And by 1860, when Abraham Lincoln is elected president, there are now 18 free states and 15 slave states. The balance is shifting dramatically, and it is threatening the power that the slave holders have in the federal government, right?

JAMES OAKES:

So these two issues: the expansion of slavery into the territories, and the balance of power in the federal government are inseparable. They are the same issue. One of them is framed as the economic necessity of expansion. The other is framed as the political necessity of the slave states to maintain their power in the federal government.

Slavery in the Constitution

00:18:33:00

JAMES OAKES:

It is all but universally accepted that what you might call status conditions are created, destroyed, regulated by states. And what do I mean by status

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condition? Marriage, the laws of marriage are state laws. Indentured servitude is a state law. The labor law is state law. And slavery is a state law. Slavery is created or destroyed by states. It is simply accepted that the federal government has no business regulating marriage, regulating indentured servitude, or regulating slavery. In that sense, the Constitution presupposes that the federal government cannot abolish slavery in a state. Scholars called this the federal consensus. It's federalism as it relates to slavery, right?

JAMES OAKES:

The one that most rankled anti-slavery folks, like Lincoln, was the Three-fifths Clause, right? This is one of the major compromises with slavery in the Constitution. Coming into the Constitutional Convention at Philadelphia in 1787, the Southerners demanded that five-fifths of the slaves be counted for purposes of representation, and taxation, and direct taxation. The Northerners, the anti-slavery Northerners, demanded that zero-fifths be counted as for purposes of representation, because slaves are not part of the political nation, as it were. And the compromise they worked out was three-fifths, right? So three-fifths of the slave population will count. If you're an anti-slavery Northerner, that means you got... The South got an extra three-fifths of its population counted. They got more votes in the House of Representatives, and more votes in the Electoral College, right?

JAMES OAKES:

And that wasn't so much an issue at the time, but it became an issue around 1800 when Jefferson was elected and his critics, his opponents, started saying you got elected thanks to the Three-fifths Clause, right? And Lincoln objects to the Three-fifths Clause that says, for example, Northerners...

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Southerners would say, slavery is none of your business. Slavery is a Southern institution. And Lincoln comes back and says, but the Three-fifths Clause is a humiliating discrimination against the North. So every new slave state that gets admitted to the union is a matter of urgent concern for Northerners. It's a serious issue for us. We have to be concerned with it, right?

JAMES OAKES:

The second issue like that is the Fugitive Slave Clause. The Constitution gives slave holders the right to recapture their slaves in Northern states and states where slavery has been abolished. It says explicitly that a state where slavery has been abolished does not have the power to emancipate a slave who has run away from a slave state.

JAMES OAKES:

This becomes a source of anxiety for Northerners because they don't like the idea of Southern slave catchers coming into their states and running through the streets, capturing African-Americans, on their streets. Many of whom had been there for years, decades, built lives, built families, and this is a source of enormous aggravation to Northerners who might otherwise not have cared very much about slavery, right?

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JAMES OAKES:

So those two clauses, the Fugitive Slave clause and the Three-fifths Clause are the two that matter most in the Constitution. Those are the two compromises, if you will, and with slavery in the Constitution. But of course the anti-slavery folks like Lincoln believed that those two causes were

exceptions to a general rule of freedom in the Constitution. When we think about slavery and the Constitution, when we think about the conflict between slavery and freedom, anti-slavery Northerners would say, "Why are you only focusing on the clauses in the constitution that protects slavery? What about the clauses in the Constitution that protect freedom? Why don't they count in the balance? Why doesn't the fifth amendment, which says that no person shall be deprived of liberty without due process of law, why doesn't that count in the consideration of what the Constitution has to say about slavery? Why doesn't the preamble with the guarantee of freedom and liberty to all as the stated purpose of the creation of the covenant, why doesn't that count?" Right? "Why doesn't the clause empowering the federal government to regulate the territories and, with it, the power to ban slavery from the territories.

JAMES OAKES:

Does the Constitution not give Congress the power to ban slavery from the territories? Of course it does. Does the Constitution not give Congress the power to ban slavery from... Abolish slavery in Washington, D.C.? Of course it does. Does the Constitution not give the federal government the power to ban the Atlantic slave trade, ban slave trading, international slave trading from the United States? Of course it does."There are all sorts of clauses in the Constitution that are anti-slavery for anti-slavery Northern people like Lincoln. And in the balance between the compromises that were made with slavery and the overwhelming commitment to freedom, people like Lincoln and anti-slavery Northerners concluded, in the language of the time, that freedom is the rule, slavery, the exception in the Constitution.

Lincoln and the Declaration of Independence

00:24:23:00

JAMES OAKES:

For Abraham Lincoln, as for all anti-slavery Northerners, the Constitution is, in part, the text and it's the structures it puts in place, and the commitments to certain kinds of freedom that it puts in place, but there's also a spirit. And the spirit of the Constitution is reflected in the Declaration of Independence. Specifically in the famous opening lines of the Declaration of Independence, in which Jefferson writes that "all men are created equal, they are equally entitled to life, liberty, and the pursuit of happiness." That's the spirit.

JAMES OAKES:

Lincoln says at one point that the Constitution is the frame and the Declaration is the picture held by the frame, right? So the two work hand in hand, right? So if that's the guiding spirit. If the guiding spirit of the Constitution is the principle of universal freedom, then, for him and for anti-slavery Northerners, the intentions of the founders were to put slavery on a course of ultimate extinction.

Lincoln on free labor

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JAMES OAKES:

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We sometimes think of the argument against slavery as a kind of economic abstract argument, right? That free labor is economically superior to slave labor, right? It's as opposed to a moral argument. But if you listen to the way Lincoln made that economic argument, he phrased it in biblical terms, right? And the right to the fruits of his labor, the slave is my equal, and the equal of any living man, right?

JAMES OAKES:

He says it about women and the right to the fruits of her labor. The Black woman is my equal and the equal of any living man, right? It applied to men and women. It applied to Blacks and whites. The right to the fruits of your labor is not simply an economic argument for the superiority of free labor. It's a moral conviction, right? And it derives, again, from the principles expounded in the Declaration of Independence, right? The third of the three rights. It's the right to life, the right to liberty, and to the pursuit of happiness. Which included the right to the fruits of your labor.

JAMES OAKES:

It's very hard to say whether Lincoln felt a personal stake in that. I should tell you that it's controversial among scholars whether Lincoln actually ever said, "I was a slave," because it came as a recollection many years after, right? And, in certain ways, it's incompatible with his notion of what free labor is all about. That is, he grew up, he knew he was going to be freed when he was 21 years of age. He knew that that's the way that the free labor system worked. So I'm not entirely sure that what the personal experience was.

JAMES OAKES:

His real personal experience was the experience of upward mobility. Which he believed slave systems thwarted, right? So he said, famously, that, "The normal expectation in a free labor system is that you start your life as a farm laborer, you grow up on a farm, you grow up on a farm, you go to work for someone else, you save enough to buy a farmer of your own, and eventually you will be sufficiently prosperous if you're hardworking and industrious and do what you're supposed to do, you will eventually end up hiring farm laborers of your own." And his experience was that, as a young man, still in his father's household, he was sent to work for others. And the fruits of his labor became his father's.

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JAMES OAKES:

And he remembered the first time someone paid him for his own labor and that it wasn't his own money. It's very interesting. There's a very similar story that Frederick Douglass tells about having escaped from slavery, arriving in New England, arriving and getting his first job. And the first time he gets paid and realizing this was the fruits of his own labor, finally being paid, right?

So the experience of a slave coming into freedom and being paid and the experience of a young man in his father's household being paid and having to give it to his father, is in that sense, they're parallel kinds of stories, except that the son knows that when he reaches the age of 21, he's on his own and the fruits of his labor will be his own.

"A course of ultimate extinction"

00:29:35:00

JAMES OAKES:

If you're an anti-slavery politician like Lincoln, and you assume that the federal government cannot abolish slavery directly in the state, but you are committed to ultimately destroying slavery or ultimately the ultimate death of slavery, how do you do that?

JAMES OAKES:

So anti-slavery politicians thought up various ways of putting slavery on what Lincoln called a "course of ultimate extinction." How would they do that? They would prevent slavery from expanding into the Western territories, which they believed slavery needed to do because it was backward and inefficient and it could only survive by constant expansion. So cut off the expansion and you cut off its lifeblood. Make it difficult for slave holders to recover their fugitive slaves in the Northern states. Do not protect slavery on the high seas. Abolish slavery in Washington, DC. Perhaps regulate the interstate slave trade. Certainly the coast-wide slave trade, the slave trade that would ship slaves from Charleston Harbor to New Orleans, for example, many anti-slavery believed you could do that.

JAMES OAKES:

And if you could do all those things, and you watched as slavery gradually disappeared from the upper South states like Delaware is a slave state in name only by, by the 1850s. The proportion of slaves in Virginia, in Maryland, and Kentucky is declining because the slaves are being siphoned off. You're setting those states up for ultimately extinguishing slavery, because those are

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the states that need the constant expansion of slavery for slavery to remain viable in their states.

JAMES OAKES:

And so Lincoln believes that if you don't allow a slaveholder in Kentucky to sell off his surplus slaves to Texas, then the value of those slaves declines, the value of slavery itself declines, and eventually in those states as happened in the Northern states, those states would abolish slavery. That's the ultimate extinction of slavery.

JAMES OAKES:

What did Lincoln, how long did Lincoln think that would take? He once said in passing that if slavery is abolished in the most peaceful, most gradual way imaginable, a hundred years down the line, the last slave would finally pass away. What does that mean? We don't know for sure, because he never explained what he meant and he didn't actually believe that slavery was going to be abolished in the most peaceful, most gradual way.

JAMES OAKES:

But nevertheless, there were other antislavery politicians who talked in similar terms, who imagined, for example, if the federal government adopted all of these policies that were designed to put slavery on a course of ultimate extinction, then 25 years down the line, the last of the slave States would adopt a gradual abolition policy, right? And under those gradual abolition policies, the last slaves born the day before the gradual abolition law was passed, 25 years down the line, lived to the age of 75. That's a hundred years, right?

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JAMES OAKES:

25 years down the line, the last gradual abolition laws passed the slaves born before then lived to 75 years, 25 plus 75 is a hundred. That's probably what Lincoln was thinking. Of course, by then 99.999% of the slaves have been emancipated. But the truth is that Lincoln didn't believe that that was going to happen. He believed there was going to be a crisis. Some kind of violence was going to be necessary to overcome this crisis. But what that meant, isn't clear.

Abolition and anti-slavery movements

00:33:47:00

JAMES OAKES:

Abolitionism is a big wide movement and it encompasses a lot of different folks. Most abolitionists would say they believed in the immediate abolition of slavery, but what does that mean? If you're William Lloyd Garrison and you believe the constitution is a hopelessly pro-slavery document, it would mean that the federal government couldn't do anything. It can't abolish slavery in the territories. It can't abolish slavery in Washington, D.C. It can't restrain the fugitive slave law because the constitution requires the federal government to protect slavery in all of those ways.

JAMES OAKES:

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So what looks like the most radical anti-slavery position is in some ways, the position that has the most stultifying politically. At the other end of the abolitionist spectrum are abolitionist constitutionalists, that's people who believe the constitution is not simply an anti-slavery document, but an abolitionists document. That is, if the preamble says that liberty is the goal of this government, then this government has the right to do everything necessary to ensure the protection of liberty to ourselves and our posterity, and could actually abolish slavery in a state.

JAMES OAKES:

That's a very small minority. Most abolitionists when they talk about immediate abolition, mean two things: the slave holders should immediately free their slaves, and the states that are responsible for creating or destroying slavery should immediately abolish slavery on their own. Because they all accept that the federal government can't do it.

JAMES OAKES:

So in that sense, there's not that much difference between abolitionism as a political project and anti-slavery politics as a political project. The differences are nuanced. A more radical anti-slavery politician would say that the federal government could and should suppress the domestic slave trade, which would have a quite stultifying effect on slavery. That there would be policies like that, that you could go further on then Lincoln was willing to go.

JAMES OAKES:

They might say that the fugitive slave law of 1850 shouldn't simply be revised, but that it was unconstitutional because of its denial of due process

rights. Lincoln wouldn't say that, things like that. So the differences between the more radical anti-slavery politicians and the mainstream anti-slavery politicians like Lincoln, tend to be at the margins of those specific policies, not so much on fundamental questions of the morality of slavery or the like.

Lincoln was not an abolitionist

00:36:43:00

JAMES OAKES:

I would not call Lincoln an abolitionist. I was almost going to title a book I've wrote called almost an abolitionist, that is Lincoln never called for the immediate abolition of slavery. He never joined an abolitionist society. He didn't focus on the cruelties and barbarism of slavery the way abolitionists did. He was suspicious of that kind of emotional appeal. He preferred to kind of rational appeal based on the principles of the declaration, rather than emotional appeals, based on... He didn't call slaveholders sinners, for example. He didn't use that kind of language. He wasn't an immediatist in that sense. So I wouldn't call him an abolitionist in those ways.

Lincoln's moral aversion to slavery

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JAMES OAKES:

Here and there, he makes it clear that he's aware of and sensitive to the barbarism of slavery. It just wasn't the kind of argument he preferred to

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make. He once says that in his reaction to the *Dred Scott* decision, for example, he says that "I understand that Dred Scott and his wife, Harriet, had little children and what the *Dred Scott* decision does is send that woman and her children back into slavery and all the attending horrors that women and children suffer under slavery."

JAMES OAKES:

So he's aware. The implications are that enslaved women are subjected to sexual abuse and parents are separated from their children. These are the kinds of emotional issues, but very real issues, that abolitionists often emphasized in their work. They always emphasize it, but Lincoln preferred not to emphasize those kinds of issues. He preferred to emphasize the violation of the principles of fundamental human equality. And he preferred to emphasize the way slavery forded economic progress, and inhibited the ability of individuals, slaves and free people, to rise up in the world and make a success of their lives on their own.

JAMES OAKES:

You know, I find Lincoln hard to get at psychologically – what he is at his core. I can say that he was a politician first and foremost, and that in his preference for focusing on something like the violation of the principle of fundamental human equality, he was adopting an anti-slavery argument that had the broadest possible appeal among Northern voters.

JAMES OAKES:

And I tend to think of it in those terms rather than was he insensitive to the cruelties of slavery because I don't think he was. I think he's always thinking

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of the largest possible vote, is always thinking of the coalition that you need to build. And there are Northerners who accept that the founders didn't like slavery, and we should probably put slavery on a course of ultimate extinction, but I'm not particularly concerned about the way Black people are treated under slavery.

JAMES OAKES:

So, and we know Lincoln thought that way, that way, that every once in a while, he would say so what you don't care about Black people, but you can still fight to preserve the union, for example. And in the meantime, we'll abolish slavery. And so I tend to think of it more in terms of his strategic sensibilities as a politician. Even though in his artistic tastes, as someone engaged in American culture, he had an affinity for kind of maudlin sentimental poetry, romantic poets with their obsession with death, for example, and things like that. But as a politician, as a lawyer, he was at a supremely rational human being. And he parsed arguments in extraordinarily specific, precise terms. He used very precise language when he was saying things.

JAMES OAKES:

And it's important to sometimes if you read some of his statements too quickly, you'll think he's saying something he's not actually saying, because he knows exactly how to get a point across and to imply things without actually committing himself to any particular position is very key.

The Dred Scott decision

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JAMES OAKES:

So in 1857, the Supreme Court issues a decision in the case of *Dred Scott V. Sanford*, which declares that a slave who has been carried by his owner into a free state or into a free territory, nevertheless remains a slave if the slave is carried back to a slave state, in this case in Missouri. This was a violation of the presumption in Northern law, that if you set foot on free soil, you are free, right?

JAMES OAKES:

So Northern states had passed what they call Sojour laws, what historians called Sojour laws, that say quite explicitly, we know we have to return your fugitives when they escape. But if you voluntarily carry a slave into a free state, that slave is emancipated.

JAMES OAKES:

The *Dred Scott* decision says, no, it's not. No, the slave is not emancipated. The slave is a slave, as long as the master holds him as a slave. So that's an attack on a basic premise of the laws of the free states. But more than that, what Roger Taney does in that decision is declare that the most important policy that anti-slavery advocates endorse, which is the ban on slavery in the territories, is unconstitutional. And it's unconstitutional on the grounds that slaves are a constitutionally protected species of property. That property rights are singular. All property is the same under the Constitution. It is all protected by the Constitution.

JAMES OAKES:

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He says that the Constitution expressly recognizes the right of property in slaves. That is an extreme provocation for anti-slavery Northerners. From the constitutional convention itself, we know that anti-slavery Northerners did not want to have a Constitution that recognized the right of property in slaves, and the denial of a right of property in slaves has been a centerpiece of anti-slavery thinking throughout the history of the United States.

JAMES OAKES:

So what Taney is doing is overthrowing the single most important principle of anti-slavery politics, which is that slaves are recognized in the constitution only as persons, never as property. This is for Lincoln, and for all anti-slavery Northerners, essentially a declaration that anti-slavery politics is illegitimate. And specifically that the Republican party that has formed and did very well a few months earlier in the 1856 elections, is essentially unconstitutional. Tony is trying to shut down anti-slavery politics, which is something pro-slavery politicians have been trying to do since the 1820s.

JAMES OAKES:

To understand the reaction of people like Lincoln and anti-slavery politicians to the Dred Scott decision, we have to get out of the constitutional mindset of the early 21st century. We assume if the Supreme Court issues a ruling, that's it. They are the people who determine what the constitution says, and there's nothing any of us can do about it, except perhaps wait till we can alter the composition of the Supreme court.

JAMES OAKES:

But that's not the assumption that people in Lincoln's day operated from. They accepted the principle of legislative supremacy. They didn't think the Supreme court was always and everywhere the final arbiter of what the constitution was and was not. So Lincoln simply declares at one point that if he were in Congress, he would vote to overturn the Dred Scott decision. Specifically the Dred Scott decision.

JAMES OAKES:

In the Dred Scott decision, Roger Taney says the constitution does not allow the federal government to ban slavery from the Western territories. Lincoln says, if I were in Congress, I would vote to ban slavery from the Western territories. And as a matter of fact, as soon as the Republicans get control of Congress in December of 1861, in that very first Republican controlled Congress, they pass a law banning slavery from the Western territories in explicit, unapologetic defiance of the Supreme Court.

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JAMES OAKES:

Because they're living in a constitutional culture that does not accept that what the Supreme court says is what the Constitution is. So one of the things it's important to understand is that the two major dissenting opinions in the Dred Scott decision by justices MacLean and Curtis actually reflect the views of the Republican party, which is the majority party in the North. And if you think about it in those terms, if you think about it in those terms in 1861, in the spring of 1861, when a Republican president is inaugurated and Republicans take control of Congress, the ruling thinking about what the constitution is or is not, is reflected in those two dissenting opinions by

MacLean and Curtis. That becomes the Constitution as far as those now in control of the federal government are concerned.

The Lincoln-Douglas debates of 1858

00:47:52:00

JAMES OAKES:

The odd thing about the Lincoln-Douglas debates, given the context in which the major split in the United States is between the North and the South, between pro-slavery Southerners and anti-slavery Northerners. What makes the Lincoln Douglas debates odd is that Douglas is a Northerner who is unwilling and unable to take an explicitly pro-slavery position. So what is Douglas his strategy in those debates? He wants to shift the terms of debate away from slavery to race. He wants this to be about the difference between people like Lincoln, who he says are racial egalitarians, who believe that Blacks and whites are equal. And Lincoln is trying to say, no, no, no, the issue isn't race, the issue is slavery, pure and simple.

JAMES OAKES:

And that is in a sense, is the tension in those seven debates. So the very first debate, Douglas comes out swinging on at Lincoln's claim, in the aftermath of the Dred Scott decision, that slaves were citizens of the United States. The Dred Scott decision had said that slaves were not citizens and had never had been citizens, that they had no rights the white man was bound to respect. And Lincoln had responded by attacking Taney for saying that. So Douglas

goes right at him, not on the slavery issue, but on whether or not Blacks are citizens.

JAMES OAKES:

And all through the debates, he will be saying, and all through his speeches outside the debates, his argument is if Lincoln and the Republicans have their way, Black men will be able to marry your daughters. Blacks will serve on juries. Blacks will be able to vote. Blacks will be able to do this and that. They'll come swarming out of the South, up into your cities and towns and the like. They'll be competing with you for lower wages. Douglas's strategy is to make this an issue about racial equality and Lincoln's strategy is always to say, no, it's not about racial equality. It's about the right and the wrong of slavery itself.

JAMES OAKES:

And some of his most eloquent attacks on slavery come during those debates, especially the latter parts of those debates when he has zeroed in on this singular issue of the right and wrong of slavery and declared that he will not argue this in terms of the equality or inequality of Blacks and whites, he will only argue this on the right and wrong of slavery.

JAMES OAKES:

I don't have the exact quotation with me, but for me, the most articulate statement of his anti-slavery views comes toward the end when he says that this is the age old struggle between tyrants and the people, between Kings who lorded over their subjects, without regard to the rights of their subjects. It's the right and wrong. It's the divine right of Kings versus democracy.

And he goes through this litany in which he places the issue of slavery in the longer history of struggles for equality and justice against all forms of tyranny. And those are the terms on which he wanted to discuss it.

JAMES OAKES:

It's in the aftermath of these debates that Lincoln's shift on the question of racial equality becomes most evident. It's often said that Lincoln grew on the issue of racial equality. And one of the places I think it's most clear that he was growing is, is the way he begins to talk about race after having been subjected to this barrage of racist demagoguery by Stephen Douglas in those debates.

00:52:00

JAMES OAKES:

He begins to denounce racial demagoguery itself. He begins to attack people like Stephen Douglas for their constant, relentless attacks on the humanity of Black people, saying that the goal of this strategy is to make Northerners insensitive to the issue of slavery by making them believe that Blacks are somehow less than human. And he begins to denounce racial demagoguery in much more explicit terms after the 1858 debates with Douglas.

Lincoln's changing views on racial equality

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JAMES OAKES:

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It is in the 1858 debates, especially at the opening of the Charleston debate where Lincoln gives his most notorious defense of certain forms of racial inequality. So if you think about equality as racial equality as operating on different levels, at the level of natural rights to life, liberty, and the pursuit of happiness. Lincoln believes in racial equality. Blacks and whites are equally entitled to freedom, equally entitled to the fruits of their labor.

JAMES OAKES:

If you think of equality at a different level, as the rights, the privileges and immunities of citizenship, Lincoln isn't always there, but in the 1850s he begins to suggest that Blacks and whites are equally entitled certainly to the rights of due process. And he becomes more and more explicit about that over the course of the decade. He's quite explicit about it in his inaugural address.

JAMES OAKES:

But there's another level of racial equality, at the level of various forms of state based discrimination, state, local discrimination of Blacks could not vote. Blacks couldn't serve on juries. Blacks couldn't testify in courts. Blacks and whites couldn't marry. And at that level, Lincoln never commits himself to that kind of racial equality. And in fact, explicitly in the debates with Douglas, explicitly disclaims any commitment to the equality of Blacks and whites at that level, at the various forms of state-based discrimination. And it is his most, should I say, this is the most offensive defense of racial inequality that we see.

JAMES OAKES:

Lincoln could say those things because he personally believed it. And he could say those things because he believed strategically in the state of Illinois in the 1850s, if he said anything differently, that would be the end of his political career. So it's very difficult to say there are some indications that he had earlier, in earlier speeches that he did recognize that this might not be something, these forms of discrimination might not accord with justice. But it hardly matters in a democracy, whether it does or does not accord with justice, because we will know that the vast majority of whites will not accept the living with Blacks on a condition of complete equality.

JAMES OAKES:

So he's in a state that has a reputation as being one of the most racist states in the North. He knows that, and he is struggling to separate out the issue of racial equality from the issue of slavery. And in order to do that in the course of doing that, he occasionally, maybe even often descends into something like racial demagoguery. That tossing racist nuggets to the peanut gallery to make it clear to people that in his opposition to slavery, he is not advocating all the forms of racial equality that Stephen Douglas and the Democrats are jumping up and down about.

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JAMES OAKES:

So although Lincoln always hated slavery as much as any abolitionist, he was not always as committed to racial equality. He was not committed to racial equality at the beginning of his political career, the way he was at the end of his political career. In his earliest days as a politician in the state legislature of Illinois, he was perfectly willing to use grotesque racial demagoguery in his

speeches, in his attacks on his opponents. He once drafted a law that gratuitously excluded Black men from voting, things like that.

JAMES OAKES:

And although that kind of racial demagoguery diminishes over the course of his career, it doesn't completely disappear until the latter half of the 1850s. The way I think about this is, you could say that Lincoln's opposition to slavery, you could say was inhibited by his racial prejudices. But you could also say, and I would say, that his racial prejudices were dampened by his increasing commitment to anti-slavery. And the more committed he became to the destruction of slavery, which he does over the course of his career, and particularly over the course of the war, the more committed he became to racial equality.

The secession crisis

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JAMES OAKES:

Lincoln's anti-slavery convictions and the convictions of the party on which he's elected are so well-known that as soon as he is elected, the Southern states begin to secede from the Union and one by one, they do so. And by the time he is inaugurated as president, the Deep South states have seceded from the Union. The Union has effectively collapsed. It's hard to think of any president who assumed office facing such a catastrophic crisis as the crisis Lincoln confronted upon his taking office as president. He is the only

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president whose entire term of office is consumed by war. And so the scale of the crisis he confronts is unprecedented and has never been matched since.

JAMES OAKES:

It's often said that the secession was a hysterical overreaction to a non-existent threat, that Lincoln was always saying he had no intention of interfering with slavery in the states where it existed, but that's boilerplate among anti-slavery folks. That is, the Constitution does not allow the federal government to abolish slavery in the state. And they said so from the beginning of the nation's founding, and they said so until the end of the Civil War. And it's important to understand that radical abolitionists said that. Conservative anti-slavery folks said that. It was a consensus position. And when you hear people quoting Lincoln saying that, it's important to understand what that meant at the time, because the slave holders in the South and the secessionists in the South heard him say that, heard Republicans say that and say, so what, that's not the problem.

JAMES OAKES:

The problem isn't that they're going to abolish slavery in the state. The problem is they're going to surround us and do everything they can to undermine slavery indirectly, even though they can't do it directly. And that's an existential threat to us as if they were claiming to be able to abolish slavery outright.

JAMES OAKES:

Of course, they're not going to abolish slavery outright. Everybody knows they're not going to do that, but they're going to do it. They're going to

undermine slavery by hook or by crook, by any means. And so I don't think it was a hysterical overreaction on the part of them. It turned out, of course, to be a spectacular miscalculation on their part, but they understood quite clearly what Lincoln and the Republicans represented. And they considered that, not unreasonably, to be an existential threat.

Preserving the union is inherently anti-slavery

01:01:06:00

JAMES OAKES:

It is a mistake to separate Lincoln's commitment to the union from Lincoln's hostility to slavery, because he believes that the Union that the founders intended to create was a union without slavery, a union which ultimately had no slavery in it. So, yes, he was determined to preserve the Union, but he believed that the union was supposed to be an anti-slavery Union. And that at some point along the way, that destiny of the United States to be a union of universal freedom, was thrown off course.

JAMES OAKES:

Lincoln and the Republicans came into war with a well-developed commitment to a set of policies that would put slavery on a course of ultimate extinction, with or without a war. They would have preferred to do that without a war. That is, they were committed as they had to be to fighting a war to preserve the Union. The Constitution doesn't give the federal government the power to wage a war for the purpose of abolishing slavery. It gives the federal government the power to wage a war for the purpose of

preserving the Union. It's just that as it happened, the Union that the Republicans and Lincoln wanted to preserve was a union that ultimately would have no slavery in it, so that the Union that they are determined to preserve is a union in which the fate of slavery has been determined, and that that fate is ultimate extinction.

JAMES OAKES:

That is not to say that they came into the war, that they prosecuted the war in order to destroy slavery. It's that they came into the war with a certain understandings of what the federal government could and should do to undermine slavery, and they came into the war with an understanding that slavery was the source of the rebellion and that there were certain things that they could do to slavery in the context of a war, that they would not have been able to do in the context of peace.

The emancipation opportunity the war creates

01:03:39:00

JAMES OAKES:

By the time Lincoln is elected president, the Republicans and Lincoln and antislavery constitutionalists, broadly, have developed two distinct scenarios for attacking slavery, one in peacetime, and one in wartime. They accept the precedence that under the laws of war, belligerents can attempt to defeat an enemy or suppress an insurrection by means of emancipating the enemy slaves. That's what the British did during the war of independence. They did it again in the war of 1812, and the United States signed at least three treaties

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that acknowledged the right of belligerents to emancipate slaves in wartime. So they've accepted this as a precedent, but they've gone further in the sense that in the 1830s, anti-slavery theorists led by former president John Quincy Adams, begin to argue that although the federal consensus does not allow the federal government to abolish slavery in a state in peacetime, in wartime, the War Powers Clause of the Constitution does in fact give the federal government the power to free slaves as a means of suppressing an insurrection.

JAMES OAKES:

And from that point on, that conviction, that if you're going to leave the Union, you're going to be subjected to the full panoply of war powers, that includes the right of belligerents to emancipate enemy slaves in an attempt to suppress an insurrection. So they accept that. They've also developed what I call the Forfeiture of Rights Doctrine. And in 1839, William Jay of the Jay family, of a long established abolitionist family, argues legally that if the slave states carry out their threat to secede from the Union, the Northern states would no longer be under any obligation to return their fugitive slaves. They would forfeit their constitutional right to the return of their fugitive slaves.

JAMES OAKES:

So these two ideas, that you can emancipate enemy slaves in wartime, and you will forfeit your claim to slaves who escape in wartime or to the Free states during war or to union territory during the war, coming into the war, Republicans developed these notions of what the federal government can do in wartime that it could not do in peacetime. But they also have, still, this peacetime agenda that they're going to abolish slavery in Washington, D.C.

They're going to abolish slavery in the Western Territories. They're going to sign treaties with Great Britain to suppress the Atlantic slave trade, and they're going to inhibit the return of fugitive slaves, according to their conception of what due process rights ought to be involved in that.

JAMES OAKES:

So there's these two pronged approaches to slavery, the wartime approach and the peacetime approach, that coming into the war, Republicans and Lincoln already accept, even though they do not prosecute a war and never prosecuted a war for the purpose of destroying slavery. It's just that they come into the war, determined to use the powers they have to undermine slavery in an attempt to achieve the purpose of the war, which is the restoration of the Union.

The Fugitive Slave Laws in wartime

01:07:34:00

JAMES OAKES:

It's important to understand that all through the 1850s, the issue of fugitive slaves was boiling up in American politics. We tend to think of secession as a response to the threat to close slavery off in the territories. And it was, but the fugitive slave issue was at least as important, or let's say almost as important, or certainly second in importance to the territorial issue. And Lincoln responds to that threat during the secession crisis and in his inaugural address by saying, you complain that you can't get your slaves back now. What do you think is going to happen when you leave the Union and we

are no longer under any obligation to return your fugitive slaves to you at all. He says in his inaugural address, if you secede from the Union, your fugitive slaves, now only partially returned, will not be returned at all. He makes an explicit threat in his inaugural address that we will not return your fugitive slaves to you, so long as you maintain secession.

JAMES OAKES:

Whether he intended it as a signal, it certainly was a signal, that is, we know that the slaves across the South were paying very close attention to the 1860 election, that they understood the Republicans to be an anti-slavery party, and they understood Lincoln to be an anti-slavery politician. And they clearly believed, many of them, that if Lincoln was elected president, and if there was a war, they could run to Union lines and get their freedom and he would free them. It's sometimes described as a naive belief on their part, but I think it was a belief based in reality. He is in fact threatening not to return fugitive slaves if the slave states secede from the union. He does it at least twice before the war begins.

Lincoln's "War Powers"

01:09:48:00

JAMES OAKES:

So, for people like Lincoln, for people coming out of the anti-slavery constitutional tradition, the War Powers Clause of the Constitution meant that when a slave ran to Union lines or escaped to the North, not only were the Northerners no longer any under any obligation to return the fugitive

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slaves, but that the slaves became effectively 'contraband of war.' The federal government could legally confiscate those slaves as 'contraband of war.' And Lincoln believed that under the War Powers Clause, that his powers as Commander in Chief enabled him to emancipate confiscated slaves, which he begins doing almost immediately after Congress authorizes the legal confiscation of the slaves.

JAMES OAKES:

So they have these constitutional convictions. We won't return your fugitive slaves to you. We don't have to return your fugitive slaves. And the issue arises very quickly in Fortress Monroe in Virginia, not too far from Washington, D.C., when slaves near the fortress decide to test this proposition. And a couple of them, three of them arrive at Fortress Monroe where Massachusetts General, Benjamin Butler, decides that under the laws of war, the Union is under no obligation to return them to the owner, whose representative shows up the next day and demands their return. And Butler says, well, if you sign an oath of loyalty to the Union, I'll return them to you. But the price of disloyalty is that you don't get your slaves back, which is standard anti-slavery constitutional theory. It's what Lincoln was threatening.

JAMES OAKES:

But he's not sure he's allowed to do that as a general. He can't make policy, so he writes to his superiors in Washington, says this is what I did. Am I allowed to do this? Lincoln calls a cabinet meeting, and at the end of the cabinet meeting, the Secretary of War telegraphs General Butler and says, yeah, you can do that. That's approved. So the Lincoln administration immediately

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approves the policy of not returning fugitive slaves to their owners, but what's the status of these fugitive slaves? Are they emancipated? Well, that's not clear. Congress has to be involved in that decision, and Congress won't be in session for a couple of months.

JAMES OAKES:

Lincoln calls a special session of Congress to meet on July 4th, 1861, lasts for about a month, and at the end of that session, Congress passes a First Confiscation Act authorizing the permanent confiscation of slaves used in support of the rebellion. Two days later, Lincoln's Secretary of War once again writes to Benjamin Butler and says, these slaves are now emancipated. So there's a legal process in which it's kind of a two step process that's actually immediate, even though it's two steps. We have legally confiscated these slaves and the president has legally emancipated the slaves, which are now confiscated property by the federal government. So, that's the technical legal way in which it's done. Lincoln is using his powers as Commander in Chief to emancipate slaves who have been legally confiscated under the laws passed by Congress.

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JAMES OAKES:

This is the critical first step. It's not universal emancipation. It's not abolition, but it is the critical first step on a path that will lead to the increasing radicalization of anti-slavery politics of policy, until you get to the complete eradication of slavery by means of a constitutional amendment, four years down the line. And you can watch as Lincoln, the Republicans, the Northern public, become radicalized by this war. The longer it lasts, the more they are

determined to strike at the cause of the rebellion, which anti-slavery Northerners, the majority of Northerners, come to believe or believe right from the start, is slavery. Slavery is the cause of this war. If we want to end this war, we need to destroy the cause of this war. And they're saying this in the first year of the war. The question is, how are they going to do it? And the policies they adopt to attack slavery as the cause of the rebellion are increasingly aggressive over the course of the war.

JAMES OAKES:

There are two ways to think about this. You can say that they are pushing against the constraints the Constitution imposes on them, or you can say that they are empowered by the war and the War Powers Clause to take actions against slavery that they would not have been able to take, had their achievement of power in the federal government been peaceful, had there been no war. So they're feeling their way through these constitutional questions, but at no point, do they actually violate that critical premise that the federal government can't abolish slavery in a state. They're not going to cross that line, but they're going to do everything else they can do under the Constitution, as a peacetime measure and as a wartime document. I don't know whether I would say they are constrained by the Constitution, or whether they are actually empowered by war to do things that the constitution allows them to do, that they couldn't do in peacetime.

The enslaved as “property”

01:15:45:00

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JAMES OAKES:

The central premise of all anti-slavery constitutional thought is that the Constitution does not recognize slaves as property, only as persons. Every reference to slaves in the Constitution is as persons. And that was not an embarrassment, they were so embarrassed by the fact that they recognized maybe that they didn't use the word, or something like that. It was quite deliberate. The slaves were not to be recognized as property under the Constitution, but they did recognize that they were property under the laws of the Southern states. That's what made slavery, slavery. They were property. So, the laws of war allow belligerents to confiscate enemy property in time of war. Now they recognize, this gets kind of oddly complicated, but also crucial. They cannot permanently confiscate real estate, but they can permanently confiscate moveable property, personal estate.

JAMES OAKES:

So, this is going to be important during Reconstruction because they can't permanently keep the land they've confiscated and they end up giving it back to their owners, but they can permanently confiscate personal property. And that's what they begin to do. They take advantage of something they've always hated, which is that the slaves are legally property under the laws of the slave states, and say, okay, they're property. You said they were property. We are now going to confiscate that property. And as the owners of this confiscated property, we are entitled to do what we want with this confiscated property. We don't want to hold them as slaves, therefore, immediately upon confiscating them, we will emancipate them. So they turn the argument about the slaves as property, over and against the slave holders.

You said they were property. You said they were your moveable property. Now we're going to take that property and confiscate it, because that's what the laws of war allow us to do.

Self-emancipation

01:17:51:00

JAMES OAKES:

If you start from the assumption that we can step back all the way through human history, because slavery goes back all the way to antiquity, slaves, as far as we can tell, always ran away. It was the basic way of getting out of slavery if you were a slave, was to run away. And they ran away in ancient Greece, and they ran away in Rome, and they ran away in Sicily in the Middle Ages where there was still slavery. They ran away. Everywhere we know there was slavery, slaves ran away, but until there is such a thing as abolition, running away is an individual act of resistance, that has no political consequences.

JAMES OAKES:

When you see the world beginning to divide between polities where slavery is abolished, and polities where it is still in existence, which happens in the late 18th century in North America, you begin to see slaves escaping from a polity that recognizes slavery to a polity that doesn't recognize slavery, and then suddenly running away takes on a political significance that it didn't used to have. And we're going to see that in the War of Independence, in the War of 1812, in the two Seminole Wars, slaves run from areas where they are

legally enslaved to areas where slavery doesn't exist, and the politicians are required to make a choice about what they're going to do.

JAMES OAKES:

This is absolutely the issue that arises during the Civil War, from the earliest days of the war. Northerners have, all through the 1850s and going back decades, but especially 1850s, have made it clear that they don't like having to return fugitive slaves to their owners. And given the theory that once we're at war, and once you've seceded, we're no longer under any obligation to return your slaves, then running away takes on even greater political significance.

01:19:52:00

JAMES OAKES:

So, the anti-slavery policy that Lincoln and the Republicans developed, presupposes that slaves will run away, because they know slaves run away. They've been running away and the running away has caused enormous problems over the course of the 1850s. They don't go into the war thinking, what are the slaves going to do, because they know what the slaves will do. Well, they're pretty certain what the slaves will do, and they begin to run to Union lines. And the earliest to anti-slavery policies, in a sense, all of anti-slavery policy until the abolition amendment, is based on the assumption that slaves will free themselves by running to Union lines where the Constitution prevails over state law, and where you are thereby presumptively free. So the policy presupposes the agency of the slaves. The slaves have to run away for the anti-slavery policy to work, and they do. They do in increasingly huge numbers, and the radicalization of anti-slavery policy

is reflected in both the growing willingness of increasing numbers of Union officers and soldiers to accept slaves who are running to their lines, and the determination of policymakers to make sure that Union soldiers and Union officers do not return slaves to their owners. That's one of the ways in which you see the increasing radicalization of anti-slavery policy. The policies and the statutes that get passed banning the Union Army and the Union Navy from in any way, participating in the return of fugitive slaves. You see that happening over the course of the war. The numbers of slaves coming into Union lines increases as the numbers of Union troops enter the South and enter deeper and deeper into the South where the slaves are concentrated. But eventually you see policy shift towards the aggressive recruitment of slaves off of the plantations.

JAMES OAKES:

So it's no longer just slaves have to run to Union lines. We can actually now, after the Emancipation Proclamation, go onto plantations and say, "Come on, you want to be free. Especially the men, come and join the Union Army, and you will be emancipated, because that is now the policy of the Union Army." And each step of the way, Lincoln becomes increasingly aware of the leverage it gives him, to promote the policy that has been an anti-slavery policy since the late 18th century. The more slaves he can encourage to come to Union lines, the more slaves who voluntarily come to Union lines, the weaker slavery becomes in those states that he is trying to get to abolish slavery, right?

01:23:06:00

JAMES OAKES:

It's a commonplace that Lincoln is inhibited in his anti-slavery policy by his desire to keep the border states from leaving. The problem with that argument is that the border states have always been in the first line of attack for anti-slavery people. Those are the states that you want to abolish slavery first, right? So there's 15 slave states, get the four or five border states to abolish slavery first, then you're down to 10 or 11 slave states, and then you keep going, right? So early in the war, in late 1861, Lincoln begins to draft proposals for the abolition of slavery in the border states.

JAMES OAKES:

So this longstanding anti-slavery policy of using the federal government to encourage the abolition of slavery in the states, Lincoln is adopting that policy in the border states that are supposedly inhibiting his anti-slavery convictions. When in fact what he's doing, is beginning, without quite realizing it, to follow a two pronged-approach to attacking slavery and achieving the goal of putting slavery on a course of ultimate extinction, by getting the number of slave states to abolish slavery.

JAMES OAKES:

So you start, and by late 1861, they are already emancipating slaves who come to Union lines. In late 1861, Lincoln begins to rev up the pressure on the border states to abolish slavery on their own, "We'll give you all sorts of incentives. We'll give you \$300 for every slave who is emancipated by if you abolish slavery on your own. We'll subsidize the voluntary colonization of

slaves who want to leave the Union and stuff like that. We'll do everything we can." By early 1862, these two policies begin to interact with one another. Lincoln begins to see that the escape of slaves to Union lines, gives him a lever to pressure the border states to begin to abolish slavery. He starts saying to them, "Look, this is going to happen, and you can either do it this way, legally, or you can succumb to the friction and abrasion of war, which means that the slaves will eventually be emancipated by some other mechanism."

JAMES OAKES:

So there are these two policies. There's the peace-time policy of using the federal government to encourage the slave states, beginning with the border states, to abolish slavery on their own. Then there is this war-time policy of encouraging the slaves to emancipate themselves by running to Union lines where they will be confiscated and freed. Over the course of the first year of the war, Lincoln begins, these two policies begin to merge and Lincoln begins to use one policy, the emancipation of slaves under the laws of war, to pressure the slave states to adopt the second policy, which is gradual abolition by the states themselves. That policy, that merger of those two policies, reaches its peak with the Emancipation Proclamation and the enlistment of Black troops.

JAMES OAKES:

As I said, the anti-slavery policy that Lincoln adopts, presupposed that slaves would run to Union lines and the policy doesn't work without slaves taking action for themselves by running to Union lines and expecting to be freed in so doing. So their agency is central to the process of emancipation that takes

place over the course of the Civil War. Whether, I mean, they're influencing one another, I don't think Lincoln had to be coerced into thinking that we should emancipate slaves who run to Union lines. I don't think the slaves had to be taught to run for their freedom to Union lines. But the two things had to be operating at once for this policy to work, for slavery to be undermined.

00:27:48:00

JAMES OAKES:

So, I think it's why I'm reluctant to call Lincoln, "the great emancipator," as though he simply freed all the slaves with the stroke of his pen. I am also reluctant to say that the slaves freed themselves, all by themselves, because it took both. If all it took was war to get slavery abolished, slavery would have been abolished during the War of Independence. It's not enough. Wars throughout human history are the opposite of emancipatory. War is the single most important source of slaves. When you go to war against somebody else, you enslave their populations, you don't free them. So it's not an automatic thing that because there's a war, the slaves can free themselves. There has to be on the other side, a policy of accepting the runaways and emancipating them. And the two have to work in tandem. It doesn't work, if either half of that isn't in place. We know that the Lincoln and the Republicans went into the war assuming slaves would run to Union lines, expecting them to run and vowing not to return them if they do run to Union lines.

Lincoln and colonization

01:29:25:00

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JAMES OAKES:

For about 10 years of his life, from 1852 to 1862, Lincoln repeatedly endorsed a policy of voluntary colonization, primarily as a mechanism for encouraging the slave states to abolish slavery on their own. That is, "If you abolish slavery on your own, we will subsidize the voluntary colonization of those who are emancipated to some colony outside the United States." So he's not saying we need to rid ourselves of the pestilential presence of free Blacks, which is what colonizationists in the Southern states, and especially the upper South, were saying. He's saying that a colonization is part of a larger anti-slavery project that's designed to encourage the states to abolish slavery on their own. "If this is one of the incentives you need to do that, we will give you that incentive. We will subsidize the voluntary colonization of slaves to someplace outside the United States."

JAMES OAKES:

The statements he makes on colonization are oddly ambiguous. That is he endorses it, he says it would be the thing, but he also says it's highly impractical. It's inconceivable that we would ever be able to find enough ships, find enough money, find a place where 4 million American slaves could be shipped off to. So he doesn't seem to think it's a realistic policy. It appears to be primarily an incentive for the states to abolish slavery on their own, which is the policy that he wants to pursue by various means.

JAMES OAKES:

Once Lincoln commits himself through the Emancipation Proclamation, to universal emancipation, that all the slaves in all of the seceded states will be emancipated by this war, he now has that lever. The lever has become so

powerful, so huge that he no longer needs to use colonization as an incentive. He's got a stick instead of a carrot. He's got a very big stick called, "We're going to free all the slaves as soon as the Union army gets into your State. And I don't have to offer you this policy that my party doesn't like anyway, that anti-slavery people don't like by and large." So he drops it. As soon as he issues the Emancipation Proclamation, he drops it as as part of his agenda to get the states to abolish slavery. So the result of this, is that at the end of the war, of the 4 million slaves who are emancipated by the war, the number who are colonized by the United States government outside the United States is zero.

The Emancipation Proclamation

01:33:10:00

JAMES OAKES:

So the Emancipation Proclamation is in some ways the best evidence of the radicalization of anti-slavery policy. Its significance is both very real in terms of policy, but it's also significant symbolically. I do think, for example, that this is the moment at which war becomes revolution. It is now the policy of the federal government to destroy slavery completely, not simply emancipate slaves who run to Union lines in an effort to undermine the rebellion, but we are now going to destroy slavery itself, or at least try to destroy slavery itself. That has practical consequences – two big practical consequences. The proclamation lifts, what had been a ban on enticement. That is up until the Emancipation Proclamation, the policy of the federal government was, any

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slave who voluntarily comes into Union lines or refuses to leave with the master when the Union arrives. Which is what happened in South Carolina, the union troops occupy the islands of the coast of South Carolina, the masters run away, but the slaves don't.

JAMES OAKES:

So that's voluntarily coming into Union lines. They are not allowed to go on to plantations and entice slaves away until the Emancipation Proclamation, at which point, the ban on enticement is lifted. You begin to see Union officers systematically encouraged, as a matter of policy, to go onto plantations and encourage slaves to leave, in particular encouraged slaves to join the Union army. Which is the second big practical policy change made by the Emancipation Proclamation. It doesn't simply say, "All slaves in rebellious areas are emancipated if they come to Union lines and we encouraged them." It also says that, "We will now enlist slaves into the Union army for purposes of armed service."

JAMES OAKES:

This is a real revolutionary transformation. This is taking slaves, allowing slaves, bringing slaves off the plantations, arming them, putting them in Union uniforms and then turning around and shooting at their former masters. This is rebellion. This is revolution. This is using emancipation to overthrow the system of slavery itself. And it's truly revolutionary. That is the policy that the Emancipation Proclamation implements.

JAMES OAKES:

Like the artificial distinction between motivated to preserve the Union and motivated by a hostility to slavery, military necessity is something that justifies emancipation for people who don't like slavery. That is, there are Northerners- Democratic, Democrats, who support a war for the preservation of the Union, but think the argument that military necessity requires emancipation, military necessity requires the enlistment of Black troops, that's bogus. They reject the notion that military necessity requires these anti-slavery policies. If you are committed to anti-slavery, if you don't like slavery, if you think slavery should be abolished, then your conception of what is militarily necessary is going to be shaped by those convictions.

01:37:10:00

JAMES OAKES:

So it's hard to separate out what is driven by purely military necessity, versus ... How your determination of what military necessity is, is shaped by your anti-slavery convictions. So, again, it's artificial, there is no legal justification for emancipation other than military necessity. The constitution doesn't allow it. So that's always going to be the primary justification for it. But how much you're willing to use emancipation, justify emancipation as a military necessity is going to be determined by your convictions about slavery.

Black enlistment in the border states

01:37:57:00

JAMES OAKES:

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So the Emancipation Proclamation throws the Union army open to the enlistment of Black troops. But since most of those troops are going to come from the Southern states, and states are normally the vehicles which individuals entered an army, the Southern states aren't going to do it. So the federal government has to be the recruitment agent for slaves. And to do that, they establish, shortly after the Emancipation Proclamation in early 1863, they established the United States Colored Troops, right? They begin to enlist Blacks into the union army, often in States like Kentucky and Maryland, that are formally excluded from the Emancipation Proclamation, from the emancipation provisions of the proclamation.

JAMES OAKES:

This is something else. This is another aspect of the Emancipation Proclamation that we need to talk about. That is the Emancipation Proclamation, emancipates slaves in areas that are in rebellion. And it opens up the union army to slaves and Black people everywhere. That is the military provision of the Emancipation Proclamation is not limited to states in rebellion. And by the spring and early summer of 1863, the union army is actively recruiting Blacks in states that are technically exempt from the emancipation provisions of the Emancipation Proclamation.

JAMES OAKES:

So it's a mistake to say that the proclamation left alone in slavery in the states where the union had the power to attack slavery. It does attack slavery in those states. In particular in those states actually. A disproportionate number of the slaves who eventually joined the Union army and are guaranteed their freedom by doing so, come from those border states of Kentucky, Maryland,

because that's the only way they're going to get their freedom. Because the laws of war don't allow the federal government to emancipate slaves, technically, in states that are loyal, because it's disloyalty that's determining the the reach of emancipation policy.

JAMES OAKES:

So it's another way in which emancipation policy is radicalized by the extension of recruitment into the U.S. army, into the states that have, the slave states that have not left the Union. That's what they begin to do in the spring and summer of 1863.

Black troops are indispensable to the Union

01:40:40:00

JAMES OAKES:

The Black troops begin to engage in battles, and people are watching very carefully what their performance is. In a series of engagements in the summer of 1863 they prove themselves in battle, to the delight of Lincoln and his fellow Republicans, and to the discredit of the anti-war movement. Which at the same time is manifesting itself in a series of anti-draft riots. The most notorious of which happens in New York in the summer of 1863, at the same time that Black troops are proving themselves on the battlefield.

JAMES OAKES:

This conjunction of these two phenomenon – of Black troops proving their loyalty to the Union, and that they're willing to fight and die to preserve the

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Union, while Northern anti-war whites are rampaging through the streets, killing Black people, rather than join the Union army – this disjunction seriously discredits the anti-war movement and Lincoln takes full advantage of that fact. He knows, he senses Northern public opinion on this has shifted and he goes public in unusual ways – ways that were unusual for him – in ways that discredit those who are opposed to the war, who are encouraging people to resist the draft, for example, and things like that.

JAMES OAKES:

So Black troops have an important effect, a major effect on the politics of emancipation at this critical moment in the history of the war. Remember also, in July of 1863, at the same time is when the Union turns back Robert E. Lee's invasion of the North at Gettysburg, and the Union achieves this major victory in the liberation of Vicksburg, Mississippi. So the Union is doing better than ever, and the Black troops are proving themselves and then come these anti-war riots. Again, the conjunction of these events seriously discredits the anti-war movement in the North. And that's the end. That's the end of the draft riots. The New York riot is so disgraceful. It's so terrible. So disgraceful that ... And it was actually suppressed by Union troops who are marched from Gettysburg, where they have just defeated Robert E. Lee to New York to suppress the Draft Riots.

JAMES OAKES:

So Black troops proving themselves at this absolutely crucial moment in the summer of 1863 is a major turning point in the history of the war and the history of emancipation, I think. But there's more to it than that, the actual number of Union troops who are, of Black Union troops increases over the

course of 1863 and 1864. Until by 1864, they are a substantial proportion of the Union army. It becomes for people like Lincoln as for General Grant, they are by the end of 1864 at another critical turning point in the war, indispensable to the Northern war effort. So they are militarily indispensable, just as they have been already politically indispensable to the war effort.

Abraham Lincoln and Frederick Douglass

01:44:40:00

JAMES OAKES:

I think the relationship itself is an indication of the trajectories of these two very important men. You don't have to make that interesting by exaggerating the influence that Douglass might've had or try to make it as though he is more influential. I think what the biographies, the trajectories of Abraham Lincoln from a politician who is not an anti-slavery politician, to a politician who is an anti-slavery politician. And the trajectory of Frederick Douglass from an abolitionist who rejects politics, comes out of the Garrisonian wing of the movement, and gradually comes to accept politics as the way in which slavery needs to be attacked. It represents the convergence of two men who come from very different places, but end up in the same place, that is committed to the idea that if you're going to abolish slavery, it has to be done politically.

JAMES OAKES:

You have to build a coalition, that's going to do it. A kind of reconvergence happens again during the Civil War when they meet for the first time, and

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meet three times, where Frederick Douglass is initially saying, "Why aren't you being more aggressive? Why aren't you being more aggressive?" And Lincoln is steadily pursuing this policy and becoming increasingly aggressive. So that by the end of the war, once again, there's a convergence on the indispensability of the complete and utter destruction of slavery. So that over the course of their three meetings, Douglass becomes increasingly persuaded of Lincoln's increasing commitment to the destruction of slavery.

JAMES OAKES:

They end in something that looks, to me, like real friendship, real mutual admiration for one another. It's just hard not to romanticize that. It's a really interesting development on the part of these two people where they're calling each other friends and the admiration is real. And it's based on something quite substantial. It's based on this twice convergence towards politics and towards a wartime destruction of slavery, I think.

JAMES OAKES:

The first time he meets Lincoln, in the summer of 1862, when he's pushing Lincoln to issue the Emancipation Proclamation. And he goes there, because he has things to say, and he because he wants to criticize him, "Why aren't you letting back troops in? Why aren't you ..." And he's impressed by Lincoln's honesty. The second time he goes, is when Lincoln calls him to the White House in the summer of 1864, when Lincoln thinks he's going to lose the election and he needs Douglass to help him with this policy of undermining slavery from within, before he loses the election. But the third time Douglas goes voluntarily, without anything to complain about. As you, I don't know, you didn't say it, and he is barred.

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JAMES OAKES:

He goes to the second inaugural address, he hears that extraordinary second inaugural address. He decides, he wants to go say, "Hello," to Lincoln at the inaugural celebration that evening, he's not allowed in. Lincoln finds out that he's been held at the door, and says, "Let him in." He comes in, and he just, in front of the world, says, "Here's my friend, Frederick Douglass. I want to know what you thought of my second inaugural address. No one's opinion means more to me than yours." And Douglass says, "It was a sacred effort," which it sort of was.

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