

SLAVERY AND INVOLUNTARY SERVITUDE

THIRTEENTH AMENDMENT

SECTIONS 1 AND 2. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Congress shall have power to enforce this article by appropriate legislation.

ABOLITION OF SLAVERY

Origin and Purpose

On January 1, 1863, President Lincoln issued the Emancipation Proclamation¹ declaring, based on his war powers, that within named states and parts of states in rebellion against the United States “all persons held as slaves within said designated States, and parts of States, are, and henceforward shall be free” The Proclamation did not allude to slaves held in the loyal states, and, moreover, there were questions about the Proclamation’s validity. Not only was there doubt concerning the President’s power to issue his order at all, but also there was a general conviction that its effect would not last beyond the restoration of the seceded states to the Union.² Because the power of Congress was similarly deemed not to run to legislative extirpation of the “peculiar institution,”³ a constitutional amendment was then sought. After first failing to muster a

¹ 12 Stat. 1267. On September 22, 1862, Lincoln had issued the preliminary Emancipation Proclamation, which announced his intention to issue the Emancipation Proclamation on January 1, 1863.

² The legal issues were surveyed in Welling, *The Emancipation Proclamation*, 130 No. AMER. REV. 163 (1880). See also J. RANDALL, CONSTITUTIONAL PROBLEMS UNDER LINCOLN 371–404 (rev. ed. 1951); ALLEN C. GUELZO, LINCOLN’S EMANCIPATION PROCLAMATION: THE END OF SLAVERY IN AMERICA (2004); and Frank J. Williams, “Doing Less” and “Doing More”: The President and the Proclamation—Legally, Militarily, and Politically, in HAROLD HOLZER, EDNA GREENE MEDFORD, AND FRANK J. WILLIAMS, THE EMANCIPATION PROCLAMATION: THREE VIEWS (2006).

³ K. STAMPP, THE PECULIAR INSTITUTION: SLAVERY IN THE ANTE-BELLUM SOUTH (1956).