Musings on the Thirteenth Amendment

by Charles K. Grant

This year marks the 150th anniversary of the passing in the Senate of the resolution that would ultimately become the Thirteenth Amendment to the Constitution, which forever abolished slavery and involuntary servitude in the United States. The measure was passed by the Senate on April 8, 1864, passed by the House on January 31, 1865, and adopted on December 6, 1865. On December 18, 1865, Secretary of State William H. Seward proclaimed its adoption after the requisite three-fourths of the states ratified it. The Amendment states:

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.

Over four million slaves were freed by its passage.

Until the Thirteenth Amendment, slavery had been protected in the original Constitution through clauses such as the Three-Fifths Clause, by which three-fifths of the slave population was counted for representation in the House of Representatives, and the Fugitive Slave Clause, which required slaves who fled to another state to be returned to the owner in the state from which they escaped. Though many slaves in the states in rebellion had been declared free by Lincoln’s 1863 Emancipation Proclamation, this document was of questionable legality and their post-war status remained uncertain.

What perhaps is unknown by many is that there was an earlier proposed Thirteenth Amendment, the purpose of which was to forever constitutionally enshrine slavery in the states allowing for that “peculiar institution.” This proposed amendment, passed by the necessary two-thirds vote in the House on February 28, 1861, and the two-thirds vote in the Senate on March 2, 1861, provided as follows:

No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof; including that of persons held to labor or service by the laws of said State.

In what later became known as the "Corwin Amendment," named after Ohio Rep. Thomas Corwin, this amendment was a last ditch effort to placate the South and contain secessionist sentiment. The Senators and Representatives from the seven slave states that had already declared their secession from the Union did not vote on it. The resolution called for the amendment to be submitted to the state legislatures and to be adopted "when ratified by three-fourths of said Legislatures.” Outgoing President James Buchanan, a Democrat, endorsed the Corwin Amendment by taking the unusual step of signing it despite the fact that the chief executive had no role in the amendment process. However, Buchanan left to newly-elected President Abraham Lincoln, a Republican, the responsibility of transmitting the amendment to the state legislatures for ratification.

Lincoln defended the states’ right to adopt it. In his first inaugural address, on March 4, 1861, Lincoln declared that he had "no objection" to the Corwin Amendment, nor that it be made forever unamendable:
I understand a proposed amendment to the Constitution — which amendment, however, I have not seen — has passed Congress, to the effect that the Federal Government shall never interfere with the domestic institutions of the States, including that of persons held to service. To avoid misconstruction of what I have said, I depart from my purpose not to speak of particular amendments so far as to say that, holding such a provision to now be implied constitutional law, I have no objection to its being made express and irrevocable.

Thereafter, the man who would become the Great Emancipator transmitted an authenticated copy of the Corwin Amendment with a cover letter to each of the governors. Ohio was the first state to ratify the amendment and Maryland followed suit. An Illinois state constitutional convention that met in 1862, purported to ratify it, but had no legal authority to do so. The onset of the Civil War interrupted the states’ ratification processes. Ohio rescinded its ratification in 1864.

Technically, the Corwin Amendment is not actually dead. Neither the amendment itself nor the enabling resolution, H.J.R. No. 80, placed a time limit during which it would remain open for ratification. To this day, it lies dormant and ready to be ratified by the required number of states. While this is too far from reality to be taken seriously, it has not stopped Maryland from beginning the process of rescinding its ratification. On February 19, 2014, the Maryland Senate adopted a joint resolution to rescind Maryland’s 1862 ratification. The joint resolution is now pending in the Maryland House of Delegates for its consideration.²

(Endnotes)

¹ The Corwin Amendment appears officially in Volume 12 of the Statutes at Large at page 251. The Corwin Amendment was the second unsuccessful proposed “Thirteenth Amendment” submitted to the states by Congress, but not ratified by the states. The first was the similarly ill-fated Titles of Nobility Amendment in 1810. See Joel A. Silversmith, The “Missing Thirteenth Amendment”: Constitutional Nonsense and Titles of Nobility, 8 S. Cal. Interdisc. L.J. 577 (Apr. 1999), available at http://www.thirdamendment.com/missing.html.