



Andrew Napolitano and the Pollardism of Slave Condemnation

Burt Likko / 11 hours ago

If you're like me, and I know I am, there is something about historical revisionism that is deeply unsettling and agitating. Here, watch this, and particularly if you're a national of the United States, I challenge you to *not* be disturbed after so doing:

When I see the affable, well-educated, and persuasive Judge Andrew Napolitano — a man with whom I often *agree* about a lot of other things, most pointedly contemporary disregard of the Constitution in the name of national security — basing part of his book pitches on inflammatory comments concerning Abraham Lincoln and the Civil War, well, that gets my attention.

Quite unfortunately, Napolitano seems to be, perhaps unintentionally, assuming a leadership position in the trend of Civil War revisionism. That movement approaches the sesquicentennial of its dissemination of deception and apologia that began with the the 1866 publication of Robert Pollard's 800-page polemic *The Lost Cause: A New Southern History of the War of the Confederates*. But its real champion in its early phases was the charismatic, articulate, and unrepentant former Confederate General Jubal Early. Confederate revisionists have set forth a pretty consistent series of arguments founded upon Pollard and Early's semi-truths thereafter, recapitulated in a variety of permutations of emphasis depending on a wetted intellectual finger lifted to sense the shifting breezes of cultural norms and the vagaries of prevailing academic fashion:

1. The southern states' assertion of autonomy, prominently including interposition against tariffs and exercise of their perfectly legal right of secession, were the true reasons the North declared war on the South; the North was not concerned about slavery and perpetrated slavery itself after the war;
2. The slaves in the South were as satisfied with their existence as anyone else and loyal to their societies and to their beneficent owners, who in turn were mostly searching for and finding an economic and socially viable way to phase slavery out of existence;
3. The Confederacy was an improvement upon the United States' Constitutional form of government with respect to civil and natural rights; it fielded a talented, brave, heroic,

- and morally superior military force, which found an avatar in the honorable Robert E. Lee — and they were only defeated over time by the relentless and heartless application of overwhelming amounts of manpower and materiel, and not through inferiority at arms;
4. Southern women and civilians and even slaves were patriotic and loyal to their states and the Confederate cause to and even past the end of the war;
 5. The North effectively initiated an aggressive war on the South after substantial angling and positioning for the same, whereas the Southern states and their leaders only sought to defend themselves and assert fundamentally the same kinds of legal and moral claims that the Founders did during the American Revolution; and
 6. Northern society, northern politicians, and the U.S. Government were all every bit as racist, cruel, hypocritical, unprincipled, and dishonorable as they accused the South and its leaders of being.

Napolitano turns out to be yet another proponent of this constellation of revisionist theories. To be sure, he morally condemns slavery in the roundest of turns and offers the different spin of suggesting that ultimately it was good that the Union won. As has been the case since Pollard and Early, there is a kernel of truth, in some cases more than a kernel, in all of this. But these half-truths must exist side-by-side with other truths, like the riots in Confederate cities like Charlotte and Nashville (if civilians and in particular women were so loyal, why did they riot?), the long history of fugitive slaves (if they were so happy, why did they run away?), and the sore fact that the South really did shoot aggressively first, and *contra* Napolitano, not in response to some kind of “trick”.

The big claim, that the Civil War was about secession and union rather than slavery, points to a very big tree and calls it the forest. Why did the southern states secede? To protect their political sovereignty, their “states’ rights?” Sure, but why did they think it was important? At least four of the Confederate states were quite explicit that protection and maintenance of the “peculiar institution” was *the* “states’ right” for which secessionists were willing to stake their blood and honor.

Judge Napolitano seems to have first moved in to this territory in his 2007 book *The Constitution in Exile*, and it seems he’s pushing quite a lot of this today, calling it an intellectual foundation to his more critical recounting of the presidencies of Theodore Roosevelt and Woodrow Wilson. It’s also a political and publicity foundation for his publications: it’s riveting to hear an accusation that a great national hero was in fact crosswise to both the values of the Constitution and the values of fundamental humanity when doing the very things for which they are today celebrated, and thus that we are celebrating the wrong things.

Now, there’s a point to which using Lincoln as a punching bag can be dismissed as a shock value tactic, and as with the kernel-of-truth that can be found in most of the Lost Cause arguments, not everything Lincoln did was above reproach or represented adherence to principle; his own attitudes about a number of things including racial equality evolved over the course of his lifetime; as President, Lincoln issued orders that he was well aware that would have would have been clearly unconstitutional in a time of peace and domestic tranquility.

But the thing that set me off about this particular rehash of the revisionism is Napolitano's argument that the entire Civil War could have been avoided by buying (or perhaps condemning) every slave in the country. I found the argument unsettling — expensive, yes, but predictably less expensive than a war it would seem.

Actual historians rebutted this to Napolitano's face the other night,* which comfortably affirmed my pre-existing understanding of the factual and moral structure of the historical Lincoln and his actions, and they called him out on some things that he got just plain wrong (like the accusation that Lincoln ordered the return of fugitive slaves to Confederate states *during* the war). As to the seizure-of-title-and-manumission issue, the cost would actually have been so prohibitive that the war wound up costing fewer dollars than the proposed mass manumission, and the best available projections about the war's length and the cost in blood to wage it were (as are so many wars before they are actually fought) predicted to be minimal as these things go.

“Minimal cost in blood?” Yes, that *was* the prediction. The north's grand strategy at the outset of hostilities was Winfield Scott's “Anaconda Plan,” which basically required controlling the Ohio and Mississippi rivers and imposing a naval blockade, was essentially a large-scale siege intended to starve the south into submission with relatively low cost and bloodshed. And while Lincoln was basically agnostic about Scott's strategy, Congress rejected it because it felt a political need to demonstrate force in response to secession and the attack on Fort Sumter — and that after one or two decisive battles, the Southerners would see the futility of resistance and come to terms. So the conventional wisdom prevailing in early-to-mid-1861, including but not limited to Lincoln, was that tactics were available to quickly and decisively end the war. (Then First Bull Run happened, an overture to all the awfulness of the worst four years of America's history.)

I have always thought, since I was taught this as a lad, that the leadership of Lincoln and Grant and the others saw the nation through the conflict was the fundamental reason why the United States survived at all — and consequently that it could play the decisive role it did resolving two world wars in the twentieth century, without which our world today would be even darker than it already is. Of course, it brings unease to hear Napolitano, who I'd otherwise found reason to respect and admire, attack the very decisions in which I'd invested such grave moral significance. Like anyone, I don't want to think that I'm celebrating the sorts of things and people that I ought to be condemning. And, while I do not shrink from intellectual challenges to my beliefs and opinions, that does not make the process of confronting them particularly comfortable.

But I'd have avoided even my moment of unease if I'd remembered while watching the plug that we'd actually discussed the political impossibility of that tactic on these very pages, less than a year ago: not only would such a project have been far beyond the financial reach of the Federal government in the early 1860's, it was unpopular to the point of being not politically feasible to implement, for reasons well beyond Lincoln's ability to control.

So could Lincoln really have avoided the Civil War by buying the slaves? About as much as we moderns could have shortened the war in Afghanistan by buying every poppy in the country for \$1.75 billion a year like I suggested we do back in 2009. That was never going to happen and I

knew it even then despite the fact that I still think it was a *brilliant* idea. Yes, that would have starved the bad guys of money and local political support, but there's no way Congress would ever have either agreed to buy opium in any sort of official or overt capacity, nor would the government have found the money and logistical ability to pull off such a thing.

Far easier for Congress to find and then spend money on guns and soldiers — and it was far easier for Congress to do the same thing back then, too. Condemnation of slaves *en masse* was no more politically viable in 1861 than the Anaconda Plan. In a more perfect world, Lincoln might have been able to have done as Napolitano suggests, but when wishing for a more perfect world, we ought to wish for a perfecter world, one in which there was never slavery in the first place, or an even more perfecter world in which men did not actively wish for war or could at least find ways to resolve their political disputes that did not involve killing.

Lincoln did not live in a world sufficiently perfect that he could have availed himself of Napolitano's preferred strategy. I think highly enough of President Lincoln to hold on to faith that if it had been a realistic option, he'd have been willing to have tried it. But Napolitano, of all people, should understand that Lincoln needed to work with Congress, not in spite of it, and Congress was never going to do something like that.