Imagine for a moment this unlikely scenario. Before the presidential election of 1864, Russia, England, and France bring the Union and the Confederacy to the negotiating table. The international powers proclaim their concern over the seemingly endless slaughter, as well as the possibility of even greater barbarity through a slave uprising. More to the point, the foreign powers hope to expand their spheres of influence in the Western Hemisphere, restore the flow of cotton from the South, increase trade throughout the Pacific Rim, and discredit the validity of republican governments. War weariness in the North causes Abraham Lincoln and his advisers to consider terms. Meeting on board a Russian warship off the northwest coast, the president and Secretary of State William Henry Seward confer with Confederate emissaries to hammer out a settlement. The Confederates give up their claim to sovereignty and rejoin the Union. The Lincoln administration refuses to budge on the question of antislavery, but agrees to float bonds worth $400 million to ease the financial sting for planters, who are allowed to drag out this version of compensated emancipation over five years. The talks nearly break down over the issue of human rights: the punishment of certain Confederates for war crimes, including the treatment of prisoners of war, and reparations for the freedpeople. The international arbitrators push the issue of truth and reconciliation into the next phase, gaining a promise from former Confederates to broach the subject as they refashion their state governments, while establishing a monitoring agency to assess how both sides live up to their promises.

And the end of the war came.1

Perhaps.

Such might have been an outcome of America’s Civil War, but only if it had occurred in the twentieth or twenty-first century and followed the patterns of more recent conflicts. Since World War II, more than 70 percent of armed conflicts have been internal ones.2 But ending these wars through negotiations has been problematic.

The author would like to thank Gregory P. Downs, Gary W. Gallagher, Ari Kelman, Mark E. Neely Jr., Evan Rothera, and Michael Vorenberg for their careful readings of this essay.

1 With apologies to Abraham Lincoln, who in his Second Inaugural Address of March 1865 explained how slavery caused the American Civil War, adding succinctly: “And the war came.”
2 Karl DeRouen Jr. and UK Heo, eds., Civil Wars of the World: Major Conflicts since World War II, 2 vols. (Santa Barbara, Calif., 2007), 1: 2. The editors chart 225 armed conflicts between 1946 and 2001, with 163 of them—nearly 72 percent—internal conflicts: “Internal conflict has been the dominant form of conflict throughout most of the post–World War II period and certainly since the late 1950s.”
atic. The most common way for them to conclude has been through third-party intervention: either the United Nations or some coalition of international forces and other institutions. They typically produce a settlement agreed to by both parties. Often, redress for human rights violations or justice for wrongdoing becomes part of the settlement, or at least figures prominently in the discussions for peace. Consequently, modern conflict resolutions contain the expectation of a return to normalcy by the warring nation, which should have a functioning system of justice in place. The reality of a “permanent” settlement, however, has been discouraging. Scholars have indicated that 62 percent of all civil wars between 1940 and 1992 led to a signed bargain. Only half of those agreements were ever implemented. Here again, third parties have proven instrumental for success. “Only if a third party is willing to enforce or verify demobilization," writes Barbara F. Walter, “and only if the combatants are willing to extend power-sharing guarantees, will promises to abide by the original terms be credible and negotiations succeed.”

The United States’ Civil War featured none of the above: no possibility of third-party pressure beyond 1862, no negotiations between warring parties that led to a signed bargain, no resolution of human rights issues as part of a settlement—and no settlement at all, actually. It was a war won by military conquest and a peace whose contours were determined by military force—the coercive power of an internationally recognized nation versus discussion of terms among combatants of equal political status. Through victory by arms, the nation has endured to this day, albeit with significant bumps along the road to reunion. Lest one think that this makes the Civil War exceptional in comparison to current conflicts, one scholar has shown that wars ending in victory between 1940 and 2000 were “nearly twice as likely to remain settled than those concluded through negotiated settlement or a cease-fire/stalemate.” It is perhaps an unwelcome realization that force rather than reason has enjoyed the edge in holding fractious countries together.

Had other nations intervened in the U.S. Civil War, they quickly would have realized that the conflict had opened thorny issues that extended beyond a cease-fire. Ending slavery, although important, was one among many concerns to resolve. Northern leaders also had to decide on the status of the rebels—whether they would return quickly as part of the electorate, deserved punishment of some kind, or should have confiscated property returned. A much harder problem was how to determine whether the rebels truly accepted the authority of the United States government. The allegiance of the former Confederates remained suspect and a point of inquiry by the Congress’s Joint Committee on Reconstruction deep into 1866. At the same time, African Americans’ securing of political rights equal to those of white people was not a foregone conclusion. Most white northerners believed that the freedpeople would benefit from a period of tutelage in which they could prove that they had

embraced free labor ideology. The status of black Americans had created much de-
bate during the war; freedom left many questions concerning citizenship and rights
unanswered.6

Consequently, historians from time to time have questioned when the U.S. Civil
War actually ended. International wars close with a declared winner—either through
a settlement or conquest, with the defeated entity establishing governmental stability
that limits the possibility of future conflict. But in an intra-national fight, the to-do
list for the end of a conflict can become much more expansive. And it can become
even more complicated when the conflict has been fought as if it were a war between
nations, with both sides respecting certain rules such as an exchange of prisoners.

Can the rebels be treated as traitors who deserve possible execution? Does civil war
end with a cease-fire between armies, or does it require the acceptance and creation
of governmental relations that conform to the desires of the victors? What if the de-
feated faction mounts an insurgency designed to preserve whatever strands of the
prewar status quo it can hold on to? Does ending the civil war require winning the
hearts and minds of the conquered people, or simply gaining allegiance, no matter
how unwillingly?

The United States solidified victory, and answered some of the post-battle ques-
tions, through the adoption by Republican politicians and thinkers of a constitutional
position that recognized a state of war as lasting beyond the surrenders of armies.

Democracies assume self-determination and voter participation as hallmarks. Federal-
ism, the constitutional arrangement of sovereignty that survived the war, dictated
that the individual states control requirements for voting, office-holding, and such
forms of civic participation as serving on juries or testifying at trials. Yet it was not al-
ways in the interests of the U.S. to have former rebels voting when the freedpeople
could not, or for the traitors to be administering a legal system that allowed for an in-
surgency to coalesce. Constitutionalism became an inconvenience, with even Radicals
understanding that peace restored the supremacy of civil over military rule, narrow-
ing what could be done to the traitors. Republicans resolved the contradiction be-
tween the rights of self-determination and coercion through military force by
declaring that wartime continued.7 Instead of large battles with a uniformed enemy,
the situation caused the U.S. Army to conduct small wars—low-intensity incursions
and constabulary actions—that kept the conflict alive.8

Could the war have ended by peaceful means before the spring of 1865? Probably

6 Eric Foner’s Nothing but Freedom: Emancipation and Its Legacy, new ed. (Baton Rouge, La., 2007),
thoroughly outlines the problem of freedom after the Confederate surrenders.

7 Gregory P. Downs, After Appomattox: Military Occupation and the Ends of Wars (Cambridge,
Mass., 2015), 3; Mark Wahlgren Summers, The Ordeal of the Reunion: A New History of Reconstruction
(Chapel Hill, N.C., 2014), 13; Michael Les Benedict, “Preserving the Constitution: The Conservative
58. On the desire for nineteenth-century Americans to have policy matters gibe with “constitutional plau-
sibility,” see Mark E. Neely Jr., Lincoln and the Triumph of the Nation: Constitutional Conflict in the
American Civil War (Chapel Hill, N.C., 2011), 5.

8 Mark Grimsley, “Wars for the American South: The First and Second Reconstructions Considered
as Insurgencies,” Civil War History 58, no. 1 (March 2012): 6–36. For other works that have considered
the violence in the South as either counterrevolution or terrorism, see George C. Rable, But There Was
No Peace: The Role of Violence in the Politics of Reconstruction (Athens, Ga., 1984); and Allen W.
not, because of the nature of the war aims on both sides. And did the ending of the fighting between the larger armies secure the goals of victory for the Union? The answer is mixed. For many of the loyal citizenry, the restoration of the Union with the destruction of slavery likely was enough. But others, especially hard-line Republicans, saw the war as concluding only with the final admission to the U.S. Congress of representatives from the reconstructed states in 1871.9

A WAR THAT WAS CAST BY THE SOUTH as a legal quarrel over the true meaning of the Constitution and the intent of the Founding Fathers proved every bit as intractable to resolve as an ethnic or religious conflict. The U.S. Civil War was a nationalistic independence effort conducted by southerners to protect slavery. Nationalist independence movements had become typical in the nineteenth century, and according to Don Doyle, roughly half of the members of the United Nations today began “as breakaway states. What is cheerfully referred to as the family of nations has been largely the product of hostile divorces, forced marriages, and patricidal violence.”10 But the Confederacy’s aim of creating an independent nation with slavery created difficulties for negotiating an end to the war. As James McPherson has noted, “The American Civil War could not end with a negotiated peace because the issues over which it was fought—Union versus Disunion, Freedom versus Slavery—proved to be non-negotiable.”11

Nonetheless, some tried. With the exception of third-party intervention and human rights discussions, the counterfactual history that opens this essay features actual scenarios that played out during the war. Although the possibility passed by 1863, the North worried that European powers might intervene. The Lincoln government floated plans to allocate $400 million as a means to ease the financial loss of emancipation for slaveholders.12 Lincoln and Seward met with Confederate envoys on board a steamer to discuss terms, and the fighting ended with widespread amnesty for the rebel traitors. After the fighting stopped, reparations for freedpeople came up in Congress in the form of land redistribution, but this approach lacked support beyond Radical Republicans. What never came about, however, was a settlement between North and South that contained not only a cease-fire between governments but also a consensus even among northerners regarding the political and social alignments that should occur within the defeated Confederacy.

If the peacemakers are blessed, as Jesus observed in his Sermon on the Mount, they received no such consideration during the American Civil War. In fact, the greatest proponents among northerners for a peaceful settlement earned charges of disloyalty. During the conflict, the Democratic Party divided between those who advocated a war for reunion but opposed the Lincoln administration’s policies for fighting it, and those who pushed for a compromise settlement. The peace wing, which

9 Downs, After Appomattox, 3.
earned the epithet of “Copperheads,” gained strength during a dark time in 1864 when the war appeared to have reached a stalemate and the body count from the battlefield was rising faster than ever. Had the Democrats defeated Lincoln in the 1864 election, the platform promised that every effort would be made to halt the hostilities—to call some unspecified convention of states or pursue other peaceable means to restore the Union. Most observers understood at the time that this meant reunion with slavery. The Republicans struck back by decrying the compromise proposals as evidence of disloyalty. Today, the Civil War Peace Democrats remain easy targets for vilification by historians because they condoned the continuation of slavery in favor of union.

Similar, smaller movements occurred in the Confederacy. By the fall of 1862, several southern congressmen began to broach the possibility of negotiations to end the war. In September 1862, Congressmen Henry S. Foote of Tennessee and Hines Holt of Georgia proposed to send commissioners to Washington to seek peace. There was not enough sentiment in support of the venture at the time. Peace also became part of several state elections. The most famous state battle occurred in 1864 in North Carolina, where William Woods Holden, the editor of the Raleigh Standard, opposed Zebulon Vance for the governor’s office. Holden had espoused peace in 1863, just after the Battle of Gettysburg, but pressure from the citizenry had caused him to call off rallies that promoted a negotiated settlement. In the gubernatorial race the next year, Holden ran on a platform advocating that a state convention be held to determine whether to begin peace talks with the Union. A state proposing to conduct unilateral negotiations with the Lincoln government was tantamount to a secession movement from the Confederacy. Like the northern Copperheads, Holden was vilified as a traitor. North Carolinians favored the incumbent Vance, taking their chances on continuing the war at a time when defeat of the Republicans in the presidential election still seemed possible.

The Confederacy also made a last-ditch effort to court foreign intervention. In December 1864, Jefferson Davis and his secretary of state, Judah P. Benjamin, decided that the time had come to give up slavery in exchange for aid from Europe. Most likely they sought recognition as a nation from the international community rather than armed intervention. Even recognition would feed morale and allow for the flow of much-needed goods for the war effort. It was unclear how Davis and Benjamin could promise even a gradual emancipation, because the Confederate constitution did not allow for legislation to deny or impair “the right of property in negro slaves.” The supposedly constitution-loving leaders had shinnied out to the thin end of a legal limb. Whatever the case, in January 1865, Confederate congressman Duncan F. Kenner—a Louisianan and one of the largest slaveholders in the South—

13 The historiography of the Copperheads has centered on whether the Peace Democrats formed a loyal opposition or were a threat to the nation. For the Copperhead threat as being exaggerated, see Frank L. Klement, The Copperheads in the Middle West (Chicago, 1960); and Joel H. Silbey, A Respectable Minority: The Democratic Party in the Civil War Era, 1860–1868 (New York, 1977). For the view of Copperheads as a threat to the Union war effort, see Jennifer L. Weber, Copperheads: The Rise and Fall of Lincoln’s Opponents in the North (New York, 2006).

traveled through New York in disguise so he could gain passage to Europe and confer with Confederate ambassadors. To make a long story short, the French said they would follow the British lead, and the British declined to intervene. Everyone could see that the Confederacy’s foundation was crumbling.\footnote{Confederate Constitution, Article 1, Section 9, item 4; William J. Cooper Jr., Jefferson Davis, American (New York, 2000), 514–515; Doyle, The Cause of All Nations, 275–280.}

The United States made contact with Confederate agents, who sent out feelers for a negotiated peace. In July 1863, for example, Vice President Alexander Stephens went to Union lines ostensibly to discuss the exchange of prisoners, but in reality he was testing the waters for peace. It came to naught, as Lincoln suspected that more was afoot than a discussion about prisoners. In July 1864, a meeting took place among newspaper editor Horace Greeley, Lincoln’s personal secretary John Hay, and Confederate emissaries of questionable authority in Niagara, Canada. Conducted during a low point for the Union military campaigns, the event was concocted to try to embarrass Lincoln politically, with his enemies believing that he would not trade terms with traitors and thus would look as if he intended to waste more northern blood and treasure. Instead, Lincoln made it known that he would gladly consider peace, but only if it meant a reunited nation with the end of slavery.\footnote{For an overview of the attempts to raise the peace issue, see Steven E. Woodworth, “The Last Function of Government: Confederate Collapse and Negotiated Peace,” in Mark Grimsley and Brooks D. Simpson, eds., The Collapse of the Confederacy (Lincoln, Nebr., 2001), 13–39; on Niagara, see also Michael Vorenberg, “‘The Deformed Child’: Slavery and the Election of 1864,” Civil War History 47, no. 3 (September 2001): 240–247; James M. McPherson, Battle Cry of Freedom: The Civil War Era (New York, 1988), 766–767.} So much for Confederate independence or a return to the antebellum status quo.

The most significant talks occurred in early February 1865 among high officials of both warring nations. For the Union, the officials could not have been any higher—President Lincoln appeared with Secretary of State William Henry Seward at Hampton Roads, Virginia. They met on board a Union steamer with Confederate vice president Stephens, former U.S. Supreme Court justice John A. Campbell, and rebel senator R. M. T. Hunter of Virginia. The southern emissaries were shocked to learn that the U.S. Congress had just sent the Thirteenth Amendment to the states to ratify in order to end slavery permanently. The talks fizzled when Jefferson Davis’s hopes of independence with slavery intact came up against Lincoln’s two non-negotiable conditions: reunion and abolition. There had been no chance for an agreement, because the respective minimum demands were irreconcilable. Davis and his representatives tried to make political hay out of rejecting what they considered to be “unconditional surrender,” and they tried to raise flagging spirits, but it was becoming clear that the Confederate experiment was tottering on increasingly unstable legs. At this meeting Lincoln raised the prospect of appropriating $400 million to compensate the South at least partially for the loss of its slaves. Upon returning to Washington, Lincoln raised the issue with the cabinet, which unanimously scuttled the plan.\footnote{Woodworth, “The Last Function of Government,” 30–34; Donald, Lincoln, 556–560; Cooper, Jefferson Davis, 510–513.}

Other overtures featured dubious solutions on the part of the Union. Francis P. Blair Sr., an important antebellum editor and elder statesman, conducted a visit with Jefferson Davis in Richmond on January 12, 1865, that served as a prelude to the
February meeting at Hampton Roads. Blair proposed that Lincoln should play to the common Americanism between Yankees and rebels by having them unite to fight a foreign enemy—the French-supported monarchists who were conducting their own civil war against the republicans in Mexico. It was unclear what was to happen once victory was achieved over the monarchists—whether the Confederate force would rule over Mexico or annex the territory for the U.S. The implication from Blair was that Davis, if he wished, could be installed as a dictator. Although this issue was raised during the February meeting with Confederate emissaries, it was quickly shoved aside by Lincoln.18

Lincoln came up with a less bizarre, although convoluted, inducement to end the fighting. Visiting Richmond after its fall to the Union in early April, the president spoke with John A. Campbell, the Confederate assistant secretary of war, about a way to settle the fighting piecemeal by taking a state-by-state approach that at the same time refused to recognize the legitimacy of the governments called upon to act. Lincoln encouraged Campbell to urge “the gentlemen who have acted as the legislature of Virginia in support of the rebellion” (translation: they were not lawmakers of a legitimate government) to withdraw the state’s troops from the Confederate insurgency. If they did, he promised to relinquish the confiscation of property. What this meant is anyone’s guess, and no one had the chance to find out, as Lincoln withdrew his offer after the surrender of the Army of Northern Virginia at Appomattox.19

Perhaps stunning was the realization among high-ranking Confederate military officers, including Robert E. Lee, that by the winter of the Confederacy’s greatest discontent, the time might have come to seek the best political solution to end the strife and save southern lives. Historian Mark Grimsley has argued that southern generals, even more than their civilian counterparts, knew by the winter of 1865 that it was time to say “enough.” They recognized the need to seek the best terms possible. Lee apparently spent the greater portion of one night after the talks at Hampton Roads discussing the situation with Senator Hunter, who had been at the meeting. “He said,” according to Hunter, “if I thought there was a chance for any peace which would secure better terms than were likely to be given after a surrender at discretion, he thought it my duty to make the effort.” The general told the senator that it was Hunter’s duty to enter a resolution in the Senate to that effect. Lee said that he could not recommend negotiations openly because “it would be almost equivalent to surrender.” Hunter pressed him to say something to the president, to which Lee made no reply. Hunter concluded: “In the whole of this conversation he never said to me he thought the chances were over; but the tone and tenor of his remarks made that impression on my mind.”20

The large-scale fighting between the Confederacy and the Union during the U.S. Civil War closed with the surrenders of four Confederate armies—at Appomattox,
Virginia; at Durham Station, North Carolina; at Galveston, Texas; and at Citronelle, Alabama. The terms were lenient: If soldiers laid down their arms and obeyed the laws of the United States, they remained safe from prosecution. Where this left the civilian population, especially the leaders of the rebellion, was unknown—as was the status of civic participation by white and black people in the South. But no one was hanged for treason against the United States.

Even if foreign commissioners had presided over the surrenders, and the subsequent settlement, the ending of the war might have been just as lenient, provided that certain persons had served as the arbitrators. Europe was struggling in the aftermath of the revolutions in 1848–1849 with tensions between monarchists and republicans. Internationally, sentiment existed for a merciful end to America’s Civil War partly because of the example that would be set by a republic that could prove its strength by absorbing rather than executing its enemies. The Duke of Argyll hoped that the U.S. would not resort to capital punishment. John Bigelow, the U.S. consul in Paris, reported from France that he had encountered no one who believed it wise to execute Jefferson Davis. In Brussels, Henry S. Sanford, another diplomat, suggested that whatever course the United States followed could have repercussions on “the treatment of those condemned hereafter for revolutionary enterprises.”

One of the more remarkable letters came from Agénor de Gasparin, a prominent French politician and reformer. As an Orléanist, he was no republican, but he leaned toward a constitutional monarchy. Still, he considered the U.S. to be part of the world’s progressive community. To Seward, Gasparin articulated ideas that anticipated exactly how Reconstruction would take shape: he hoped that the U.S. would abolish slavery, preserve its free institutions, reestablish the southern states with rights intact, and recognize the newly freed blacks’ rights of citizenship. He concluded, “Do not consent to resort to reprisals, to dictatorships or to wars. Nothing will equal in beauty this liberal conclusion of a civil war.”

The leniency toward former enemies had begun without the United States taking the counsel of Europe. It was a leniency crafted to end the fighting, to encourage reunion, and to deny further resistance by creating martyrs or by encouraging Confederates to seek foreign partners to continue the fight, such as through an alliance with the French in Mexico. Lincoln feared potential anarchy in the South and hoped that there would be respect for the national authority and the laws of the land. Additionally, legal minds grasped the problem of trying the rebels for treason. Trials would be conducted in Richmond, where it would be difficult to secure a conviction from a jury of the peers of Jefferson Davis and Robert E. Lee. Under the circumstances, it was best to let the enemy down gently.

And the end of the war came.

Perhaps.

22 A. de Gasparin to William Henry Seward, May 1, 1865, ibid. For more on European reception of the surrenders, see Doyle, The Cause of All Nations, 292–297.
IF THE WAR DID NOT END WITH THE SURRENdERS, then when did it end? Only recently has the question gained fresh currency. More than four decades ago, historian Avery Craven made the bold statement “The American Civil War did not end at Appomattox,” adding: “Until the Negro’s place in American life was fixed, the war was not over.” But he remained a minority voice, as the sheer weight of scholarship has leaned toward portraying the surrenders of the Confederate armies as the end of the war. Although violence continued in the South—much of it aimed at either controlling elections or preserving the racial order—historians have disagreed over whether to interpret this as a continuation of warfare. On the one hand, those who see the end of the war with the surrenders in 1865 argue that the rebels did not secede again, and also that the violence involved only a tiny fraction of the South’s white males. At the same time, according to the argument, the violence featured minimal interstate cooperation, belying the notion of a concerted, organized leadership. On the other hand, the violence did fulfill the goal of conducting what one historian has called a counterrevolution that overturned the Republican state governments in favor of a regime friendlier to the interests of the former Confederates. More recently, Gregory P. Downs has revived the provocative idea that we should consider the end of wartime as coming around 1870, with the admission of the last southern states under Radical Reconstruction.

Two factors make it plausible to consider the war as having lasted beyond the surrenders. First, there was support among key players at the time for defining the post-surrender South as still living in a condition of wartime. Second, violence persisted in a form of warfare that we know today as an insurgency.

Concerning the first element, numerous Republicans pressed for considering the war as ongoing so that they could enact the hardest measures allowed under the auspices of the war powers clause of the Constitution. The war ended without an understanding of the terms under which the country would reunite. There remained the need to establish true peace, respect for the law, the protection of the freedpeople, and the acquiescence of the former Confederates in allegiance to national authority.26 The most articulate, and influential, argument that called for considering the Civil War as continuing beyond the surrenders came from Richard Henry Dana Jr. On June 12, 1865, the former U.S. attorney and author of Two Years before the Mast delivered a famous speech at Faneuil Hall in Boston at a rally for black enfranchisement in which he asserted that the war was not over. “A war is over when its purpose is secured,” he declared, adding, “It is a fatal mistake to hold that this war is over, because the fighting has ceased.” He added that a victorious nation did not retreat and give up possession of the enemy country only because the fighting had ceased.

24 Avery Craven, Reconstruction: The Ending of the Civil War (New York, 1969), 1, 2.
25 For the argument against war continuing beyond the surrenders, see, for instance, Gary W. Gallagher, The Confederate War: How Popular Will, Nationalism, and Military Strategy Could Not Stave Off Defeat (Cambridge, Mass., 1997), 206 n. 1. On counterrevolution and the statement that “peace became war carried on by other means,” see Rable, But There Was No Peace, 15; and see also Downs, After Appomattox, 3. The literature as a whole remains tilted toward the war ending with the surrenders. For an excellent analysis of the capitulation by the Confederate Army in the east, which also shows the repercussions and contested images beyond the event, see Elizabeth R. Varon, Appomattox: Victory, Defeat, and Freedom at the End of the Civil War (New York, 2014).
26 Paul A. Cimbala and Randall M. Miller, eds., The Great Task Remaining before Us: Reconstruction as America’s Continuing Civil War (New York, 2010), 2.
“No; it holds the conquered enemy in the grasp of war until it has secured whatever it has the right to require.” The position did not appeal to Democrats or conquered Confederates. But the consideration that a state of war still existed until all goals had been achieved became an ideal adopted by a range of Republicans, including House Speaker Schuyler Colfax, Senator William Pitt Fessenden, Representative George S. Boutwell, and William Lawrence of the House Judiciary Committee. The “Grasp of War” theory, according to constitutional specialist Michael Les Benedict, became the favored rationale in dealing with the rebels because it offered the greatest constitutional flexibility while respecting fundamental principles.

There were additional signs that the condition of wartime continued during Reconstruction. For more than a year after the greater fighting ceased, much of the Confederacy existed in a limbo between military and civil law, even after the fall 1865 elections that attempted to restore the insurgent states to the Union. Martial law remained in place, and the Freedmen’s Bureau and provost courts intermingled with civil rule in the former Confederacy, creating what Downs has called a “dual government” in which the army sometimes made arrests, ruled on cases, and overturned elections despite the functioning of civil authority. Attorney General James Speed argued for maintaining martial law—a status that continued for all of 1865 and part of 1866, until Andrew Johnson proclaimed the final restoration of peace and civil authority in the South on August 20, 1866.

Also, violence erupted that required what students of military engagements call “small wars,” and what we today see as an insurgency. These kinds of operations often appear in the wake of internal conflicts. Colonel C. E. Callwell popularized the term “small wars” in a book by that title published first in 1896. He defined these operations as “campaigns undertaken to suppress rebellions and guerilla warfare in all parts of the world where organized armies are struggling against opponents who will not meet them in the open field, and it thus obviously covers operations very varying in their scope and in their conditions.” More recently, these operations have earned the title “low-intensity conflict.” Andrew J. Birtle of the U.S. Army Center of Military History has acknowledged the intellectual debt to Callwell but added that experiences of the army in small wars since that study have often been affairs of a quasi-police nature conducted after the large-scale fighting ceased; hence, the term “constabulary operations” has emerged. In extreme cases, according to Birtle, this might have involved the imposition of military government, which could become “programs of social engineering designed to reshape the subject society,” or in other words, exactly what happened in the post-surrender South.

29 Downs, Beyond Appomattox, 62, 63, 68, 72. On April 2, 1866, Johnson had declared that no armed resistance to the authority of the United States existed, except in the state of Texas. The August proclamation finally recognized that the insurrection had died in Texas.
Political decisions about the size of the military and its dispersal virtually guaranteed an emphasis on small wars. Northern ideals about republicanism stressed the need to restore civil authority as quickly as possible. Additionally, the size of the national debt that was amassed in prosecuting the Civil War and the shifting strategic priority to continue wars of pacification against Native Americans in the West conspired to drastically reduce the size of the army in the South. The number of soldiers in the former Confederacy dropped from 1 million in April 1865 to 90,000 by the end of January 1866. Subtract the troops stationed at the Mexican border in Texas, and the number falls to 61,000. In early Reconstruction, the army typically fielded roughly 25,000 soldiers in the Southeast, although in the 1870s that figure would decline to 8,000. In comparison, during the 1870s, the United States stationed 25,000 soldiers in the American West; at the end of the nineteenth century, the U.S. left about the same number in the Philippines after the combat stopped. In the U.S. South, the number of troops rarely seemed sufficient to satisfy the needs for protection; however, geography even more than size affected the nature of occupation. Wherever the military presence was small or nonexistent, white southerners could operate with greater impunity. Resistance melted whenever federal troops appeared.

It is possible that none of the northerners who espoused the “Grasp of War” theory truly believed that the war continued—that they primarily sought a means of cloaking pragmatic political concerns within the mantle of constitutionalism. But if they did not see wartime continuing at first, they became more convinced that stern action was necessitated by the violence they saw visited upon both the freedpeople and white Republicans in the South. It is clear that the assaults, assassinations of public officials, and so-called “riots” (always a coded word for the right to murder black people in places such as Memphis and New Orleans) drove moderates toward a more Radical position, leading to military oversight of Radical Reconstruction. Pacification and constabulary engagement by soldiers via the Military Reconstruction Acts of 1867 seemed increasingly necessary because of an insurgency dedicated to overturning the achievements of the war and preventing black advancement—and a commander in chief who was unwilling to use the martial power that Congress had given him. Historian Mark Grimsley has considered the violence in early Reconstruction as part of an insurgency. He asserted that it took more than a century for scholars to recognize it as such. Insurgencies are not easy to identify, even today. They can be missed during what scholar Robert Thompson refers to as “the build-up phase.” Furthermore, they could be overlooked entirely, according to Grimsley, if they failed to account for a range of coercive measures, including economic threats to black laborers, propaganda through newspapers, and paramilitary measures.

34 Grimsley, “Wars for the American South,” 9–14. Thompson quotation from 11. Adds another historian of South Carolina, “From 1865 until 1877 they successfully prosecuted what today would be called
“Records Relating to Murders and Outrages,” a collection of the Freedmen’s Bureau in the National Archives, provides horrifying glimpses into this world. The documents demonstrate a continuous application of violence in the world made by the Civil War. In these records collected by military officers stationed in the South, we can see an insurgency, defined as employing terrorism and other means “to challenge the existing government for control of all or a portion of its territory, or force political concessions in sharing political power.” Louisana provides an example. From the organization of the bureau in 1865 to February 1867, agents reported 70 freedmen killed by white people, 10 killed in riots, 6 killed without knowing the perpetrators, and 210 shot, whipped, stabbed, or beaten. Two freedmen were murdered by another black person. One white person faced the same fate. If anything, the agent believed that the total number of cases was underreported by at least half because of the fears of reprisal. The most chilling statement came in the conclusion by the bureau agent making the report: “In no instance in any of the foregoing cases has a white man been punished for killing or ill treating a freedman.” In one case, Damascas D. Day slashed Mary Stewart, a freedwoman, with a knife on her head, side, and arms. He was brought before the civil authorities in New Orleans for trial, but no witnesses appeared against him, “it being believed they were . . . kept away by threats.” Thus “he was acquitted and immediately afterwards appointed one of the Grand Jury then in session.” Louisiana was not exceptional. Downs has charted that in parts of Mississippi, Texas, and Alabama, the former rebels killed an average of one black man per day during the summer of 1865.

In this build-up phase, the “Murders and Outrages” records are inconclusive about whether white southerners met as a group to plan violent actions to take against the freedpeople. The conflicts seemingly were not organized by a centralized mind, but remained local in nature.

However, these actions took place in a different world, in which the freedpeople were subject to the protection of the law. The white opposition was formulating how to fight back by using economic coercion, black codes, and other means in conjunction with terrorism. Although no official meeting was likely convened to establish a strategy, the silence from higher authorities gave Damascas Day and his peers approval to continue their assaults. They were learning that there would be no consequences for their actions—that, to the contrary, they could be rewarded with positions of community authority, like Day, who became a grand juror and assisted with the regulation of the legal system. The violence against the freedpeople was accepted by local legal and law enforcement officials and white community leaders in general.

Through the implementation of the Reconstruction Acts of 1867, which empowered the military to reorganize state governments in the defeated Confederacy,
the condition of wartime received its curtain call. As a consequence of the recalcitrance of former Confederates, if not because of the heartfelt goals of a majority of Republicans, black suffrage had come to the South. The newly constituted governments had to endorse the Fourteenth and Fifteenth Amendments to the Constitution, adding the precedents of granting federal protection for civil rights and prohibiting discrimination by race in voting. Yet readmission to the Union had been a slow process, taking two years to unfold and involving differing degrees of violence and resistance depending on the state. After the seating of a Georgia senator in Congress in 1871 completed the process for all the former states in rebellion, not even a diehard Radical could legitimately stretch the definition of wartime anymore.  

This is not to say that violence ended. It was during the launch of Military Reconstruction that the scholarly literature most agrees that an insurgency took place, first through the Klan and then through a counterrevolution after 1870 identified as Redemption, which was the overturning of Republican majorities through intimidation, economic coercion, and violence, employing what Steven Hahn has called “paramilitary politics."

Whether the war ended in the spring of 1865, or with Johnson’s declaration of August 1866, or not until 1871, all of these endpoints featured no negotiated settlements and no intervention by a third party. There was no international institution like the United Nations that had the standing of neutrality and legitimacy to act. European powers that could force such bargaining had a vested interest in securing imperialistic holdings in the Northern Hemisphere. Even the Vatican could not succeed. In October 1862, Pope Pius IX called for an end to the “destructive civil war” and urged archbishops to apply their pressure to achieve conciliation. The appeal was ignored by the United States, which is perhaps not surprising given the anti-Catholic bias in the country. The pontiff had his own bias. He relied on the protection of monarchists against revolutionaries led by Giuseppe Garibaldi. Despite ostensibly having a moral influence on 175 million Catholics at the time, he could not bring the warring sides to the bargaining table. Ultimately, what happened in the United States was primarily homegrown.

The end of the Civil War—whether in 1865 or 1871—came about through the coercive measures of a nation-state, seemingly contrary to democratic ideals of self-determination. It was a force, however, that was wrapped in the cloak of leniency at first, and then democratic rituals such as conventions, ballots, and constitutional amendments, implying consent of the governed even if that agreement came about through non-negotiable terms. The use of military oversight directed by the national state provided the only real protection for life, liberty, and property among formerly enslaved people, although it would have taken a far longer commitment to military occupation beyond 1877 to achieve the fullest realization of civil rights. Yet for all

38 For the patterns of readmission of the former states of the Confederacy, see Eric Foner, Reconstruction: America’s Unfinished Revolution, 1863–1877 (New York, 1988).
39 Trelease, White Terror; Steven Hahn, A Nation under Our Feet: Black Political Struggles in the Rural South, from Slavery to the Great Migration (Cambridge, Mass., 2003), chap. 6. For a recent work that exposes the cultural values of violence in Redemption, see Carole Emberton, Beyond Redemption: Race, Violence and the American South after the Civil War (Chicago, 2013).
41 Blair, “The Use of Military Force to Protect the Gains of Reconstruction.”
of the faults of a non-negotiated settlement with no consideration of issues of human rights, and there are many, the nation had been reunited. Perhaps some at the time could predict how the counterrevolution would unfold. But for the moment, a number of goals had been achieved, among them peace, reunion, and black manhood suffrage.

And the end of the war came.

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