

A NOTE ON SLAVERY AND THE AMERICAN FOUNDING



Slavery is the great exception to the rule of liberty proclaimed in the Declaration of Independence and established in the United States Constitution. From the beginning there has been intense debate about slavery and America, precisely because it raises questions about this nation's dedication to liberty and human equality. Does the continued existence of slavery in the context of the American Founding, its motivating principles, and the individuals who proclaimed those principles, make the United States or its origins less defensible as a guide for just government?

At the time of the American Founding, there were about half a million slaves in the United States, mostly in the five southernmost states, where they made up forty percent of the population. Many of the leading American Founders — most notably Thomas Jefferson, George Washington, and James Madison — owned slaves, but many did not. Benjamin Franklin thought that slavery was “an atrocious debasement of human nature” and “a source of serious evils.” He and Benjamin Rush founded the Pennsylvania Society for Promoting the Abolition of Slavery in 1774. John Jay, who was the president of a similar society in New York, believed that “the honour of the states, as well as justice and humanity, in my opinion, loudly call upon them to emancipate these unhappy people.

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To contend for our own liberty, and to deny that blessing to others, involves an inconsistency not to be excused.” John Adams opposed slavery his entire life as a “foul contagion in the human character” and “an evil of colossal magnitude.” James Madison called it “the most oppressive dominion ever exercised by man over man.”

From his first thoughts about the Revolution to his command of the Continental army to his presidential administration, Washington’s life and letters reflect a statesman struggling with the reality and inhumanity of slavery in the midst of the free nation being constructed. In 1774, Washington compared the alternative to Americans asserting their rights against British rule to being ruled “till custom and use shall make us as tame and abject slaves, as *the blacks we rule over with such arbitrary sway.*” When he took command of the Continental army in 1775, there were both slaves and free blacks in its ranks. (About 5,000 blacks served in the Continental army.) Alexander Hamilton proposed a general plan to enlist slaves in the army that would in the end “give them their freedom with their muskets,” and Washington supported such a policy (with the approval of Congress) in South Carolina and Georgia, two of the largest slaveholding states.

In 1786, Washington wrote of slavery, “there is not a man living who wishes more sincerely than I do, to see a plan adopted for the abolition of it.” He devised a plan to rent his lands and turn his slaves into paid laborers, and at the end of his presidency he quietly left several of his own household slaves to their freedom. In the end, he could take it no more, and decreed in his will that his slaves would become free upon the death of his wife. The old and infirm were to be cared for while they lived, and the children were to be taught to read and write and trained in a useful skill until they were age 25. Washington’s estate paid for this care until 1833.

During his first term in the House of Burgesses, Thomas Jefferson proposed legislation to emancipate slaves in Virginia, but the motion was soundly defeated. His 1774 draft instructions to the Virginia Delegates to the First Continental Congress, *A Summary View of the Rights of British*

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America, called for an end to the slave trade: “The abolition of domestic slavery is the great object of desire in those colonies where it was unhappily introduced in their infant state.” That same year the First Continental Congress agreed to discontinue the slave trade and boycott other nations that engaged in it. The Second Continental Congress reaffirmed the policy in 1776.

Jefferson’s draft constitution for the state of Virginia forbade the importation of slaves, and his draft of the Declaration of Independence — written at a time when he owned about 200 slaves — included a paragraph condemning the British king for introducing slavery into the colonies and continuing the slave trade:

He has waged cruel war against human nature itself, violating it’s most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating & carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. This piratical warfare, the opprobrium of INFIDEL powers, is the warfare of a CHRISTIAN king of Great Britain. Determined to keep open a market where MEN should be bought & sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce.

These words were especially offensive to delegates from Georgia and South Carolina, who were unwilling to acknowledge that slavery went so far as to violate the “most sacred rights of life and liberty,” and, like some of Jefferson’s more expressive phrases attacking the king, were dropped in the editing process. Nevertheless, Jefferson’s central point — that all men are created equal — remained as an obvious rebuke to the institution.

From very early in the movement for independence it was understood that calls for colonial freedom from British tyranny had clear implications for domestic slavery. “The colonists are by the law of nature free born, as indeed all men are, white and black,” James Otis wrote in 1761. “Does it follow that it is the right to enslave a man because he is black?” In the wake of independence, state after state passed legislation restricting or banning

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the institution. In 1774 Rhode Island had already passed legislation providing that all slaves imported thereafter should be freed. In 1776 Delaware prohibited the slave trade and removed restraints on emancipation, as did Virginia in 1778. In 1779 Pennsylvania passed legislation providing for gradual emancipation; as did New Hampshire, Rhode Island, and Connecticut in the early 1780s; and New York and New Jersey in 1799 and 1804. In 1780, the Massachusetts Supreme Court ruled that the state's bill of rights made slavery unconstitutional. By the time of the U.S. Constitution, every state (except Georgia) had at least proscribed or suspended the importation of slaves.

Thomas Jefferson's 1784 draft plan of government for the western territories prohibited slavery and involuntary servitude after the year 1800. The final Northwest Ordinance of 1787, passed by the Confederation Congress (and repassed two years later by the First Congress and signed into law by President George Washington), prohibited slavery in the future states of Ohio, Indiana, Michigan, Illinois, and Wisconsin. That same year Jefferson published his *Notes on the State of Virginia*, which included this about slavery:

And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are the gift of God? That they are not to be violated but with his wrath? Indeed I tremble for my country when I reflect that God is just: that his justice cannot sleep for ever. ... I think a change already perceptible, since the origin of the present revolution. The spirit of the master is abating, that of the slave rising from the dust, his condition mollifying, the way I hope preparing, under the auspices of heaven, for a total emancipation, and that this is disposed, in the order of events, to be with the consent of the masters, rather than by their extirpation.

When delegates convened at Philadelphia to write a new constitution, however, strong sectional interests supported the maintenance of slavery and the slave trade. "The *real* difference of interests," Madison noted, "lay not between large and small states but between the Northern

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and Southern states. The institution of slavery and its consequences formed a line of discrimination.” In order to get the unified support needed for the Constitution’s ratification and successful establishment, the framers made certain concessions to the pro-slavery interests. The compromises they agreed to, however, were designed to tolerate slavery where it currently existed, not to endorse or advance the institution.

Consider the three compromises made by the Constitutional Convention delegates and approved as part of the final text:

1. On enumeration: apportionment for Representatives and taxation purposes would be determined by the number of free persons and three-fifths “of all other Persons” (Art. I, Sec. 2). The pro-slavery delegates wanted their slaves counted as whole persons, thereby according their states more representation in Congress. It was the anti-slavery delegates who wanted to count slaves as less — not to dehumanize them but to penalize slaveholders. Indeed, it was anti-slavery delegate James Wilson of Pennsylvania who proposed the three-fifths compromise. Also, this clause did not include blacks generally, as free blacks were understood to be free persons.
2. On the slave trade: Congress was prohibited until 1808 from blocking the migration and importation “of such Persons as any of the states now existing shall think proper to admit” (Art. I, Sec. 9). Although protection of the slave trade was a major concession demanded by pro-slavery delegates, the final clause was only a temporary exemption for existing states from a recognized federal power. Moreover, it did not prevent states from restricting or outlawing the slave trade, which many had already done. “If there was no other lovely feature in the Constitution but this one,” James Wilson observed, “it would diffuse a beauty over its whole countenance. Yet the lapse of a few years, and Congress will have power to exterminate slavery from within our borders.” Congress passed, and President Jefferson signed into law, such a national prohibition effective January 1, 1808.

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3. On fugitive slaves: the Privileges and Immunities Clause (Art. IV, Sec. 2) guaranteed the return upon claim of any “Person held to Service or Labour” in one state who had escaped to another state. At the last minute, the phrase “Person *legally* held to Service or Labour in one state” was amended to read “Person held to Service or Labour in one state, *under the Laws thereof.*” This revision emphasized that slaves were held according to the laws of individual states and, as the historian Don Fehrenbacher has noted, “made it impossible to infer from the passage that the Constitution itself legally sanctioned slavery.” Indeed, none of these clauses recognized slavery as having any legitimacy from the point of view of federal law.

It is significant to note that the words “slave” and “slavery” were kept out of the Constitution. Madison recorded in his notes that the delegates “thought it wrong to admit in the Constitution the idea that there could be property in men.” This seemingly minor distinction of insisting on the use of the word “person” rather than “property” was not a euphemism to hide the hypocrisy of slavery but was of the utmost importance. Madison explained in Federalist No. 54:

But we must deny the fact, that slaves are considered merely as property, and in no respect whatever as persons. The true state of the case is, that they partake of both these qualities: being considered by our laws, in some respects, as persons, and in other respects as property. In being compelled to labor, not for himself, but for a master; in being vendible by one master to another master; and in being subject at all times to be restrained in his liberty and chastised in his body, by the capricious will of another—the slave *may appear* to be degraded from the human rank, and classed with those irrational animals which fall under the legal denomination of property. In being protected, on the other hand, in his life and in his limbs, against the violence of all others, even the master of his labor and his liberty; and in being punishable himself for all violence committed against others—the slave is no less evidently regarded by the law as a member of the society, not as a part of

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the irrational creation; *as a moral person, not as a mere article of property.*

Frederick Douglass, for one, believed that the government created by the Constitution “was never, in its essence, anything but an anti-slavery government.” Douglass had been born a slave in Maryland, but escaped and eventually became a prominent spokesman for free blacks in the abolitionist movement. “Abolish slavery tomorrow, and not a sentence or syllable of the Constitution need be altered,” he wrote in 1864. “It was purposely so framed as to give no claim, no sanction to the claim, of property in man. If in its origin slavery had any relation to the government, it was only as the scaffolding to the magnificent structure, to be removed as soon as the building was completed.” This point is underscored by the fact that, although slavery was abolished by constitutional amendment, not one word of the original text was amended or deleted.

Judging by the policy developments of the previous three decades, the Founders could be somewhat optimistic that the trend was against slavery. At the Constitutional Convention Roger Sherman said that “the abolition of slavery seemed to be going on in the United States and that the good sense of the several states would probably by degrees complete it.” In the draft of his first inaugural, George Washington looked forward to the day when “mankind will reverse the absurd position that the many were made for the few; and that they will not continue slaves in one part of the globe, when they can become freemen in another.” And in one of his last letters, Jefferson wrote that “All eyes are opened, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God.”

Nevertheless, there was plenty of reason for concern. In 1776, Adam Smith argued in *The Wealth of Nations* that slavery was uneconomical because the plantation system was a wasteful use of land and because slaves

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cost more to maintain than free laborers. But in 1793 Eli Whitney invented the cotton gin, making cotton production economical and leading to dramatic growth in the cotton industry, which greatly contributed to an increased demand for slave labor in the United States.

In 1819, during the debate over the admission of Missouri as a slave state, John Adams worried that a national struggle over slavery “might rend this mighty fabric in twain.” He told Jefferson that he was terrified about the future and appealed to him for guidance. “What we are to see God knows, and I leave it to Him and his agents in posterity,” he wrote. “I have none of the genius of Franklin, to invent a rod to draw from the cloud its thunder and lightning.”

The Missouri crisis was “a fire bell in the night,” wrote Jefferson in 1820. “We have the wolf by the ears and we can neither hold him, nor safely let him go. Justice is in one scale, and self-preservation in the other.” But Jefferson gave no public support to emancipation and refused to free his own slaves. “This enterprise is for the young,” he wrote.

Slavery was, indeed, the great flaw of the American Founding. Those who founded this nation chose to make practical compromises for the sake of establishing in principle a new nation dedicated to the proposition that all men are created equal. “The inconsistency of the institution of slavery with the principles of the Declaration of Independence was seen and lamented,” John Quincy Adams readily admitted in 1837. Nevertheless, he argued, “no charge of insincerity or hypocrisy can be fairly laid to their charge. Never from their lips was heard one syllable of attempt to justify the institution of slavery. They universally considered it as a reproach fastened upon them by the unnatural step-mother country and they saw that before the principles of the Declaration of Independence slavery, in common with every mode of oppression, was destined sooner or later to be banished from the earth.”

“In the way our Fathers originally left the slavery question, the institution was in the course of ultimate extinction, and the public mind rested in the belief that it was *in the course of ultimate extinction*,” Abraham

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Lincoln observed in 1858. “All I have asked or desired anywhere, is that it should be placed back again upon the basis that the Fathers of our government originally placed it upon.”

Lincoln once explained the relationship between the Constitution and the Declaration of Independence by reference to Proverbs 25:11: “A word fitly spoken is like apples of gold in a setting of silver.” He revered the Constitution, and was the great defender of the Union. But he knew that the word “fitly spoken” — the apple of gold — was the assertion of principle in the Declaration of Independence. “The *Union*, and the *Constitution*, are the *picture of silver*, subsequently framed around it,” Lincoln wrote. “The *picture* was made *for* the apple — *not* the apple for the picture.” That is, the Constitution was made to secure the unalienable rights recognized in the Declaration of Independence. As such, the slavery compromises included in the Constitution can only be understood — that is, can only be understood to be prudential compromises rather than a surrender of principle—in light of the Founders’ proposition that all men are created equal. In the end, lamentably, it took a bloody civil war to reconcile the protections of the Constitution with that proposition and to attest that this nation, so conceived and dedicated, could long endure.

—MATTHEW SPALDING