

Constitution

Contributed by Administrator
Monday, 25 February 2008

CONSTITUTION

The founding of the American Republic has been hailed as one of history's greatest achievements in the advancement of human dignity. The first ten amendments of the Constitution of the United States, known as the Bill of Rights, for the first time in a written constitution protected the individual from the deprivation of his most basic human rights by a tyrannous government. But there was a class of humans whose rights and interests were deliberately and glaringly omitted from the protection of the American Constitution: Negro slaves. How can we understand a document which both recognized and guaranteed man's most basic human rights, but which at the same time also perpetuated and aggravated one of the worst human rights atrocities in modern history?

SLAVERY AND THE AMERICAN CONSTITUTION

by Thomas O. Alderman

I. Introduction.

The founding of the American Republic has been hailed as one of history's greatest achievements in the advancement of human dignity. The first ten amendments of the Constitution of the United States, known as the Bill of Rights, for the first time in a written constitution protected the individual from the deprivation of his most basic human rights by a tyrannous government. But there was a class of humans whose rights and interests were deliberately and glaringly omitted from the protection of the American Constitution: Negro slaves. How can we understand a document which both recognized and guaranteed man's most basic human rights, but which at the same time also perpetuated and aggravated one of the worst human rights atrocities in modern history?

My study of this question was never intended to result in any definitive treatment of the subject, but merely to determine whether a reasonably coherent explanation for the stark contradictions within the Constitution would emerge with any clarity from a limited study. In this hope I believe I was well rewarded, and I am pleased to share the fruits of my study with anyone who shares an interest in human rights.

II. Pro-Slavery Clauses in the Constitution.

When I was in school in the 1950s and 1960s, civics and history classes did not dwell on the darker aspects of the history of the United States; and although slavery and the Civil War have always been given prominent treatment in school, at that time the possibility that the Founders might have been morally responsible for the towering injustice of slavery was not emphasized. In particular, I do not recall being confronted with those portions of the Constitution which consigned millions of men, women and children to lives of unremitting toil, brutalization and anguish; and I surmise that only a small fraction of the American public is aware that this travesty was written into the very document which created the nation we love. But it was written there, not once but many times; as a prominent delegate to the Constitutional Convention stated at the time, "domestic slavery [was] the most prominent feature in the aristocratic countenance of the proposed Constitution."¹

How was the slave's fate sealed in the Constitution? First, the Constitution augmented the political power of the Southern states by increasing their representation in Congress for every slave owned:

Representatives and direct taxes shall be apportioned among the several States, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free Persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. Art. 1, Sec. 2. [Emphasis added.] Second, the delegates to the Constitutional Convention made certain that the power of the national government would be available to put down the slaves, should they ever revolt:

Congress shall have power . . . to suppress insurrections. Art. 1, Sec. 8.
Third, the opportunity to continue to profit from the stealing of men, women and children

was carefully protected:

The migration or importation of such persons as any of the states now existing, shall think proper to admit, shall not be prohibited by the Congress, prior to the year one thousand eight hundred and eight: but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person. Art. 1, Sec. 9. Nor should it be overlooked that the pecuniary motive for the importation of slaves and the political motive of increasing representation in Congress through the increase in the number of slaves, operated together in tandem, reinforcing each other, raised the price even further for abolishing slavery, and gave the monstrous institution even greater strength than it ever had prior to the Revolution.

Fourth, any hope that a slave might obtain his freedom by escape to a neighboring free state was cruelly extinguished:

No person, held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

Art. 4. Sec. 2. Finally, according to William M. Wiecek, professor of history at the University of Maryland, Article I, Sections 9 and 10, which prohibited Congress and the states from taxing exports, were adopted in order "to prevent them from taxing slavery indirectly by taxing the exported products of slave labor."¹

Thus, when our attention is directed not to the noble and ennobling First Amendment guarantees of the freedoms of religion and speech, but to the incentives for the continued importation of slaves; not to the Fourth, Fifth, Sixth and Eighth Amendment guarantees of regular and fair procedure for those accused of criminal offenses, but to the Fugitive Slave Clause; not to the grand structure of the balance of powers among co-equal and competing branches of government, but to the perpetuation of the slave trade; we may sense our reverence for the Founding Fathers beginning to flag.

Nor is that all. The record is clear that none of the delegates to the Convention could have pleaded ignorance. On the floor of the Convention, Gouverneur Morris described the moral significance of the institution of slavery in words that make our hearts ache:

The admission of slaves into the representation, when fairly explained, comes to this, that the inhabitant of Georgia and South Carolina, who goes to the coast of Africa, and, in defiance of the most sacred laws of humanity, tears away his fellow-creatures from their dearest connections, and damns them to the most cruel bondage, shall have more votes in a government instituted for protection of the rights of mankind, than the citizen of Pennsylvania or New-Jersey, who views with a laudable horror so nefarious a practice. . . .² Furthermore, George Mason brought home to his fellow delegates in the clearest terms the peril in which they would place the nation they were creating:

Every master of slaves is born a petty tyrant. They bring the judgment of Heaven on a country. As nations cannot be rewarded or punished in the next world, they must be in this. By an inevitable chain of causes and effects, Providence punishes national sins by national calamities. . . .³ The question which these circumstances most insistently raise, it seems to me, is this. In light of the constitutional clauses protecting and perpetuating the institution of slavery, what can we preserve of our view of many of the Founders as great men, as heroes, as enlightened and creative geniuses? I submit that if we are prepared to admit that they were human and subject to the human frailties common to all men, and that they could no more have swept away the institution of slavery with the stroke of a pen than raise Atlantis out of the sea; in short, if we can see them realistically - as men and not gods - then we will be able to continue to appreciate the tremendous good they accomplished.

III. Could the Union Have Been Formed on any Other Terms?

One circumstance which must be carefully considered is that there appears to be no reason to assume that Union with the southern states was possible on any other terms. At the Constitutional Convention, among all the constitutional provisions establishing slavery as the supreme law of the land, it was the clause protecting the slave trade which attracted nearly all the debate on the subject of slavery; and as to the slave trade, there can be no doubt that the South delivered an ultimatum. The Madison Papers contain numerous statements by Southern representatives making their insistence upon a provision protecting the slave trade unmistakably clear.

William R. Davie of North Carolina] said . . . he saw that it was meant by

some gentlemen to deprive the Southern States of any share of representation for their blacks. He was sure that North Carolina would never confederate on any terms that did not rate them at least as three-fifths. If the Eastern States meant, therefore, to exclude them altogether, the business was at an end. [p. 19.]

Mr. Pinckney. South Carolina can never receive the plan if it prohibits the slave trade. [p. 25.]

Gen. Pinckney. South Carolina and Georgia cannot do without slaves. . . . He . . . should consider a rejection of the clause as an exclusion of South Carolina from the Union. [p. 27.]

Mr. [Hugh] Williamson [of North Carolina] stated . . . the Southern States could not be members of the Union if the clause should be rejected. . . . [p. 28.]

Mr. [John] Rutledge [of South Carolina]. If the Convention thinks that North Carolina, South Carolina and Georgia, will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those States will never be such fools, as to give up so important an interest. He was strenuous against striking out the section. . . . [p. 29.] Moreover, the northern delegates understood they were being presented with a stark choice - accept slavery, or resign themselves to union without the South.

Mr. Gouverneur Morris [of Pennsylvania] . . . could never agree to give such encouragement to the slave trade, as would be given by allowing them a representation for their negroes; and he did not believe those States would ever confederate on terms that would deprive them of that trade. [p. 18.]

Mr. [Roger] Sherman [of Connecticut] said it was better to let the Southern States import slaves, than to part with them, if they made that a sine qua non. . . . [p. 29.]

Mr. [Hugh] Williamson [of North Carolina] said, that both in opinion and practice he was against slavery; but thought it more in favor of humanity, from a view of all circumstances, to let in South Carolina and Georgia on those terms, than to exclude them from the Union. [p. 30.] Additionally, there were several circumstances which worked powerfully against whatever inclination may have existed to allow the southern states to go their separate way. It is clear, for instance, that the passion and the creative energies of the founding generation were focused elsewhere than on the freeing of the slaves; their imagination was directed instead toward creating a new nation. As William W. Freehling states, "The master passion of the age was not with extending liberty to blacks but with erecting republics for whites."⁴ To the extent that abolition was in view, it was, for this reason, consigned to the future.

The Founders were also concerned about the property rights articulated in the Declaration of Independence. Freehling says that "Liberty for blacks became irrevocably tied to compensation for whites; and if some proposed paying masters for slaves, no one conceived of compensating South Carolina planters for the fabulous swamp estates emancipation would wreck."⁵

Finally, the Founders and their generation were by no means free from racism, which deprived them of the fortitude to follow their liberal principles to their full conclusion. According to Mark E. Brandon,

National ethos, if in fact one existed on the question of slavery, was never deeply antagonistic to slavery, even up to the commencement of hostilities in 1861. Apart from declared abolitionists, most Northerners until at least the 1850s did not exhibit acute concern about slavery, and, in any event, very few were prepared at any time to dissolve the union over the fate of a few million blacks. . . .⁶ As Freehling observes, Jefferson typified the age: "Jefferson suspected that blacks had greater sexual appetites and lower intellectual faculties than did whites. This racism was never as hidebound as its twentieth-century varieties. Jefferson kept an open mind on the subject and always described innate differences as but his suspicion. Still it is significant, as Merrill Peterson points out, that Jefferson suspected blacks were inferior rather than suspecting blacks were equal."⁷

IV. Did the Founders Do Anything to Abolish, or even to Weaken Slavery?

Even more important than the difficult circumstances which might be pleaded in mitigation of the shame in which we had our beginning, are the positive things which many of the Founders did to weaken slavery and to limit it geographically. According to Freehling,

The abolitionist process proceeded slowly but inexorably from 1776 to 1860: slowly in part because of what Jefferson and his contemporaries did not do, inexorably in part because of what they did. The impact of the Founding Fathers on slavery, like the extent to which the American Revolution was revolutionary, must be seen in the long run not in terms of what changed in the late

eighteenth century but in terms of how the Revolutionary experience changed the whole of American antebellum history. Any such view must place Thomas Jefferson and his contemporaries, for all their ironies and missed opportunities, back into the creeping American antislavery process.⁸ "The first key reform took place in the North," says Freehling. "When the American Revolution began, slavery was a national institution, thriving both north and south of the Mason-Dixon line." Moreover, even the North was barren soil for abolitionists. "The movement of 1776 changed all this. The humanitarian zeal of the Revolutionary era, together with nonslaveholder hatred of slave competition and universal acknowledgment that the economy did not need slavery, doomed northern slavery to extinction. In some states the doom was long delayed as Northern slaveholders fought to keep their bondsmen. Slavery was not altogether ended in New York until 1827 and in New Jersey until well into the 1840s. By 1830, however, less than one per cent of the 125,000 Northern blacks were slaves. Bondage had been made a peculiar institution, retained alone in the Southern states."⁹

Just as important was the Northwest Ordinance of 1787, whereby Congress decreed slavery illegal immediately in the upper Western territories. "The new law left bondage free to invade the Southwest. But without the Northwest Ordinance slavery might have crept into Illinois and Indiana as well, for even with it bondage found much support in the Midwest."¹⁰

Most important was the abolition of the African slave trade. Freehling states, "This accomplishment, too often dismissed as a nonaccomplishment, shows more clearly than anything else the impact on antislavery of the Revolutionary generation. Furthermore, nowhere else does one see so clearly that Thomas Jefferson helped cripple the Southern slave establishment."¹¹

Article I, Section 9 of the Constitution, quoted above, precluded Congress from ending the slave trade until 1808. "A year before the deadline Jefferson, now presiding at the White House, urged Congress to seize its opportunity. 'I congratulate you, fellow citizens,' he wrote in his annual message of December 2, 1806, 'on the approach of the period when you may interpose your authority constitutionally' to stop Americans 'from all further participation in those violations of human rights which have been so long continued on the unoffending inhabitants of Africa, and which the morality, the reputation, and the best interests of our country have long been eager to proscribe.' Although the law could not take effect until January 1, 1808, noted Jefferson, the reform, if passed in 1807, could make certain that no extra African was dragged legally across the seas. In 1807 Congress enacted Jefferson's proposal."¹²

The abolition of the slave trade weakened slavery in several unexpected ways. Slaves' lives improved, because they became a scarce commodity and could no longer be "used up." Additionally, the closing of the slave trade ended the importation of cheap labor to the South during a time when European immigrants were pouring into the North, and this enabled the North to industrialize more quickly, which would give it a tremendous advantage in the coming war. Most importantly, the ending of the slave trade pushed slavery farther south. Additions to the Southern plantation slave population now had to come from Northern states, reducing the North's dependency upon and affinity for the institution.

None of this was lost on the lower Southern states. They saw their position becoming inexorably weaker, and felt they must act quickly to avoid losing the border states to abolitionism. As the war was beginning, Abraham Lincoln is said to have remarked that while he hoped to have God on his side, he had to have Kentucky. "The remark, however apocryphal, clothes an important truth. In such a long and bitter war border slave states were crucial. If they, too, had seceded, the Confederacy might have survived." But when the fateful moment came, four of the eight border states remained loyal to the Union. "The long-run impact of the Founding Fathers' reforms, then, not only helped lead lower South slavocrats to risk everything in war but also helped doom their desperate gamble to failure."¹³

V. Conclusion.

"ANY JUDGMENT OF THE FOUNDING FATHERS' record on slavery," concludes Freehling, "must rest on whether the long or the short run is emphasized. In their own day the Fathers left intact a strong Southern slave tradition. The American Revolution, however, did not end in 1790. Over several generations, antislavery reforms inspired by the Revolution helped lead to Southern division, desperation, and defeat in war. That was not the most desirable way to abolish slavery, but that was the way abolition came. And given the Deep South's aversion to committing suicide, both in Jefferson's day and in Lincoln's, perhaps abolition could not have come any other way."¹⁴

Much of the revisionism of recent years has attempted to prove too much. All dead, white, European males are presented as incapable of virtuous action and as undeserving of our gratitude. The revisionists have important things to tell us; but we know that despite their failures, the Founders' accomplishment was in many respects noble and good. On the other hand, we have seen that the old view of the Founders as paragons was also simplistic and profoundly misleading. In the end, such a view

weakens their true legacy by lending pretext to their detractors. By confronting the Founders' failures honestly, we can preserve our heritage of liberty more securely than we can by pretending they were better than they really were.

ENDNOTES

1Gouverneur Morris of Pennsylvania, August 8, 1787, in *The Constitution a Pro-Slavery Compact - Selections from the Madison Papers, etc.* (New York: Negro Universities Press, 1969), page 23. (Originally published in 1844 by the American Anti-Slavery Society, New York.)(Hereinafter, "The Madison Papers.")

2Quoted Mark E. Brandon, *Free in the World: American Slavery and Constitutional Failure* (Princeton U. Press 1998), p. 56.)

3George Mason of Virginia, August 22, 1787, *The Madison Papers*, p. 26.

4William W. Freehling, "The Founding Fathers and Slavery," in *The Law of American Slavery: Major Historical Interpretations*, Ed. Kermit L. Hall (New York: Garland, 1987), pp. 219-231, 221.

5Freeling, p. *.

6Brandon, p. 53.

7Brandon, p. *.

8Freeling, p. 220.

9Freeling, p. 224.

10Freeling, p. 225.

11Freeling, p. 226.

12Freeling, p. 226.

13Freeling, p. 230.

14Freeling, p. 230. (Emphasis added.)

© 2000 Thomas O. Alderman