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**Down But Not Out: How American Slavery Survived the Constitutional Era**

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DOWN BUT NOT OUT:
HOW AMERICAN SLAVERY SURVIVED THE CONSTITUTIONAL ERA

by

JASON E. BUTLER

Under the Direction of H. Robert Baker, Ph.D.

ABSTRACT

Whether through legal assault, private manumissions or slave revolt, the institution of slavery weathered sustained and substantial blows throughout the era spanning the American Revolution and Constitutional Era. The tumult of the rebellion against the British, the inspiration of Enlightenment ideals and the evolution of the American economy combined to weaken slavery as the delegates converged on Philadelphia for the Constitutional Convention of 1787. Even in the South, it was not hard to find prominent individuals working, speaking or writing against slavery. During the Convention, however, Northern delegates capitulated to staunch Southern advocates of slavery not because of philosophical misgivings but because of economic considerations. Delegates from North and South looked with anticipation toward the nation’s expansion into the Southwest, confident it would occasion a slavery-based economic boom. Consequently, the institution of slavery was given room to thrive in ways that would take decades and a devastating war to overcome.

INDEX WORDS: Slavery, Abolition movement, Constitutional Convention, American Revolution, Northwest Ordinance, Manasseh Cutler, Black soldiers
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JASON E. BUTLER

A Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of
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DOWN BUT NOT OUT:
HOW AMERICAN SLAVERY SURVIVED THE CONSTITUTIONAL ERA

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Office of Graduate Studies
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Georgia State University
December 2015
DEDICATION

To my parents, for teaching me how to get better. To my children, for making me want to get better. And to my wife, for making me better.
ACKNOWLEDGEMENTS

I wish to acknowledge those who have most directly made possible this labor of love. The probing questions of Dr. Rob Baker, Dr. Chuck Steffen and Dr. John McMillian of Georgia State University helped, in and out of class, to fortify the engine of inquiry requisite for this project. Rob far exceeded the requirements of advisership with support, insight and generosity that safeguarded my sanity. From the Teaching American History grant in 2011-12 to the final stages of my thesis, he has encouraged and edified me in ways I deeply appreciate. With prompt, helpful and informative answers to two years’ worth of questions, Ms. Robin Jackson, graduate coordinator par excellence, shepherded me through my master’s program with abundant patience. The generosity and inspiration of the James Madison Memorial Foundation made it possible financially and intellectually for me to complete this course of study. The Foundation’s faculty and staff, Dr. Jeffry Morrison in particular, provided a metaphorical steroid injection to my brain. The Madison Fellows who gathered at Georgetown in the summer of 2013 have deepened my love of history in a way that made this project possible; Trish Everett, Elizabeth Rasmussen and Adena Barnette deserve mention as first among equals in that regard. Danielle Armstrong, Sean Costa and Antoinette McGlasker, colleagues and friends, have made me a better teacher in a way that has made me a better student, which helped make possible this project’s success. My 96-year old grandfather, Benjamin Harrison Root, has infected me with his passion for learning as long as I can remember. He is an inspiration. Lastly I want to recognize the alpha and omega of the support I have received throughout my journey. Though the word literally is grossly overused, it is entirely accurate here. My wife, Carmen, and her parents, Connie and James, have literally made this project possible by holding down the fort and taking care of my sons throughout my time at Georgia State, never once letting on that it was a burden. They knew this was a labor of love, they knew it was a lot of labor and they know they have my love.
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1 INTRODUCTION

The year was 1786, and the horizon shimmered with heady possibilities for the youngest nation on earth. In the prior decade, American rebels had overcome daunting odds to best Britain on the battlefield, championing the causes of liberty and rights in ways that stirred the Western world. The United States had won independence, formed a sovereign government and adopted the set of laws that would see it through not only the Revolutionary War but the nation’s infancy.

Ambitious from the start, America’s dreams knew no bounds. The new nation laid claim to more land than the sum of England, France and Spain. Its multifaceted economy – boasting the North’s forests and fisheries, alongside lucrative cash crops like tobacco and indigo in the South – teemed with potential. Buoyed by glorious ideals such as equality and natural rights, America looked to the unknowns of the future with justifiable optimism.

Unanimity, however, was not in the offing. Americans were hardly on one accord, as the populace, four million and growing daily, was riven by varying views on matters both political and economic. The colonial period had bred manifold philosophies among the populace in terms of distribution of power between federal and state governments, and there was no articulated consensus as to what place Native Americans and immigrants would have in the new nation. But no issue occasioned more impassioned or more impactful views than did slavery, as white Americans’ perspectives were disparately shaped by geography, religion, station in life and personal experiences. The Carolinian subsistence farmer, the Connecticut shipping baron and everyone in between had strong opinions and a personal stake in the plight of nearly 700,000 enslaved Americans. In an April 1786 letter to a close friend, one founding father weighed in decisively on slavery.
“I can only say that there is not a man living who wishes more sincerely than I do, to see a plan adopted for the abolition of it,” he wrote. “(T)here is only one proper and effectual mode by which it can be accomplished, and that is by Legislative authority.”

These words came not from the quill of a second-tier statesman, nor a milquetoast who shrank diffidently into the corner while the Madisons and Jeffersons commanded the spotlight.

This was a statement of principle by George Washington, the man so widely respected that he was chosen unanimously to become the nation’s first president and has been regarded henceforth as the Father of the Country. His election took place a little more than a year after 40-odd delegates left the Pennsylvania State House in Philadelphia having spent four intense months wrangling, debating and writing the United States Constitution.

At the Constitutional Convention, over half of the delegates did not own slaves. There were many Framers who had criticized the institution in public speeches, published essays and private correspondence. Some had freed their own slaves. Eleven delegations came from states that had banned the importation of slaves. Five states already had approved immediate or gradual emancipation, in addition to the outright prohibition enacted by the Northwest Ordinance on the western frontier. Slavery’s hold on the new nation was weakening, owing to blows from south to north, from abolitionists and even from slaveholders.

Voices like Washington’s were strong, gaining momentum throughout the country. They were not quite strong enough to prevent the United States from its original sin: its birth as a slave nation. Soon after independence, however, the ambition of expansion locked the nation into dependency on Southern plantation agriculture, which crippled the effectiveness of the abolition movement for decades to come.

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No matter the time, place or circumstance, wars are rife with instability, uncertainty, gravity. The American Revolution, pitting a globe-spanning empire against an upstart band of colonists, was no exception. At stake – from the colonists’ perspective, anyway – was everything. As for Britain, hoping to retain its overseas colony and surprised in many quarters that the colonists even sought to fight, it was like any other nation at war in its willingness to take whatever measures necessary to prevail.

When the Revolution began in April 1775, conventional wisdom suggested the British would quell the rebellion without much trouble. They were a far wealthier nation, boasted a populace several times larger than that of the 13 colonies and commanded an amphibious military that far outstripped the Americans’ in terms of size, arms and experience among leadership and rank-and-file alike. Lacking war materiel as rudimentary as uniforms for many troops, the forces arrayed under General George Washington had no navy to speak of; they needed French help to be able to take the war to the sea to any degree at all. Patriots opposing the British knew that perhaps 20 to 30 percent of their fellow colonists did not support the rebellion. Still, there was at least one sign that the global superpower did not think victory a fait accompli. Britain, after all, did not become a juggernaut by lacking an understanding of how to win wars. So it was during the nascent stage of the armed conflict that Britain would enact the first large-scale emancipation of slaves in the American colonies.

On Nov. 7, 1775, fewer than seven months after the first shots fired at Lexington and Concord, John Murray, the Earl of Dunmore and royal governor of Virginia, responded to a string of small-scale acts of rebellion by issuing an edict that granted freedom to any enslaved people
joining the British side: “I do hereby farther declare all indented Servants, Negroes, or others (appertaining to Rebels) free, that are able and willing to bear Arms, they joining his Majesty’s Troops, as soon as may be.” The Dunmore Proclamation - issued from aboard a ship in Norfolk’s harbor, since its author in June had fled Williamsburg for safety – established martial law and inflamed the antipathy toward the government. “The colonists were struck with horror,” a contemporary wrote. To a populace already chafing against British rule, forced emancipation of their slaves was perceived as an egregious affront to white colonists’ liberty.

Virginians immediately reinforced slave patrols and monitored likely escape routes, in addition to mounting a public awareness campaign. Newspapers repeatedly published the proclamation in newspapers and attempted to minimize escape or insurrection by exhorting whites to tell slaves Dunmore’s offer was not all it was cracked up to be – that runaways would be mistreated or sold off by the British. George Washington, named commander of the Continental Army in June 1775, agreed that Dunmore’s plan was ill-conceived but was clearly nervous. Writing to Richard Henry Lee, a Virginia neighbor and delegate in the First Continental Congress, Washington predicted that Dunmore’s strength would increase like a rolling snowball and that the British leader would “become the most formidable enemy America has... if some expedient cannot be hit upon to convince the slaves and servants of the impotency of his designs.” Defeating Dunmore militarily was not the only objective on Washington’s agenda. In the same letter of

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6 Author’s emphasis.
December 26, 1775, he advised Lee that “(n)othing less than depriving (Dunmore) of life or liberty will secure peace to Virginia.”

Despite deterrent efforts from the highest levels of American leadership on down, an estimated 800 slaves were brave enough to join what was called Lord Dunmore’s Ethiopian Regiment before the governor, accurately perceiving the threat to his own safety, fled the colony in early 1776. These former captives were outfitted with military uniforms (with “Liberty to Slaves” boldly stitched across the chest), given arms and ordered to use them defensively and offensively. Dunmore’s edict stirred a strong response in slaves, many of whom were captured or killed before reaching him, and in white Americans. At least one enslaved woman named her child in honor of Dunmore. In those years of unpredictability, when it was not yet clear that the world would be turned upside down, the Dunmore Proclamation was among many developments contributing to the volatility of the American colonies.

In July 1775, four months prior to the Dunmore Proclamation, Benjamin Franklin had written to a British friend that Dunmore and his North Carolinian counterpart, Governor Josiah Martin, had been provoking slave insurrections. This was no baseless claim, as the British were keen to do exactly that. Martin had attested one month earlier in a letter to the Earl of Dartmouth that the presence of vast numbers of slaves in Virginia and Maryland harbored the potential for weakening colonial strength. To be sure, provoking slave insurrection made perfect sense as

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8 Ibid.
12 Quarles, “Lord Dunmore as Liberator,” 496n.
counterrevolutionary wartime stratagem. Rather than representing a moral stand or a commitment to end slavery, which Britain would not do until 1833, it was a means to a military end.¹³

To the extent that Britain could actuate slave rebellions, the colonists’ attention would be diverted. Their focus and energies would be consumed with priorities other than defeat of the colonial power. It was quite possible that responding to slave rebellions could have dampened the colonists’ passion for fighting the British; slaveowners would be compelled to stay close to home to protect their families from slaves on the lam. The British had good reason to hope that the prospect of tens or hundreds of thousands of slaves fleeing the plantation would be perceived by Patriots as “a powerful incentive for the speedy restoration of peace and loyalty” to avoid devastation to the southern economy and the formation of a threat to whites’ safety.¹⁴

In the view of George William Van Cleve, the Patriots’ motivations regarding slavery were not limited to stanching the flow of runaways. Van Cleve has suggested that white Americans alarmed by threats to slavery in Britain foresaw threats to the institution in the colonies.¹⁵ Rendered in 1772 by celebrated British jurist Lord Mansfield, the Somerset v. Stewart ruling mandated that slavery, where it existed, be permitted by explicit law rather than de facto understanding or tradition. If this legal precedent were to cross the Atlantic, the defenders of slavery would have an even harder time protecting the institution against the mounting campaign of American abolitionists, who began citing the Somerset ruling in lawsuits and petitions seeking freedom for enslaved blacks. For this reason, as Sylvia Frey has suggested, Southerners were particularly motivated to defeat the British,

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¹³ The British unleashed a similar stratagem while fighting the United States in the War of 1812, offering freedom to any slaves who materialized before them.
¹⁴ Walker, “Blacks as American Loyalists,” 60.
which broadened the intensity of a rebellion whose kindling emanated mostly from the North. In the South, she argues, it was “a war about slavery, if not a war over slavery.”

As the Revolutionary War proceeded, the British gave both northern and southern colonists more occasion to reckon with the prospect of slaves on the loose. The Dunmore Proclamation was followed by a much bolder step in June 1779. Henry Clinton, commander of the British forces, declared the freedom of all slaves held by Patriots. Unlike Dunmore’s edict, Clinton’s included only one contingency – that the slaves make their way across British lines. This required no military obligation and applied not just to men, who could subsequently take up arms against the Americans, but also to women and children. The broader terms in what came to be known as the Philipsburg Proclamation - Clinton had issued his declaration from the Philipsburg Manor just north of New York City – spurred much broader results. Several tens of thousands of slaves found safe haven with the British during the war, setting the stage for, among other things, tricky negotiations during the Treaty of Paris at war’s end. Clinton suggested later in the conflict that blacks would be given land taken from defeated American Patriots, in a foreshadowing of the Radical Republicans’ efforts to redistribute Confederate lands to freedmen after the Civil War some 80 years later.

Some slaves managed to flee to the relatively safe environs of Canada or Florida, or even Jamaica, which as a slave colony would have harbored a considerable degree of insecurity for fugitives. The strategy of fleeing far from home was often the highest priority, in some cases trumping concerns about the racial climate in a given destination. While precise numbers are not possible to ascertain, New York, New Jersey and Pennsylvania were among the colonies with the

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17 Walker, “Blacks as American Loyalists,” 55n.
highest rates of escape. The prevalence of escape in these colonies offered proof that runaways generally thought themselves safest in areas that already had a substantial number of freed blacks; it was less conspicuous for them to be moving about town unaccompanied by whites. In areas with water access, the opportunity for escape was enhanced by whites who abetted slaves’ passage onto ships. Even prior to the Revolution, colonial governments routinely responded to escapes and rebellions with tighter restrictions and stiffer punishments for those who violated them. By the late 18th century, it was evident that uprisings of the enslaved had no equal in terms of their capacity to consume the hearts and minds of white America.

Though documentation and evidence of slave rebellions are largely unavailable, there were a number of events prominent enough to register conspicuously in the historical record – and in the consciousness of eighteenth-century white America. Chief among these was the Stono Rebellion. In September 1739, an enslaved South Carolinian alternately referred to as Jemmy or Cato led somewhere between 60 to 80 slaves as they headed along the Stono River toward Spanish Florida, where the imperial government had, via several laws promulgated over the course of more than a century, promised freedom to blacks who fled British America. The Stono runaways killed 21 whites before being stopped by a group of an estimated 100 whites led by South Carolina Lieutenant Governor William Bull. The death toll of blacks, including summary executions upon capture, reached 40 to 50 within a week’s time.

South Carolina’s response was quick and severe. It was only a matter of months before its colonial legislature passed “An Act for the Better Ordering and Governing of Negroes and Other Slaves in this Province,” also known as the Negro Act of 1740. This edict, which approaches 10,000

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18 Nash, Race and Revolution, 60-61.
19 Van Buskirk, "Crossing the Lines," 90-1.
words in length and is more than double the length of the United States Constitution, stiffened the punishments against slave lawbreakers and made it illegal for slaves to earn money, assemble in groups without white supervision, grow food for themselves and a host of other actions. To ensure whites’ compliance, teaching slaves to write was made punishable by a fine of £100, an enormous sum at the time. Perhaps counterintuitively, the law also mandated that slaves be given adequate clothing and Sundays off, so as to effect more humane treatment and thereby reduce the supposed motivation for rebellion.

Additional fallout came the same year, when James Oglethorpe, Georgia’s colonial governor, ordered an invasion of Florida in which British soldiers and Indian allies stormed the capital of St. Augustine and swiftly captured Fort Mose. Two years earlier, Fort Mose had been established as a haven for runaway slaves, mostly from South Carolina. It was no accident that Mose was targeted by Oglethorpe; the presence of free blacks near the Georgia-Florida border not only represented a potential outlet for more slave escapes but also fostered circumstances likely to lead to slave rebellion. The free blacks of Fort Mose also could have crossed the border to stage a raid to liberate slaves.

White residents often encountered triggers for their fear of slave rebellion. A lurid Virginia Gazette article of January 25, 1770, was typical of newspaper reports that provoked terror among white residents. Rich with detail, it described the violence and brutality of a small slave revolt occasioned by a slave’s tardiness in lighting the morning fire at Bowler Cocke’s planation in Hanover County, Va. The nearly 500-word chronicle included details about the types of weapons the slaves used, graphic descriptions of some individuals’ injuries and the measures that were necessary to quell

22 William Rind, The Virginia Gazette, January 25, 1770.
the attack. This sort of account, often featured in the same publications where runaway-slave bulletins were printed, would have provided for white readers an effective means to consider slave revolts not as abstractions but as events that were terrifyingly feasible. Dating back to the first decades of the 18th century, slave insurrections as far away as the Caribbean were frequently reported in American newspapers. Despite an utter lack of unbiased or broad sourcing - reportage on slave rebellions relied overwhelmingly on information provided by slaveholding whites – such articles were unrivaled in informing whites’ mindset and stoking their fright.

The North, despite having far fewer slaves than the South, also was marked by the threat of insurrection in the colonial period. Although uprisings took place throughout the region, New York, which was home to more enslaved and free blacks than any other northern state, likely experienced this threat to a greater extent. In 1741, influential whites in New York City yielded to fear that had been percolating for decades and alleged a conspiracy among blacks to burn down the city. A number of whites also were implicated as having helped to plan and organize the would-be rebellion. Massive panic led to mass arrests and, despite a startling lack of conclusive evidence, to the execution of 31 blacks and the exile from North America of dozens more.

This occurred at a time when many New Yorkers would have been able to recall similarly incendiary events that took place nearby. Long Island, just east of Manhattan, was the 1708 site of one of the earliest recorded slave revolts in America. And in 1712, New York was laced with fear when a group of slaves – estimates range from 20 to double or triple that – set fire to a Manhattan building and violently set upon whites who had gone to the scene to extinguish the blaze. Nine whites were killed, six were wounded. After militia units were called from the surrounding area,

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some seventy blacks were arrested in the aftermath of the incident, with 21 ultimately being executed and another six committing suicide.\textsuperscript{25} This led to the enactment of heightened restrictions and potential punishments regarding blacks both free and enslaved. Blacks were forbidden to own land, gather in numbers exceeding three and travel at night without a lantern. Whites who manumitted their slaves would have to pay an exorbitant tax of £200, a formidable deterrent to emancipation-minded owners. Neighboring New Jersey also was the site of several prominent slave uprisings in the first half of the 18\textsuperscript{th} century.

There were other reasons why slave uprisings may have been especially common in New York. First, it was a cosmopolitan city, with its bustling ports, newspapers, excellent access to waterways and proximity to other population centers such as Boston and Philadelphia. This made it possible for New Yorkers to keep abreast of news and events happening elsewhere. Even if most black slaves could not read, they heard a great deal of news and helped spread it themselves. In the frenzy of accusations and testimony related to the 1741 conspiracy, the city’s population density and tightly woven social network would have helped to substantiate historian Jill Lepore’s assertion that “it seems altogether possible that every black man in New York knew every other black man in the city.” Objectively speaking, about 200 of the city’s roughly 450 black men, an astonishing proportion, were linked in some manner to the 1741 conspiracy.\textsuperscript{26} This was a town where ideas spread easily among both whites and blacks.

An environment ripe for the diffusion of ideas was perfect for George Whitefield.

Whitefield, an English-born preacher, visited the American colonies seven times from 1738-1769 and became the most impactful figure in the Great Awakening with his ability to command the


attention of upwards of six or eight thousand people at open-air sermons and revivals. His audiences were both white and black. Credited with sparking enthusiasm among adherents and winning converts to boot, Whitefield was in a position to wield broad influence on the issue of slavery. And like so many whites in the land where he made his mark, he was deeply ambivalent. While he excoriated masters for their harsh treatment of slaves, he also helped bring slavery into Georgia by cogently arguing that the colony could not survive without it.\textsuperscript{27} Traversing the colonies to deliver sermons, Whitefield was so afraid of insurrectionist slaves that he recorded in his diary multiple occasions on which he and his traveling party altered their route through the countryside so as to lessen the likelihood of encountering that particular perceived danger.\textsuperscript{28}

These very fears may have given rise to a controversial dimension of Whitefield’s impact on the colonies. Having completed a yearlong tour of the colonies, Whitefield had personal experiences to draw upon as he wrote a 1740 essay entitled "Inhabitants of Maryland, Virginia, North and South-Carolina concerning the treatment of their Negroes." This tract was published by his friend Benjamin Franklin, yet another prominent figure with a mixed record on slavery. Whitefield’s essay shamed masters for treating their slaves cruelly and denying them the religious exposure that he thought would help make them into better slaves. He went so far as to say revolts were God’s punishment for the harshness with which masters treated their slaves, a stance that evoked reverence from some black contemporaries and anger from many whites.\textsuperscript{29} One year after the Stono Rebellion and one year before the New York Conspiracy of 1741, Whitefield provoked the most controversy with a passage that seemed to justify insurrection: “I have wondered, that we have not more


\textsuperscript{29} Lepore, New York Burning, 188. The pioneering African-American poetess Phillis Wheatley wrote An Elegiac Poem, On the Death of that Celebrated Divine, and Eminent Servant of Jesus Christ, the Late Reverend, and Pious George Whitefield, her publishing debut that elicited considerable commendation in both America and England.
Instances of Self-Murder among the Negroes, or that they have not more frequently rose up in Arms against their Owners.”

Himself a slaveowner late in life, Whitefield typified whites’ ambivalence about the institution, but he made clear his awareness of the danger of uprisings.

Whitefield was not the only English-born observer of American folkways to comment on slave insurrections. Amid the dawning of the American Revolution, few voices were heard more loudly than that of Thomas Paine. Paine’s most well-known arguments in his Common Sense pamphlet revolved around the way the colonies no longer needed Britain and could prosper without it. First published to great acclaim in the winter of 1775-76, Common Sense helped kindle the fire of rebellion among untold legions of colonists; furthermore, as attested by John Adams, who was on foreign assignment for the fledgling government, the pamphlet “was received in France and in all Europe with rapture” for its advocacy of American sovereignty and the virtues of republicanism. But amid Paine’s political and philosophical salvoes was an allusion to the insufferable prospect of slave revolt. Paine denounced the British government as "that barbarous and hellish power, which hath stirred up the Indians and Negroes to destroy us."

Paine was not speaking as a slaveowner. To the contrary, he was on the vanguard of anti-slavery discourse in colonial America. His groundbreaking “African Slavery in America,” published March 8, 1775, as his first publication in America since emigrating from Britain, loosed a sharp critique of the institution of slavery, labeling it “monstrous” and issuing a call for the development of emancipation plans. One month later, Paine joined French-born firebrand Anthony Benezet and a Quaker-led contingent of Philadelphians as founding members of the Society for the Relief of Free

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Negroes Unlawfully Held in Bondage, the first anti-slavery society in the Americas. Still, despite the words and deeds of Paine’s that criticized the totality of slavery, the prospect of slave insurrection frightened him just as it did many other whites.

The Revolution was a formidable agent of change for blacks both enslaved and free. One of the biggest reasons for this was the tens of thousands of Americans who were engaged in the theater of war at any given time. A substantial percentage of these were slaveowners whose slaves were either left unguarded or kept under alternative arrangements - by the absent soldier's kin, for example. And perhaps most significantly, the Dunmore and Philipsburg Proclamations formalized and accelerated a timeless feature of slave regimes: escape. While the Revolution was waged to effect freedom for whites, an unintended consequence was what Gary Nash terms “the largest slave uprising in our history”

The British proclamations, coupled with the inherent instability of war and the inspiration of the colonists’ fight for freedom, combined to spur an unprecedented wave of self-emancipation. Thomas Jefferson estimated that 30,000 slaves fled their masters in Virginia alone during the British’s 1781 invasion of that colony, which had America’s largest slave population. Excluding those for whom escape was not feasible – the young, the old, the infirm, mothers of young children – this translates into an astonishing escape rate of approximately 50 percent of those who were in a reasonable position to do so. Although Virginia’s rate likely exceeded the norm for other colonies, slave escapes were a quantifiably significant feature of the wartime landscape.

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34 Nash, Race and Revolution, 57.
35 Ibid., 60.
Gaining freedom was not the only change blacks experienced during the war. Some slaves-turned-soldiers modified diminutive names they had been given – turning Jem, for example, into James – or adopted last names denied them while in bondage. At times, they chose surnames based on their trade skills, such as Sawyer or Cooper, or based on the heady circumstances in which they found themselves. Of the 289 men identified as black in the Connecticut army, 23 reported ‘Liberty’, ‘Freedom’ or ‘Freeman’ as their last name. Gaining a last name, to say nothing of deliberately choosing one with particular meaning, could be a powerful step for a former slave to influence the way others saw him.

Some of those who did not escape, while perhaps paralyzed by the danger and uncertainty that fleeing entailed, still managed to capitalize on the protean landscape of war. These circumstances, to use Frey’s term, spawned nothing short of “racial anarchy.” Some blacks took advantage of a less restrictive environment by reconfiguring plantation life more to their liking – altering work schedules, for example. Some slaves found themselves with newfound leverage. Masters in British-occupied areas who did not want to be revealed as abettors to the Patriot army had to ensure their slaves did not divulge what could have been construed as incriminating evidence. For individuals ensnared in bondage, this position of power in relation to their masters would have been somewhat of a revelation. Further, court records reveal that some slaves gave themselves surnames during the war, perhaps empowered in their own way by the revolutionary

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37 Frey, Water from the Rock, 326.
39 Van Buskirk, “Crossing the Lines,” 92.
spirit. This would have been a significant step for the slaves’ identity and concept of self even if many whites continued to refer to the slave only by his or her first name.

Aside from those who escaped bondage and filtered into free society, the blacks most affected by the Revolutionary War were those who joined the fight. Some individuals enlisted in the Continental Army; others sided with the British. And while a substantial proportion of black soldiers played support roles – serving as blacksmiths, carpenters, cooks, and, given their knowledge of the terrain, especially as guides – a large number held combat positions. As for Loyalist blacks, many of whom had been enticed by the Dunmore and Philipsburg Proclamations, the majority found employment with British families or officers. Yet a substantial number ended up with a rifle on their shoulder; there were 1,500 soldiers in the British ranks as of July 1780. This was less a verdict on blacks’ motherland-versus-colony philosophical stance than a calculated decision to cast one’s lot with the side that had pledged to provide passage into freedom. On that basis alone, blacks’ support of the British made abundant sense.

But while black soldiers had a considerable presence in the British army, a greater number fought for the Continental Army, and the vast majority did so in integrated units. A handful of notable achievements stand out. An ex-slave named Peter Salem, granted his freedom in exchange for his enlistment, is credited with killing British Major John Pitcairn at the Battle of Bunker Hill. Another former slave, Salem Poor, bought his freedom in 1769 and went on to fight at Saratoga and Monmouth, in addition to being stationed with General Washington at Valley Forge. It was Poor’s actions at Bunker Hill, above all, that led 14 officers to submit his name for commendation to the

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40 Ibid., 93.
41 Walker, “Blacks as American Loyalists,” 57.
42 Ibid., 58.
Continental Congress.\textsuperscript{44} Further distinction went to the 1\textsuperscript{st} Rhode Island Regiment, which with Washington’s sanction was exclusively comprised of black soldiers for a time during the war. These were signs that the humanity, contributions and worth of free blacks were valued – and not just in any arena, but where it mattered most. It is substantially inaccurate to paint Revolutionary-era America as a place where the social hierarchy was so rigid that respect for blacks did not exist and opportunities for blacks were uniformly circumscribed by white racism.

Perhaps the most noteworthy wartime service was tendered by James Armistead, who served under famed French officer Marquis de Lafayette as one of the first double agents in American history and a presumed beneficiary of the Dunmore Proclamation. Armistead infiltrated the British camp and convinced British officers he was a runaway, whereupon the officers promptly decided to utilize him as a spy and send him back to the American side. Having ingratiated himself with other in-the-know blacks in the British camp, Armistead was then able to deliver vital information about British tactics and troop movements to Lafayette, who used Armistead’s intelligence to coordinate with Washington in laying siege to Yorktown and ultimately forcing surrender in what is considered the last major battle of the Revolutionary War. Armistead’s heroics were noted by Lafayette, whose surname Armistead adopted after Lafayette recognized his contributions by successfully petitioning the Virginia General Assembly for his freedom.\textsuperscript{45}

That Armistead was granted his freedom, albeit after multiple fruitless attempts, indicates that even in Virginia the commitment of whites to the slave system was not as intransigent as is often suggested. That state’s General Assembly enacted a law in 1783 freeing blacks who had served in the Revolutionary War; one of its clauses specifically targeted slaveowners attempting to return

\textsuperscript{44} Ibid., 112-3.
veteran blacks to servitude. 46 This law was passed a year after Virginia re-authorized private manumission after it had been banned for a half-century. Around this same time, Lafayette, whose relationship with Washington approximated that of a father and a son, suggested to the General that all of Virginia’s slaves be emancipated. Lafayette theorized that they could be resettled in the western part of the state as “tenant farmers.” 47 This would presage later plans for colonization, which entailed resettling blacks somewhere outside the United States. 48 After the war Lafayette continued to press Washington. Various correspondence between the two men in 1786 revealed the Frenchman’s ardor for attacking the institution of slavery. Lafayette told Washington he had bought a plantation in French Guiana where he intended to turn slaves into paid laborers, a proposition Lafayette yearned to implement throughout the United States. Washington lavishly praised his friend and revealed that he shared his antipathy for slavery: “Would to God a like spirit would diffuse itself generally into the minds of the people of this country.” 49

As pioneering African-American history scholar W.B. Hartgrove has shown, fixing the exact number of blacks who served in the Revolutionary War is a formidable task. First, there was the ephemeral nature of service in the war, whether regarding blacks or whites. Individuals came and went frequently - sometimes rejoining the same regiment, and other times, a different one. They were pushed and pulled by family concerns, homesickness, fluctuating motivations and financial issues such as Congress’ inability to honor consistently its promises to compensate soldiers. In keeping up with this transience, records were less than precise.

46 An act directing the emancipation of certain slaves who have served as soldiers in this state, and for the emancipation of the slave Aberdeen, Virginia General Assembly, October 1783, accessed September 5, 2015, http://vagenweb.org/hening/vol11-15.htm (accessed September 5).
47 Ellis, Founding Brothers, 89.
48 It also augured the emergence of the state of West Virginia during the Civil War. Strong anti-slavery sentiment in the western part of Virginia was the principal reason for the partition of the Old Dominion and creation of the new state of West Virginia via an arduous legislative effort from 1861-63.
Beyond all of these issues, which affected troops of every racial background, additional complications made it particularly difficult to document the participation of black soldiers. Most significantly, records kept for each regiment didn’t always identify which soldiers were black. Amid these challenges, historian W.B. Hartgrove combed through a trove of state records, rosters and requisitions and concluded that there were “at least 4,000 Negro soldiers” who fought for the Patriots, scattered throughout the regulars and militias from all 13 states. Some historians put the number around 5,000. No matter the precise number, black soldiers formed enough of a critical mass that Americans, British and Hessians often referenced them in wartime correspondence.

As with any group of soldiers, most black soldiers in the Revolutionary War carried out their duties without leaving a substantial mark on the historical record. More is known about the battle over whether to allow them to serve. Massachusetts, as was often the case, led the way. Its initial salvo in this debate occurred in May 1775, just a month after Lexington and Concord, when the state legislature’s Committee of Safety responded to a petition from freeman Prince Hall and others by granting that free blacks could serve, while forbidding the enlistment of enslaved people. In June of that year, blacks such as Salem and Poor went on to serve with distinction in the colony’s militia at the Battle of Bunker Hill.

The issue’s importance was such that the federal government was compelled to address it immediately, with varying outcomes. In September of 1775, South Carolina’s Edward Rutledge introduced a proposal before the Continental Congress that all black soldiers would be discharged immediately. The proposal failed, but was followed on October 8 with two definitive votes. The first unanimously moved to dismiss all slaves from the army, and the second was bolder still - a majority

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51 Ironically, in 1641, the Massachusetts Bay Colony under slaveholding governor John Winthrop had been the first government in North America to pass a law explicitly permitting slavery.
vote to expel even free blacks. In the last months of 1775, with the Dunmore Proclamation having awakened the government to the fearsome prospect of blacks joining the British forces, General Washington issued an order that barred most blacks but granted an exception to those who already had served. Instead of implementing a blanket policy, Congress followed up by deferring to the judgment of each state to do it as it pleased – a notable portent of the federal government’s decades-long deference to states on the issue of slavery.

It was clear that the idea of black soldiers was complicated by several factors, strategic and otherwise. Both blacks and whites knew this issue had far-reaching repercussions. New Hampshire’s William Whipple, a slaveholding member of the Second Continental Congress, averred in 1779 that enlisting blacks would yield profound consequences: "It will produce the Emancipation of a number of those wretches and lay a foundation for the Abolition of Slavery in America." To some, this was an intended and deeply desired consequence; to others, the potential ripple effects represented a reason to reject the enlistment of blacks. Would blacks be returned to bondage after their service, and if so, would they be fit to reacquire a posture of servitude? Or would enlistment occasion a quid pro quo freeing those who had served? Most critically, was putting weapons in blacks’ hands, removing them from bondage and charging them with killing whites, an idea destined to backfire on society at large? Perhaps not. As David Brion Davis points out, slaves had been used in warfare for centuries in Muslim societies without disrupting the antebellum social order.

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53 Ibid., 114.
55 Eight decades later, Frederick Douglass didn’t think so. Advocating blacks’ service in the Civil War, he fully grasped the consequences: “Once let the black man get upon his person the brass letter, U.S., let him get an eagle on his button, and a musket on his shoulder and bullets in his pocket, there is no power on earth that can deny that he has earned the right to citizenship.”
Amid the tumult of the Revolution, it was yet to be determined which institutions, traditions and ideologies would be left intact if independence were to be attained. Slavery’s status was far from settled.

3 RESISTANCE: ASSAULTS ON SLAVERY FROM SOUTH TO NORTH

The colonies, like the states immediately following independence, were riven by the slavery debate in several forms. Infused with economic, social, religious, moral and practical dimensions, this was a battle fought in the halls of colonial legislatures and even within families. Anti-slavery currents ran through every region of British North America.

One momentous chapter of the fight occurred within the wealthy and influential Laurens family. In early 1778, South Carolina’s John Laurens exchanged a series of impassioned letters with his father, Henry, then the President of the Continental Congress, in which he broached a stunning proposition. John Laurens asked to be given his inheritance of 40 slaves early such that he could form a regiment with them to fight the British. This was a particularly revolutionary proposal, given other developments in the South. In several southern states, white men were offered not only land but slaves as bounties for enlistment. Virginia’s 1781 plan came on the heels of a debate in the colony’s legislature to redistribute land from wealthy to poor whites. This plan, however, was adopted but not implemented, and was quite controversial. Madison opposed it, rebutting it with an idea and ideology similar to Laurens’; enlisting blacks “would certainly be more consonant to the principles of liberty, which might never to be lost sight of in a contest for (colonists’) liberty.”

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59 James Madison, letter to James Jones, November 28, 1780.
Laurens’ radical proposal illustrates how pressing the need was to recruit men to fight the British, and helps explain why he was compelled to champion his extraordinary solution.

Laurens was an intriguing figure to take up this cause. As the son of a wealthy rice planter and prodigious slave trader, he had garnered immense advantages from the slave system by his early 20s and was assured of benefiting in perpetuity if he continued along his father’s path. But John Laurens was a headstrong young man, educated in England and Switzerland, who in 1776 had highlighted the hypocrisy of America’s freedom fight: “I think we Americans at least in the Southern Colonies, cannot contend with a good Grace, for Liberty, until we shall have enfranchised our Slaves.” He endorsed the virtues of using lifting up an oppressed people while serving the public good by way of military service. Laurens disregarded his father’s forceful opposition, which included warnings of the ignominy that would befall his family, and continued to push his military proposal.

After vehemently rebuffing the idea for months, Henry Laurens reflected on the progression of the war – the British had captured Savannah in December 1778 – and acceded to the viability of his son’s plan. Henry Laurens, who owned over 250 slaves he never freed and was a longtime principal in an enormous slavetrading firm, had been transformed from opponent to supporter of this potentially revolutionary proposal. In March 1779, while commissioning John Laurens as a Lieutenant Colonel, Congress approved a plan to turn to South Carolina and Georgia for the enlistment of 3,000 slaves, who would be requisitioned proportionally according to the size of each slaveowner’s holdings. Loyal service would entitle the slaves to their freedom and $50 at war’s end, provided they relinquished their weapons. This was a radical step away from the way the legislature

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60 Massey, “The Limits of Antislavery Thought,” 517.
typically resisted imposing any slave-related policies on states, and it showed once again that support for the institution of slavery could be and was in fact mitigated in various ways.

John Laurens’ idea received the enthusiastic support of close friend Alexander Hamilton, who conveyed his advocacy in a letter to John Jay on March 14, 1779. Calling Laurens’s plan “the most rational that can be adopted,” Hamilton said he believed blacks had the potential to be excellent soldiers, especially given their years of experience in subordination. Good soldiers follow orders easily and well, just as he assumed slaves did. In the letter, however, Hamilton was ambivalent on blacks’ mental capacities. He attributed their lack of intellectual development not to inherent shortcomings but to the stultifying nature of their servitude - “their natural faculties are as good as ours,” he wrote. Furthermore, in a moment of pragmatism that was somewhat at odds with his usual fierce stands on principle, Hamilton correctly reasoned that the British would make use of black troops if the Americans did not.

Despite the proposal’s influential backers, the ultimate authority on the matter was ceded to lightly populated Georgia and South Carolina, whose intransigence regarding slavery would become a decisive factor at the Constitutional Convention. Buoyed by the emergent support of his father, John Laurens went to great lengths to drum up support for his plan, but he found no quarter in the South Carolina legislature. The state’s Vice President, Christopher Gadsden, who had replaced the Congress-bound Henry Laurens, said he and his colleagues were “disgusted” by the “very dangerous and impolitic” plan John Laurens had introduced. The plan was not as radical as it was perceived, however, given that slaves had been used throughout the previous half-century to repel attacks on

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South Carolina by Native Americans and Spaniards. The younger Laurens was crestfallen at the opposition he encountered - not least because he, like Hamilton, saw the military necessity of bolstering the rolls of an army struggling to attract and keep soldiers.

Laurens was proven right in the most conspicuous way when the British took over Charleston on May 12, 1780, forcing the surrender of 5,000 troops, including Laurens himself. It was the Patriots’ worst defeat of the war. After Laurens was released, he returned to the South Carolina legislature as an elected member of the body, armed with what he felt was a compelling raft of evidence that black reinforcements were needed. He tweaked his proposal in early 1782 - by which time the tide had turned decisively in favor of the Patriots - such that slaves would be drafted only from Loyalists' holdings. Though his audience was in some ways predisposed to agree with him – his plan would punish Loyalist opponents, after all – Laurens’ plan again was rejected by the General Assembly by what one representative recalled as a margin of 100 to about 15. The irrepressible Laurens, the most ardent Revolutionary-era supporter of black empowerment in South Carolina, was planning to take his crusade to Georgia when, on Aug. 27, 1782, he was killed in battle. Washington, despite his own misgivings on the issue of slavery, memorialized Laurens as a man who “had not a fault that I ever could discover.”

Laurens was among many southerners who contradicted the pro-slavery ethos that pervaded the region. The first speech Richard Henry Lee delivered after being elected to Virginia’s House of Burgesses in 1758 was a call for an end to the slave trade. Lee would go onto propose a 1774 bill

64 Davis, *Inhuman Bondage*, 137.
65 Ibid., 523.
66 Ibid., 524.
67 Laurens’ demise was particularly untimely, given how many historians interpret the conflict that felled him. The Battle of the Combahee (S.C.) River, held almost one year after the British surrender at Yorktown, is widely seen as avoidable, as the British were preparing to evacuate Charleston at the time.
that seemed capable of taxing slave importers out of business, but when the House of Burgesses was dissolved, the bill could do nothing more than evolve into county-by-county resolutions that conveyed an official message. John Adams, who ranks among the first order of Founding Fathers, was adamant in his opposition to slavery, a position shared by wife Abigail. Declaration of Independence signer Benjamin Harrison V, a political heavyweight who served as governor of Virginia from 1781-84, urged heavy taxes and limitations on slave importations as early as 1772.69

Even before bullets flew against the British, the fighting spirit of resistance had pervaded much of the colonies. Inspired by whites who were asserting a claim for political liberty, several groups of slaves wrote petitions for freedom to the state government of Massachusetts in the mid-1770s. One of them referred to the Spanish system of coratación, in which slaves would earn remuneration for their labors and then buy their freedom.70 In November 1779, a group of 19 New Hampshire slaves – one of whom, Prince Whipple, belonged to William Whipple of the Continental Congress - appealed to that colony’s General Assembly with cogent eloquence. Their stirring plea for liberty, which ultimately would be rejected, invoked the principle of natural rights and echoed Jefferson and Locke by asserting that “freedom is an inherent right of the human species.”71 In the same year, slaves from Fairfield County, Conn., presented the colony’s General Assembly with a missive that not only delineated the contradiction of their bondage amid America’s revolutionary struggle, but also assailed racism throughout the colonies.72 The hypocrisy of the colonies’ fight for freedom was not lost on black Americans, some of whom were able and willing to deploy the power

69 Harrison was the grandson of Robert “King” Carter, the legendary Virginian who owned some 750 slaves to work his roughly 300,000 acres of land in the early decades of the 18th century.
70 Nash, Race and Revolution, 171.
72 Ibid., 152.
of the written word to further their cause. The colonies were turned upside down by the Revolution, and this was a transformation that affected all Americans – white, black, free and enslaved. In subsequent years many blacks were loath to relinquish the increased autonomy they experienced during the war.\textsuperscript{73}

Foreshadowing the rhetoric of other early abolitionists, the African-American poetess Phillis Wheatley identified the burgeoning double standard in colonial America. Her 1774 letter to Reverend Samson Occom, a Connecticut-based Mohegan Indian who was an ordained Presbyterian minister, highlighted this contradiction: “How well the Cry for Liberty, and the reverse Disposition for the exercise of oppressive Power over others, agree,– I humbly think it does not require the Penetration of a Philosopher to determine.”\textsuperscript{74} Two years before South Carolinian slaveholder John Laurens proffered the same perspective to Southern audiences, the hypocrisy Wheatley articulated was apparent to some but resolutely denied by most. Indeed, attempts to justify the deprivation of blacks’ liberty would emerge haltingly in the early national period and then metastasize in the decades before the Civil War.

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One of the most widespread and pernicious myths about slavery in the era of the Constitutional Convention was that the South, whose elite were wedded to forced labor, was unbendingly bound to the institution in economic and philosophical ways. While it is impossible to argue that slavery was not important, the vast majority of northern and southern white families did


not own slaves, and even among those who did, there was a substantial percentage who confessed to misgivings about race-based forced labor. More profound dependence emerged a generation or two after the Revolutionary era, as the advent of the cotton gin and addition of more southern states would effect a marked increase in the enslaved population beginning in the last decade of the 19th century. The fewer slaves there were, the easier it would have been to cut the legs out from under the institution itself. Even for those involved, slavery had become less lucrative, owing to factors such as the declining profit margins of tobacco farming. This was the landscape of the 1770s and 1780s, a historical moment that presented several reasons for what Gary Nash calls “the opportune time for abolishing slavery.”

In the era of the American Revolution, there was in fact a movement of considerable momentum to condemn, phase out or even abolish slavery. This was a movement that originated, predictably, in Northern areas with relatively low slave populations, areas where slavery was not the visible core of the society and economy. But it also took root in places where abolition would have dramatically transformed the landscape. Contrary to Nash’s assertion that abolitionism was waning in the leadup to the Convention, this was a movement that crossed sectional lines, a movement both public and private and a movement that sowed the seeds for transformational changes on the new national landscape. These seeds, however, would remain fallow inside the Pennsylvania State House during the summer of 1787. Outside the State House was a different story.

The most notable among these loci of vulnerability was Virginia, where the slave trade was assessed import duties as early as 1752. Leaders such as Arthur Lee, of the aristocratic Lee clan of

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75 The *Historical Statistics of the United States* indicates that the slave population increased dramatically after the American Revolution - from 654,121 in 1790 to 1,103,700 in 1810 and 1,983,860 in 1830.


Eastern Virginia, began speaking out against slavery earlier than in many other parts of the colonies. Lee’s “Address on Slavery” published in the *Virginia Gazette* of March 19, 1767, condemned slavery for several principal reasons. First, that it was “a Violation of both Justice and Religion;” second, that it was “dangerous to the safety of the Community in which it prevails” on account of the risk of violent rebellion; third, that it retarded cultural advancements; and fourth, that it undermined the morals of both slave and slaveowner. Lee, who would later represent his state in the Continental Congress, had critiqued slavery before but never in a way that garnered so much attention. Benezet saw to it that the address was circulated broadly, and as late as 1773, worked alongside devout abolitionist Robert Pleasants to distribute it throughout Virginia. The most direct effect began to materialize less than two weeks after its publication. The House of Burgesses took up legislation that ultimately would raise the taxes on slave importations.

In the summer of 1774, several Virginia counties would help to blaze a trail alongside similar actions in Rhode Island, North Carolina and South Carolina, a trail that would be followed months later by the Declaration of Resolves. The Resolves, which the First Continental Congress announced from Philadelphia, took a decisive step away from dependence on slavery by issuing a momentous ban on slave importations. In truth, this ban – promulgated by 56 delegates, including 20 from Maryland, Virginia, North Carolina and South Carolina - was a broader condemnation than that. It was a decision to disengage from all dimensions of the slave trade and from anyone yet engaged. In the second of 14 resolutions, passed on Oct. 14, the Declaration stated that the colonies would

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wholly discontinue the slave trade, and will neither be concerned in it ourselves, nor will we hire our vessels, nor sell our commodities or manufactures to those who are concerned in it.”

Several months earlier, a host of Virginia colonies had enacted similar bans while describing the slave trade as “injurious,” “wicked, cruel, and unnatural” and “dangerous to virtue and the welfare of this country.” Resentment toward heavy-handed British dictates ensured that no central authority was forcing Americans’ hands throughout the colonies. Two years shy of the Declaration of Independence, a spirit of unity and cohesiveness was only beginning to bubble up. The idea that the colonies, including the slave bastion of Virginia, chose to march in step in denouncing the slave trade indicated a formidable attack on the institution that would be put to the test in the cauldron of the Constitutional Convention.

Delaware repealed its decades-old ban on private manumissions in 1787, but Virginia had, remarkably, struck first. In 1782, the state overturned a 59-year old law that proscribed private manumissions in almost every circumstance. At the time, its population contained roughly 2,000 free blacks, a number that would mushroom to 12,766 by 1790. Even though this figure was a small percentage of the state’s enslaved population, this dramatic increase in only eight years is evidence that change was afoot. In the spring of 1783, Jefferson penned a draft of a state constitution that never saw the light of day but was shared privately with Madison, who by this point had become a close friend. Within the text was a momentous clause, the impact of which would have been revolutionary: “The General assembly shall not... permit the introduction of any more slaves to reside in this state, or the continuance of slavery beyond the generation which shall be living on the

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81 Cotton is King and The Pro-Slavery Arguments: Comprising the Writings of Hammond, Harper, Christy, Stringfellow, Hodge, Bledsoe, and Cartrwright on This Important Subject, ed. E.N. Elliott (Pritchard, Abbott & Loomis, 1860), 234-35.
82 Finkelman, Slavery and the Founders, 136.
31st day of December 1800; all persons born after that day being hereby declared free.” This would have banned the importation of slaves and phased out slavery’s existence entirely via gradual emancipation.

This proposal followed the contour of a Pennsylvania plan that was ratified in 1780, the groundbreaking Act for the Gradual Abolition of Slavery. But Pennsylvania was a place that had been shaped for a century by Quakers, whose anti-slavery beliefs and advocacy put them at the vanguard of the abolition movement on both sides of the Atlantic. The colony was founded by the Quaker entrepreneur William Penn, was dubbed a Holy Experiment and was populated substantially by members of that egalitarian faith. It was as early as 1727 that the Society of Friends condemned slavery in the American colonies. A remarkable 70 years earlier, British dissenter George Fox, the sect’s founder, had pointed out the incongruence between slavery and Quaker beliefs in equality. The Quaker-infused ethos in Pennsylvania, steeped over time, helped ensure that it never depended heavily on slavery whether in 1780 or at any other point. The Pennsylvania law is deservedly appreciated for its trailblazing place in the abolition movement. Massachusetts, too, was ahead of the curve, as a series of legal decisions collectively known as the Quock Walker cases in effect banned slavery as of 1783.

But the landscape differed considerably in Virginia, a state with by far a larger enslaved population than any other. And among the leading exemplars of contradiction was Jefferson, a figure personally and professionally rooted in the soil of the Old Dominion, as he was scarcely removed from his two-year term as Governor of Virginia. This was Jefferson, writing the draft

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85 The net result of these cases was a refined interpretation of the 1780 Massachusetts Convention, which had not explicitly outlawed slavery.
constitution at a time when he owned approximately 10,000 acres of land and almost 200 slaves in his beloved mountaintop dominion at Monticello. This was a plan that was nothing short of revolutionary.

It is left to sheer speculation as to whether Jefferson’s draft would have been ratified by Virginia’s General Assembly, or whether the gradual-emancipation clause would have been accepted in some form. The proposal never came to a vote because Virginia never called a state constitutional convention, which is where such changes would have been considered. Instead, with the Revolutionary War raging, the state maintained its original constitution of 1776. The Virginia Constitution was the first of its kind in America and a document that bore striking resemblance in several regards to the Declaration of Independence, which Jefferson was writing at that very moment. One of these commonalities is evident in its critique of King George III, who had been “prompting our Negroes to rise in Arms among us, those very negroes whom, by an inhuman use of his Negative, he hath refused us permission to exclude by Law.” Here Jefferson rightly alleges that the king had stifled Virginian attempts to ban importation of slaves. Virginia and 10 other states, with Georgia an exception and North Carolina having deterred the trade with a steep import tax, would do just that by the time the delegates would convene in Philadelphia in 1787. These bans were not merely wartime measures to reduce the economic entanglements with enemy Britain; this was a postwar reality suggesting that the strength and permanence of the institution of slavery were far weaker than historians like Jack Rakove and Joseph J. Ellis argue.

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86 Finkelman, Slavery and the Founders, 134.
88 Stewart, Summer of 1787, 199.
Virginia’s impulse to proscribe slave importations was not, however, the result of a widespread moral transformation. Although there was a rise in anti-slavery sentiment at the time, a principal impetus was economic. Because Virginia had so many more slaves than any other state, prohibiting importations would have limited the capacity of other states to augment their enslaved populations; such growth would have been attained only by natural increase. To the extent that the rise in slave population was slowed, Virginia, which had a lesser need to import, would become more advantaged relative to other states. Dating to the 1760s, this theory compelled Virginia elites such as Richard Henry Lee and George Mason to push for legislative action that would have strengthened their own financial position without effecting outright abolition.\textsuperscript{91} Such advocacy faced opposition from both the House of Burgesses and the British government, although the state in 1778 did pass an outright ban on slave importation – ratifying a bill that had gotten its start with Lee’s efforts four years earlier.

The other explanation for Virginia’s advocacy of an importation ban was a desire not to benefit the British during the Revolutionary War. With the colonies’ trans-oceanic shipping capacity far outstripped by that of the British, a large percentage of America’s slave importations were transported by British vessels. Few colonists, save perhaps for some Loyalists, had any interest in filling Britain’s coffers at a time when the colonial power had become the enemy. As evidenced in the boycotts of all manner of British goods, which had been in effect for several years by the time the war began, Americans took stock of their economic leverage and were willing to use it. Importantly, colonists’ attachment to the institution of slavery was not so great that it trumped their political objectives. The stoppage in slave importations is significant, given the macro- and micro-economic ramifications on America, and it could have served to generate momentum toward

\textsuperscript{91} Van Cleve, \textit{A Slaveholders’ Union}, 29-30.
weaning the colonists off their time-tested reliance on the institution. Virginia, despite its massive enslaved population, was at the vanguard of this movement.

Richard Dunn argues convincingly that the elite of the Chesapeake region were uniquely empowered to move the nation against slavery in the 1780s.\textsuperscript{92} That over half the nation’s slave population resided in Virginia and Maryland helps substantiate this assertion; the region’s biggest slaveholders had the most to lose amid the prospect of any form of abolition, yet a substantial number of them advocated precisely that. The Chesapeake was, of course, also the home of many of the most powerful individuals and prominent families in America – the Lees, the Washingtons, the Custises, the Randolphs, the Carters. While many of this elite class were known for their wealth and influence, another of their defining characteristics was exposure to and acceptance of some of the more liberal ideas of the era. Among these was the immorality of slavery.

There were other developments that primed the Chesapeake for a de-emphasis on slavery. One was religion. Although interpretations of Christian doctrine emerged at the heart of pro-slavery arguments as the 19\textsuperscript{th} century progressed, the late 18\textsuperscript{th} century was a time when there was considerable initiative to move in the opposite direction. In Baltimore, the seminal Christmas Conference of 1784, at which the Methodist Episcopal Church was established, featured a resolution opposing slavery. Methodist Conferences in 1780 and 1784 also emphatically denounced the institution of slavery and passed regulations against owning, buying and selling slaves.\textsuperscript{93} Consequently, thousands of blacks free and enslaved were brought into Methodism during the


subsequent decade.\textsuperscript{94} Another factor alleviating the reliance on slaves was a diversification of the Chesapeake economy. The beginnings of industrialization were taking root, but even within agriculture, circumstances grew less favorable for the institution of slavery. This was an era when tobacco farming became less prominent amid the regional emergence of wheat, corn and livestock, accompanied by a shift from the type of gang-labor systems that once had fueled the demand for slaves.\textsuperscript{95} This mitigating influence fits broader patterns seen in various societies over time. As economist Jenny Bourne argues, slavery has existed in those circumstances where the elite benefit economically from its existence.\textsuperscript{96} The converse - that slavery’s decreasing economic importance weakened the reliance on it - was proving true across the United States but particularly in the Chesapeake region of the 1780s.\textsuperscript{97} Declining profitability trumped whatever other motives may have existed and was a catalyst to opposition to slavery on humanitarian grounds.

As much momentum as the anti-slavery movement had in Virginia, the opportunity for reform may have been riper still in Maryland.\textsuperscript{98} The state featured substantial numbers of not only Methodists, but also Quakers, and an economy that was less reliant on tobacco than Virginia’s. In 1754, the colony’s General Assembly voted not once, but twice to tax slave imports: first, a five percent tax in February, followed in October by “an additional duty of 10 per cent on slaves imported over and above the usual duty and the special duty imposed in (February.)”\textsuperscript{99} The Maryland Yearly Meeting of Quakers railed against slavery and called for a petition to be introduced

\textsuperscript{94} Their ranks would include Harry Hosier, known widely as “Black Harry,” a former slave who earned glowing praise from Benjamin Rush and others for the power and effectiveness of the sermons he delivered up and down the East Coast. Further, the last letter Methodism founder John Wesley wrote before his 1791 death exhorted abolitionist William Wilberforce to fight against slavery.
\textsuperscript{95} Dunn, “Black Society,” 51.
\textsuperscript{97} Van Doren, \textit{The Great Rehearsal}, 152.
\textsuperscript{98} Dunn, “Black Society,” 76.
\textsuperscript{99} Clarence Pembroke Gould, \textit{Money and Transportation in Maryland, 1720-1765} (Baltimore: Johns Hopkins Press, 1915), 74.
to the colony’s legislature, which occurred in 1771. That same year, Matthew Tilghman, who later represented Maryland in the Continental Congress and presided as chairman and president of various state conventions, submitted a bill to increase the tax on slave importation. The bill became law in November 1771. The following year, Maryland pressured King George II to abolish the “great inhumanity” that was the slave trade, also citing the hindrance it placed on the economy and the immigration of free people. Gustavus Scott, a two-time delegate to the Annapolis Convention, and Luther Martin had formidable objections to slavery. The landscape was not entirely ripe for reform, of course; a notable counterbalance to the Quakers and Methodists was the influence of Maryland’s Jesuits, who were more bound to tradition and therefore resistant to reform.

Just east of the Chesapeake colonies, Delaware took significant steps against slavery. Some of the most prominent Delawareans – Caesar Rodney, John Dickinson, extremely wealthy governor Richard Bassett – freed their own slaves or fought against slavery. The colonial constitution ratified in 1776 included a ban on slave importations. Quaker- and Methodist-led reform efforts accompanied economic trends that aided the shift in the slavery landscape, as many farmers abandoned tobacco in favor of wheat and corn crops that required less labor. After becoming a state, Delaware in 1787 barred slaves from being sold out of state in most circumstances. A sizable Quaker presence in the state led to the drafting of a petition that was read before the Assembly on January 9, 1786. One of several similar entreaties to be written in Delaware during this era, the petition was signed by well over 200 individuals, not an insignificant number given that the state’s population was the lowest in the United States. Characteristically for Delaware’s anti-slavery

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100 MacMaster, “Arthur Lee’s `Address on Slavery,’” 150.
101 Ibid., 150.
petitions, this missive cited the ideological tenets of the Declaration of Independence in condemning the state for “withholding from (slaves) their just and Natural right of personal Freedom.”

Several states formed the first wave of the anti-slavery movement, not counting New Hampshire, which rejected a 1779 Constitution featuring outright abolition. Vermont had been the first to approve of abolition, enshrining the ban in 1777 with its maiden constitution. Pennsylvania followed with its Act for the Gradual Abolition of Slavery in 1780, and in the same year, Massachusetts outlawed slavery with constitutional language that would be upheld by its state supreme court three years later. In 1784, Connecticut and Rhode Island enacted legislation similar to Pennsylvania’s, with Rhode Island declaring that all children born henceforth to slave mothers would be free and Connecticut granting freedom to future children of slave mothers once the offspring reached 25. During the ratification of the Articles of Confederation, a process that lasted from December 1777 to February 1781, these states shared a small enslaved population and a nascent yet undeniable commitment to ending slavery.

This commitment was buttressed by a nationwide legislative landscape that did not reward and protect slaveholders the way the Constitution ultimately did. Even among the ranks of slaveholders, even in the South, belief in the institution of slavery wavered considerably.

Mostly in the north but to some extent in the south, there were many members of the political, economic and cultural elite who criticized slavery in the years before the Convention. Countering the conventional wisdom that slavery lasted so long because the elites tolerated or defended it, an examination of the Revolutionary and pre-Constitutional period suggests otherwise.

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There was ample opposition in many corners. Many prominent, influence-wielding individuals spoke, wrote or acted in opposition to slavery in the early national period. Their collective clout could have been enough to ensure a progressive outcome on the slavery issue at the Constitutional Convention, but circumstances unfolded otherwise.

No Convention attendee was more influential than John Jay, who by 1787 had developed a mass of influence, experience and personal relationships that placed him among the first rank of Founding Fathers. John Adams minced no words when describing Jay’s standing, averring that the 41-year-old statesman wielded as much influence among Convention attendees as “any of the rest, indeed of almost as much weight as all the rest. This gentleman had as much influence in the preparatory measures in digesting the Constitution, and in obtaining its adoption, as any man in the nation.”

Jay served as the President of the Continental Congress from 1778-79, served as Secretary of Foreign Affairs and Minister to Spain during the Revolutionary War and helped negotiate the Treaty of Paris that ended the war in 1783. He was well-established socially, too, hailing from a wealthy family, building a career as an attorney and marrying the eldest daughter of New Jersey governor William Livingston. After the Convention, Jay was co-author of the Federalist Papers, served six years as the Chief Justice of the Supreme Court of the United States and spent six years as governor of New York.

Born into a New York family with large slaveholdings, Jay was determined to chart his own course on this issue. As early as 1777, he sought, albeit unsuccessfully, to amend the New York state constitution to include a slavery ban. He wrote to the state’s attorney general in 1780 declaring that if he were a member of the state legislature, he “would never cease moving” toward abolition.

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or would choose to quit the body rather than be a part of an institution that clung to slavery.\textsuperscript{107} In January 1785, Jay was first among equals at the founding of the New-York Society for Promoting the Manumission of Slaves, and Protecting Such of Them as Have Been, or May be Liberated, commonly referred to as the New York Manumission Society. The seminal role he played there speaks volumes regarding the principles he took to the Pennsylvania State House in May of 1787.

Like Jay, many of the Society’s founding members were slaveholders most interested in advancing plans for gradual emancipation, though a militant faction demanded nothing short of total and immediate freedom for all. The Society debated the complexities of such emancipation schemes and met with failure on some counts – bitter fights in New York’s bicameral legislature prevented consensus on the civil rights of would-be freedmen - but did triumph in providing the impetus for the state’s 1785 laws largely banning slave importation and easing private manumissions. Forty-six of 47 members of the Assembly (the lower house) cast votes that year in support of some form of emancipation.\textsuperscript{108} Like many other states, New York found it difficult to make a clean break with slavery, but there was considerable political support to take steps in that direction. Jay, who as governor would sign the state’s gradual ban on slavery in 1799, was the tip of the spear.

In 1786, Jay had written a letter to an R. Lushington, a Quaker from Charleston who was somewhat of an anti-slavery advocate, in which he made an unqualified call for the abolition of slavery. Invoking the honor of “the States, as well as justice and humanity,” Jay highlighted the hypocrisy of white Americans’ striving for liberty while “deny(ing) that blessing to others.”\textsuperscript{109} This was not merely philosophical dissonance; Jay was himself a slaveowner who sought a traversable route to escape it.

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\textsuperscript{107} John Jay, letter to Egbert Benson, September 18, 1780.
\textsuperscript{109} John Jay, letter to R. Lushington, March 15, 1786.
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Even during the Convention, Jay presided over an August meeting of the Society at which the first order of business was to study an arresting proposal by Melancton Smith. Smith had proposed that Jay, as the Society’s unanimously elected president, be directed to push the delegates in Philadelphia on the slavery issue. Smith had recommended that Jay present the Constitutional Convention with written condemnation of slavery and a plea to ban the trade. By the following day, Jay had written that petition, his beliefs and aspirations made plain. It never was delivered.

The New York Manumission Society counted among its members another individual of eminent renown: Alexander Hamilton. Hamilton made a splash upon joining the Society by proposing, ultimately fruitlessly, that each individual’s membership would be contingent upon manumission of his slaves. This indicated Hamilton’s desire to have this peer group speak with actions and not merely words.

And at that Feb. 4, 1785, meeting to draw up an organizational constitution, Hamilton made another suggestion with an eye toward the post-emancipation aftermath that vexed both north and south, including some slaveholders and non-slaveholders. Hamilton advocated for the creation of a register of all freedmen, which would mitigate the ever-present danger of bounty hunters who would apprehend free blacks into slavery regardless of their current or former status. Hamilton had good cause to reckon with the prospect of bounty hunters, as they would continue to ply their inimical trade up to and during the Civil War.

Though an immigrant, having left his native Nevis as a teenager, Hamilton was in some ways quintessentially American. This was a man who fought against slavery, was on the vanguard of

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110 This discussion reveals a breach in the oft-cited secrecy to which Convention attendees generally adhered throughout the summer’s proceedings. If the confidentiality were as airtight as is often suggested, no external conversation among mixed company would have been possible.
111 Morris, Witnesses at the Creation, 193.
113 Legislation as late as the Fugitive Slave Law of 1850 provided the institutional framework abetting slave catchers. This law, a polemic that infuriated and prompted legal counter-action among Northerners, compelled government officials to aid in the return of runaway slaves while punishing citizens up to $1000 and six months in jail for helping fugitives.
mainstream abolitionism in the United States and put his reputation on the line in advocating for the enlistment of black soldiers in the Revolutionary War. And this was the same man who married into an elite family of slaveholders, the Schuylers of New York, and went on to assist his in-laws by conducting several types of business transactions involving slaves. Hamilton himself may have owned slaves, although this is a point of scholarly disagreement.\textsuperscript{114}

Many of Hamilton’s actions regarding slavery were subject to differing interpretations. On one hand, he was an inveterate supporter of property rights, a philosophy he sustained throughout his public life and one that would rear its head during the Constitutional Convention, when Hamilton and others showed reluctance to interfere with slaveholders’ claim to human property. At the end of the Revolutionary War, however, he waffled. The Treaty of Paris had forbidden the British from “carrying away any Negroes or other property of the American inhabitants,” a clause they flagrantly violated, but Hamilton took the uncommon step of yielding on his principles.\textsuperscript{115} Instead, he chose to prioritize the wartime pledges of emancipation that the British had offered fugitive slaves, a stance that coincided neatly with his aversion to troubling the postwar waters with Britain any further. As much of an Anglophile as a Patriot could be, Hamilton made enemies aplenty during his life with his unsparing tongue and dogmatic views. He shelved all of that in this case – not so much to ensure the emancipation of slaves, but to acknowledge the complexity of war’s end.

In a region teeming with laws that restricted or proscribed slavery, it was not a surprise to reckon with prominent Northerners who opposed or waffled when it came to slavery. However, there were many Southerners of similar ideological bent, men who were as wealthy, powerful and influential as any of the arch defenders of slavery. The beliefs of men such as Patrick Henry, Robert Pleasants and George Mason are too often ignored in scholarship of the early national period.

\textsuperscript{115} Treaty of Paris, September 3, 1783, \textit{UST} 1 (1783), 1.
Patrick Henry, rebel par excellence, is in some ways the exemplar of this breed of Southerner. Referring to *Some Historical Account of Guinea* - a deeply influential book by leading abolitionist Anthony Benezet that had been given him by his friend, Robert Pleasants - Henry was moved to reflect not only on the nature of slavery but also more directly on his own involvement in the institution. His Jan. 18, 1773, letter to Pleasants, which was part of a remarkable correspondence between the two, thanked his friend for the Benezet book and laid bare the spiritual awakenings it had kindled in him. Henry invoked Christian morality, world history and American ideals in denouncing slavery as “a Species of Violence & Tyranny, which our rude barbarous but more honest Ancestors detested.” Henry went on to call slavery “abominable,” “repugnant” and, unlike many who presumed God’s blessing and backing in defending the institution, critiqued it as “inconsistant (sic) with the Bible & destructive to Liberty.” Henry’s use of this last term is particularly interesting given his famous exhortation two years later, when he thundered before the Second Virginia Convention: “Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take; but as for me, give me liberty or give me death!”

Many white patriots invoked slavery as a way to describe their status under British rule. Their phrasing usually was interpreted as a metaphor, for whites were not enslaved physically. Rather, they felt limited and oppressed by the economic and political straits they alleged the British had foisted upon them; they perceived their hardships to be as inescapable and encompassing as

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116 This was a widely influential tract by Benezet, a seminal figure in trans-Atlantic abolitionism. Like Sarah and Angelina Grimke or Harriet Beecher Stowe, Benezet wrote unflinchingly about slavery having seen it and its effects up close.
118 Ibid., 83.
119 Typical was George Washington’s declaration to the Continental Army at the Battle of Long Island in 1776: “The time is near at hand which must determine whether Americans are to be free men or slaves.”
race-based, chattel slavery actually was.\textsuperscript{120} Men like Henry, a slaveholder for his entire adult life, were acutely aware of the power of their word choice. “Slavery” was not a term to be used lightly. And for that reason, it is impossible to reflect on Henry’s renowned oration without reckoning with his long-articulated beliefs on slavery.

Unlike some of his contemporaries, Henry had the courage to judge himself objectively and publicly. His aforementioned letter to Pleasants smoldered with an explicit critique of his own choice to own slaves: “I will not, I cannot justify it,” Henry wrote.\textsuperscript{121} True to his word, he did not. Henry assailed slavery in his private correspondence on a number of levels – moral, religious, philosophical – yet perpetuated it at the same time with his actions. He neither defended the institution of slavery nor sold his own slaves. Henry was not alone in this cognitive dissonance, this disparity between word and deed.

Though he declined to justify slaveholding, Henry continually perpetuated it on a personal level. Henry was given slaves as a wedding gift, purchased more as his finances would allow and ended up owning as many as 100 of them. This was both a multiplier of his power and a symbol of it. It is clear that Henry could have leveraged his position to greater effect but did not. Henry biographer Robert Douthat Meade holds that by the mid-1780s, Henry, as the inaugural Governor of Virginia and in his second term, “could now muster more power and influence – when he chose to do so – than almost any other American of his day.”\textsuperscript{122} On slavery, he chose not to bring to bear the full measure of his clout. Having been born and raised in a society built around slavery, Henry had evolved into a man who profited immensely from it on a personal level and could not part from

\textsuperscript{120} Bernard Bailyn, \textit{The Ideological Origins of the American Revolution} (Cambridge, Mass.: Harvard University Press, 1967), 232-33. Bailyn points out that the term “slavery” commonly was understood in 18th-century political discourse as a denial of citizens’ sovereignty - the “ultimate political evil” and one that would inspire American colonists like little else.

\textsuperscript{121} Brendlinger, \textit{To Be Silent}, 84.

it. His statements indicate he wished he could. His beliefs compelled him to do so. But he could not, despite his vision for Virginia that would have boosted immigration of farmers and artisans as a way to compensate for the freeing of slaves.\(^\text{123}\)

Despite his personal failure to move away from slavery, he made political strides in that direction. Henry is believed to have supported the 1782 Virginia law authorizing manumission of slaves in certain circumstances.\(^\text{124}\) Three years later, he was Governor of Virginia when the Virginia Assembly struck what seemed a blow for progress in prohibiting further importation of slaves. This law was no boon to African-Americans, though, as it barred slaves from testifying in court against whites and authorized physical punishment against slaves who joined in unlawful assemblies or traveled without written authorization from whites.\(^\text{125}\)

Pleasants, whose Curles Neck Plantation was not far from Henry’s own in eastern Virginia, initially was caught in the same quandary as his friend Henry – even a stickier one, in some respects. Unlike Henry, Pleasants grew up knowing nothing but slavery. He came from an elite family of tobacco magnates who owned over 500 slaves but came to a point when they longer wanted to. Having developed a relationship with Anthony Benezet and other northern Quakers, Pleasants and his father, John, were eager to disseminate the beliefs of those vanguard reformers; an August 1772 letter from Robert to his brother mentions a requested order of two dozen “Antony Benezet Treateses (\textit{sic})” and alludes to one dozen already received.\(^\text{126}\) Robert Pleasants and his father sought in 1771 to order the gradual emancipation of their slaves but could not due to the illegality of private

\(^{123}\) Ibid., 285.
\(^{124}\) Ibid., 252.
\(^{125}\) Ibid., 313.
\(^{126}\) Robert Pleasants, “The Letters of Robert Pleasants, Merchant at Curles, 1772,” \textit{The William and Mary Quarterly} 2, no. 4 (1922), 270.
manumissions at that time. Robert Pleasants saw to it that this changed by successfully pushing for new legislation in 1782, whereupon he immediately freed his slaves.

A political outsider, Pleasants attempted on many occasions to influence those with hands directly on the levers of power. He had entrée enough to write to powerbrokers such as Washington, Jefferson and Henry in an effort to persuade them to implement the legal changes he was not personally able to effect. Pleasants went on to become the founding president of the Virginia Abolition Society and in 1801 founded Virginia’s first school for free blacks. Avoiding the hypocrisy that ensnared some of his progress-minded peers, Pleasants expressed in his will the same sentiment by which he lived the last three decades of his life: the “full conviction that slavery is an evil of great magnitude.” This quintessential Southern planter, a man of influence, status and exceptional wealth, had become a full-fledged abolitionist.

Another Virginian, James Madison, stopped short of emancipating his slaves but was halting in his support of the institution of slavery. In the early 1780s, Madison bought 900 acres of land in New York with a mind to “depend as little as possible on the labour of slaves.” This move likely reflected one of two motivations on Madison’s part, both of which would substantiate the viability of the anti-slavery movement. Perhaps Madison, reading the reformist tea leaves of the time, was hedging his economic bets to maintain his prosperity should slavery be abolished. This would have been a fairly stunning indicator of the direction the would-be Father of the Constitution saw the country heading. The other explanation is that Madison was acting in accordance with his beliefs, which for years had reflected considerable opposition to slavery. He expressed private misgivings

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127 The school, known as the Gravelly Hill School, educated children of freedmen in traditional academic disciplines such as reading and mathematics, as well as in vocational skills such as farming and mechanics. It occupied part of a 350-acre tract in eastern Virginia that Pleasants gave to freedmen.


about slavery in his mid-20s and the magnitude of his criticism only grew from there. Around the time of the Constitutional Convention, Madison made repeated statements opposing slavery, and to some extent, his words were accompanied by deeds. When one of his slaves, Billy, tried to escape in 1783 while accompanying Madison to Philadelphia, Madison decided not to return him to Virginia by way of punishment for “merely for coveting that liberty for which” white colonists had “paid the price of so much blood” and “proclaimed so often to be the right, & worthy the pursuit, of every human being.”

Madison realized the hypocrisy of a free nation keeping slaves and was willing to admit it.

Later in life, after he had served as the nation’s fourth president (1809-17), he waxed more impassioned and principled in his denunciations of slavery. He continued to wrestle with a post-emancipation framework that he had pondered as far back as 1789, when in he had supported colonization but worried that, if it were to happen in the American West, freedmen would be subjected to hostility from “Savages.” Madison’s attachment to the idea of relocating slaves peaked as he served as president of the American Colonization Society from 1833-36, the last three years of his life. Unlike some supporters of colonization, Madison was fueled primarily by his disapproval of slavery. It was a disapproval decades in the making. A month before heading to Philadelphia for the Constitutional Convention, Madison had made plain his acknowledgement of the ideological quicksand on which the new nation was treading: “[w]here slavery exists the republican theory becomes still more fallacious.” Here Madison challenges the very authenticity of the American form of government, despite Rakove’s inaccurate characterization of Madison’s

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130 Ibid., 59.
“carefully guarded thoughts” on the subject of slavery.\(^{134}\) Years later, Madison would yearn for “a rapid erasure of that blot from our Republican character.”\(^{135}\) Yet having owned slaves his entire adulthood, he never freed them in life or death. Madison stands as yet another testament to the difficulty some of his peers felt in reconciling the personal and the philosophical, the monetary and the moral.

Franklin, who would later loom over the Constitutional Convention as its statesman emeritus, faced a similar struggle. He owned as many as seven slaves at various points in his life but freed them when his beliefs on the issue shifted. During his career as a publisher, he printed periodicals featuring advertisements for runaway slaves but also Quaker pamphlets criticizing slavery. By the mid-1780s, owing a considerable debt to his friendship with Benezet, Franklin’s views had changed so drastically that he became president of the Pennsylvania Abolition Society. Signs of this shift were evident early on.

As early as 1764, while serving as deputy postmaster-general of the colonies, Franklin went to England and disparaged slavery – in particular, England’s role in promulgating it in the colonies.\(^{136}\) As several contemporaries would do during the war, Franklin pointed out that there were colonial laws against slavery that were rejected by the British government. By the time of the Revolution, of course, Franklin’s allegiance to (and employment by) Britain had ended. Franklin was dogged in his efforts early in the Revolutionary War to win France’s support for the rebellion. Part of his appeal to the French, echoing that of Jefferson, was to persuade them that America would not delay in moving away from slavery.

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\(^{134}\) Rakove, *Original Meanings*, 337.

\(^{135}\) James Madison, letter to Marquis de Lafayette, February 1, 1830.

During the Constitutional Convention, Franklin, with the backing of the Pennsylvania Abolition Society, intended to introduce a proposal that would have included a statement of principle condemning the slave trade and slavery itself.\textsuperscript{137} In principle he stood not alone, but rather shoulder to shoulder with first-rank figures such as Jay and Hamilton. Yet in a microcosm of the broader contours of the slavery debate, he was outmatched by the strength of other delegates’ priorities. Several northern delegates persuaded him to withdraw the proposal because they believed it would have alienated southern delegates, thus jeopardizing the consensus that all so desperately sought to nurture.\textsuperscript{138}

Though Franklin’s agenda may have been stunted, his ideological evolution was not. He wrote several public papers denouncing slavery. Perhaps the most prominent among them was a 1789 letter in which he excoriated slavery but also sounded a note of caution as to how emancipation should unfold: “Slavery is such an atrocious debasement of human nature, that its very extirpation, if not performed with solicitous care, may sometimes open a source of serious evils.”\textsuperscript{139} Franklin went onto describe what he believed should happen upon former slaves after they were “restored to freedom.” He advocated a steadfast governmental commitment to assisting the freedmen in areas such as occupational training and education, a step he had taken personally in supporting and visiting a Philadelphia school for blacks in the 1750s and 1760s.

The Revolutionary Era was one in which economic and political power was wielded disproportionately by the elite, who enjoyed commensurate influence in all dimensions of society. These were men whose access to wealth, education, political circles, travel, and power exceeded the

\textsuperscript{137} Ellis, \textit{Founding Brothers}, 91.
\textsuperscript{138} Ibid.
\textsuperscript{139} Benjamin Franklin, “An Address to the Public,” November 9, 1789.
wildest dreams of the average colonial. It is impossible, then, to overstate the significance of the statements some of the elite made against slavery.

Few individuals spoke out more strongly than Thomas Jefferson. As early as 1774, preceding the emergence of mainstream critiques of slavery, he called abolition “the great object of desire” in an America where slavery had been “unhappily introduced” by the British in the nascent stage of its development. The result, Jefferson wrote in *A Summary View of the Rights of British America*, was that the states were “deeply wounded.”\(^{140}\) Although the pamphlet’s objective was to illustrate the right of the colonies to be free, its commentary on slavery remains noteworthy amid the discourse of the day.

In his *Notes on the State of Virginia*, written in 1781, Jefferson railed against a societal structure “permitting one half the citizens thus to trample on the rights of the other.” He could see that masters inherently became “despots” bereft of “morals” and that slaves became “enemies” of the state.\(^{141}\) Five years after his Declaration of Independence spotlighted them in momentous fashion, Jefferson again invoked the power of natural rights, rhetorically wondering how the liberties of anyone in a slave society were secure when God-given rights were denied to some. That he took such a principled, moral position in the only book he ever published was quite noteworthy. Yet Jefferson was pragmatic, too, theorizing that it was preferable to free the slaves proactively and preemptively so as to head off what may have been inevitable slave rebellion in the future.\(^{142}\) Like so many whites of various philosophical backgrounds, Jefferson was terrified at the prospect of slave rebellion. In 1784, Jefferson proposed to ban slavery in a huge swath of newly acquired territories west of the Appalachian Mountains and abolish it everywhere after 1800; the proposition failed by a

\(^{140}\) “A Summary View of the Rights of British America,” *The Papers of Thomas Jefferson*, 1:130.


\(^{142}\) Ibid., 337.
single vote in the Confederation Congress but set the stage for the abolition of slavery three years later in the Northwest Ordinance. Jefferson was perhaps the quintessential American commentator on slavery of his day, given that his moral opposition to slavery could not subjugate his personal attachment to the institution, a failing Paul Finkelman has spotlighted. Douglas Wilson, a Jeffersonian scholar, implies that it is unreasonable and presentist to expect abolitionist views from someone who grew up in a slave society, inherited slaves and was richly privileged by his status on the slavery landscape. The legitimacy of these assertions is gainsaid by the fact that individuals whose circumstances mirrored Jefferson’s made choices and acted on their beliefs far differently than he did. Furthermore, few men had the kinds of opportunities to act against slavery that Jefferson did – opportunities that, in Paul Finkelman’s view, Jefferson largely squandered.

Another slaveholding Virginian, George Mason, had a record nearly as contradictory as Jefferson’s. Mason’s first important public paper criticized the institution of slavery on several counts. Writing on December 23, 1765, he seemed every bit a man motivated to limit the expansion of slavery. Mason lamented that Virginia never had fully considered a ban on slave importation or the encouragement of immigration by free people, which he believed would have improved the colonial economy. Foreshadowing the remarks of Gouverneur Morris at the Constitutional Convention, Mason also noted the impact of “the ill Effect such a Practice has upon the Morals & Manners of our People.” He even reached back into ancient history, citing the example of the Romans. The Roman Empire, he said, was done in by its decision to traffic heavily in slaves, a

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144 Finkelman, Slavery and the Founders.
turning point Mason called the “primary Cause of the Destruction of the most flourishing Government that ever existed.”

Never plainly advocating prohibition of slavery, Mason cannot be fairly called an abolitionist. He was, however, a Founding Father willing to move on the issue, willing to take into account moral, economic and political factors that would set the stage for the evanescence of the institution that had benefited him tremendously in his personal and political life. Like Jefferson, he thought slavery would wither on the vine as it grew, weakening as it expanded beyond its Chesapeake core. Mason would later draft Virginia’s nonimportation statute, which Washington himself presented to the Virginia Assembly. He took a stronger stance still at the Convention when he critiqued slavery with a rhetorical, emotional “blast” that stood out “as one of the most stirring speeches of the Convention.”

While it is hard to ascertain the precise levels of enslaved populations in each colony or state before the first federal census in 1790, it is clear that many Americans emerged from the Revolutionary War with a spirited enthusiasm for denying blacks the liberty that independence had made possible for whites. The rebellion’s embrace of enlightenment ideals opened a new dimension to the fight against slavery, but at the same time, the way it had disrupted and threatened slavery caused the institution’s defenders to double down. Duncan MacLeod notes a postbellum sea change among slavery-related laws, which in many places were emboldened, even sanctified under “a coherent racist doctrine that became a sacred, significant totem in American society.” This divergence, a simultaneous strengthening of pro- and anti-slavery philosophies, occasioned a

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146 Ibid., i:62.
147 Morris, Witnesses, 214.
wrestling match in which the economic and political leverage of the slaveocracy prevailed until the Civil War struck the decisive blow.

As Adam Rothman points out, slavery was “a basic metaphor of power” within political rhetoric following the Revolution.\textsuperscript{149} This was years in the making. Indeed, founders such as Washington and Dickinson had helped shape that discourse even before the colonists decided on independence. Slauter argues that the potency of political slavery rhetoric was derived in no small part from its creation in a society featuring race-based slavery.\textsuperscript{150} Because colonists knew what slavery was, they could more ably flesh out various conceptions of freedom. The most salient one was political, a state of free will to determine one’s destiny untrammelled by the strictures that were imposed by government on the other side of the Atlantic.

In the 1770s and 1780s, the North was not the only region charged by anti-slavery currents. Just as there were Northerners who approved of and supported the institution of race-based chattel slavery, there were Southerners who showed willingness to limit it. This was evident at the Constitutional Convention and on the political landscape of the preceding years.

4 PRIVATE AND PUBLIC: FROM ROBERT CARTER III TO THE NORTHWEST ORDINANCE

The biggest myth regarding slavery at the Constitutional Convention is that the North had little choice but to capitulate to Southern intransigence. There are several major flaws in this perspective, which has been promulgated by many eminent scholars in the last several decades.

\textsuperscript{149} Rothman, \textit{Slave Country}, xi.
\textsuperscript{150} Slauter, \textit{The State as a Work of Art}, 179-82.
Bernard Bailyn, one of the most influential scholars on the Revolutionary era, starts with a falsehood - “[m]ost of the Revolutionary leaders hated slavery – not one of them ever publicly endorsed it” - and from there draws errant conclusions.\textsuperscript{151} Although the terms “Revolutionary leaders” and “hated” are subject to interpretation, there is no shortage of leading men from this time period who spoke and wrote in support of slavery. Framers of the Constitution such as Charles Pinckney, his cousin Charles Cotesworth Pinckney and John Rutledge, all of South Carolina; and Georgia’s Abraham Baldwin made clear at the Convention their approval of slavery.

Still, there were many founders who were to some degree opposed to slavery, and the question fumbled by Bailyn is why they did not end it. In his influential essay, “The Central Themes of the American Revolution: An Interpretation,” written in 1973, Bailyn constructs an elaborate argument as to why the Founding Fathers were circumscribed in their ability to move toward abolishing slavery. Bailyn submits that many of the era’s statesmen were opposed to slavery, which has been substantiated above, but he also treads onto thin ice in inferring why they could not act on their beliefs. In short, his conclusion was that infusing emancipation into white Americans’ striving for liberty would have been dangerous. It was potentially destabilizing enough to empower the white masses; as Edmund S. Morgan puts it, “[a]ristocrats could more safely preach equality in a slave society than in a free one.”\textsuperscript{152} Such a circumstance was safer, to be sure, but there was much about the revolutionary and founding periods that was risky. Bailyn suggests not only that the momentous phrase “all men are created equal” did not refer to all men - and all women – but that it could not. Denying that blacks had a God-given right to life, liberty and the pursuit of happiness was a matter of survival for the colonial rebels. In Bailyn’s words, “their refusal, in a word, to allow the


\textsuperscript{152} Morgan, \textit{American Slavery, American Freedom}, 380.
Revolutionary movement to slide off into fanaticism, is one of the Revolution’s most important features.” 153 But it is justified to describe as fanaticism the American Revolution itself – an ad hoc, patchwork, largely unpaid militia’s armed rebellion against the world’s strongest country and against a consanguine people. Bailyn embraces the legitimacy of one brand of fanaticism, an against-all-olds political revolt, but rejects out of hand the feasibility of another.

Further, as has been argued above, it is an empirical falsehood to imply that emancipating one’s slaves or supporting emancipation was too difficult. Taking stock of the economic, political and social circumstances in which the Founders lived, Bailyn submits that it is unreasonable “to expect them to have been able to transcend altogether the limitations of their own age” 154 and cites the “complexities of life that kept them from realizing their ideals.” 155 Although considerable inertia and vested interests compelled the founders not to move toward ending slavery, the proof that it could be done is that it was, in fact, done.

Among the founders, there were individuals who overcame the myriad obstacles to which Bailyn refers and struck a blow against slavery. Delaware’s John Dickinson, a firebrand on the vanguard of American politics from the 1760s to the 1780s, freed his slaves in 1777. William Livingston, governor of New Jersey and like Dickinson a framer of the Constitution, freed his slaves before going to the Convention. Franklin freed his late in life as well. George Wythe, the influential jurist who attended the Convention but was known more for tutoring Jefferson, John Marshall and Henry Clay, took a step similar to Washington and Delaware governor Caesar Rodney and freed his slaves in his will. John Rutledge, despite being a staunch slavery defender at the Constitutional

154 Ibid., 28
155 Ibid., 31.
Convention, took over his mother’s plantation and 200 slaves in 1760 but dwindled his
slaveholdings to 60 by 1775 and 28 by 1787.\textsuperscript{156}

The greatest counterexample to Bailyn’s assertion regarding the implausibility of freeing
one’s slaves is Robert Carter III. The grandson of Robert “King” Carter, one of the most prodigious
slaveowners in American history, a 4-year-old Carter inherited “one of the largest fortunes in
America” when both his grandfather and father died in 1732, leaving him in possession of vast
slaveholdings and a grand estate of several thousand acres alongside the Washingtons, Madisons and
Lees in Virginia’s lush Northern Neck.\textsuperscript{157} The Carters stood atop the highest rung of the landed
gentry, occupying social and economic clout far beyond the reach of those who were merely
wealthy. Robert Carter III had more of a personal stake in slavery than nearly anyone else.

This vested interest did not deter Carter from acting on the inspiration he derived from the
ideological revelations of the Revolution. On Sept. 5, 1791, he filed a “Deed of Gift” with the
Northumberland (Va.) District Court stating his plan and intention to liberate his slaves, who
numbered in excess of 450.\textsuperscript{158} It was the largest emancipation by an American slaveholder before or
since. It was not that Carter was unaware of the vexing questions regarding post-emancipation that
troubled – and paralyzed, as Bailyn suggests – many of his peers. He simply did not let these
questions deter him. Carter was “absolutely dismissive” of neighbors’ complaints and concerns
about the freedmen suddenly integrating into Northern Neck society.\textsuperscript{159} Carter faced considerable
criticism and even ostracism from his peers; he ultimately left Virginia for Baltimore in 1793 and
never returned. These are the kinds of social repercussions that may have daunted others who were

\textsuperscript{156} Stewart, \textit{Summer of 1787}, 288-89.
\textsuperscript{157} Andrew Levy, \textit{The First Emancipator: The Forgotten Story of Robert Carter, the Founding Father Who Freed His Slaves}
\textsuperscript{158} Levy, \textit{The First Emancipator}, xi.
\textsuperscript{159} Levy, \textit{The First Emancipator}, 152.
weighing whether to manumit their slaves. Edmund Morgan cites this longstanding concern on the part of wealthy Virginians as a primary deterrent against emancipations.\(^\text{160}\)

Importantly, those who advocated emancipation or supported abolition did not claim to have devised a comprehensive blueprint for the social or economic landscape that would emerge in a country devoid of enslaved persons. Jefferson, among many others, would bemoan the difficulty in finding an answer to the question of what would happen after emancipation – perhaps for lack of trying. “In fact, Jefferson was not looking for one,” submits Carter biographer Andrew Levy.\(^\text{161}\) Years after the tumult of the nation’s birth had subsided, Jefferson still had enormous difficulty conceiving of a society that included freed slaves, who “are pests in society by their idleness.”\(^\text{162}\) In a letter to a young neighbor who had planned to free his own slaves, Jefferson also revealed his oft-expressed fear of miscegenation, or “amalgamation with the other color.”\(^\text{163}\) This fear was as deep-seated as it was ironic, given that Jefferson’s own affair with his slave Sally Hemings resulted in at least five children.

With a perspective similar to Bailyn’s, Joseph J. Ellis points out that no model for a biracial society existed in the world, “nor had any existed in recorded history.”\(^\text{164}\) This would have been another purported impediment to the Founders’ ability to chart a course for abolition. Ellis submits that they could not envision what that sort of society would look like because such did not exist. Echoes Bailyn, a racially integrated society would have required a “vast leap of the imagination.”\(^\text{165}\) Aside from outright emancipation and racial equality before the law, one of the alternatives to emerge was the idea of colonization, or relocating black slaves to Africa. Although broached by

\(^{160}\) Morgan, *American Slavery, American Freedom*. Morgan submits that the planter class could not envision how an integrated society would function.


\(^{162}\) Thomas Jefferson, letter to Edward Coles, August 25, 1814.

\(^{163}\) Ibid.

\(^{164}\) Ellis, *Founding Brothers*, 128.

figures such as Virginia slaveholder Ferdinando Fairfax late in the 18th century, this idea did not gain traction until an unlikely coalition of abolitionists, pro-slavery whites and free blacks embraced it in the 1820s. But in terms of devising acceptable solutions within the United States, the Founding Fathers were some combination of unwilling and unable. For all of Jefferson’s erudition, for all of Franklin’s travels, despite the foreign birth of Hamilton, Paterson and seven other Constitutional framers, they could not conjure out of whole cloth an image of two races living together as equals.

There are two problems with this supposed barrier to emancipation. One is the very nature of the term “biracial.” Race is generally understood to be a social construct, devoid of biological meaning or basis. What white Americans in the late 18th century thought of as race meant something significantly different than the connotations of a century earlier or a half-century later, when Irish Americans, for example, were often categorized apart from Caucasians with English heritage. Depending on how one defines race, the Ottoman Empire of the 16th or 17th century provided an example of a multi-ethnic society where diverse peoples coexisted as relative equals. This would have been somewhat of a precedent for the American Founders, who were well-versed in history, to consider. The other, more meaningful flaw in Ellis’ argument is that the Founders by definition were revolutionary. If there were no historical model for biracial harmony, neither was there an example of a democratic republic with an elected executive, a trove of inalienable rights and stark limitations on the power of government. The Founders’ raison d’etre was to create something new. They clearly were undaunted by the prospect of blazing a trail, even at treasonous risk to their own lives. Forging a new social landscape would have been consistent, not inconsistent, with the approach they had stepped forward to embrace in the Revolutionary era.

166 Prior to this, some blacks latched onto the idea of self-imposed relocation and were able to act on it. Nova Scotia, Canada, was a destination for American blacks dating back to the Revolutionary War. Ontario became one in the 1810s. Northern states such as Ohio and Indiana also featured settlements for free blacks hoping for safe haven in the early to mid-19th century.
A more daunting obstacle to emancipation was the issue of compensation, which accompanied many proposals for forced emancipation. If the government were going to take slaveholders’ property from them, the blow would have been softened by financial reparation. Most estimates range from $100-200 for each freed slave. If the 700,000 enslaved people were freed at a cost of $150 per capita, the bill to the federal government, assuming it would have been responsible for the payouts, would have totaled $105 million. Given that the federal budget for 1790 was $7 million, this sort of path to emancipation was unworkable if it were to be executed in one fell swoop.

As Washington wrote in 1786, a legislative solution may have been the only viable one. No matter how much anti-slavery rhetoric flowed, no matter how many private manumissions occurred, the institution of slavery never faced greater strain than when the government itself attacked it.

One of the most salient victories for the anti-slavery movement was the Northwest Ordinance of 1787, which paved the way for the statehood of Ohio, Indiana, Michigan, Illinois and Wisconsin. Lost in the argument that its ban on slavery was only moderately successful is the reality that it represented a decisive move by Congress toward establishing the United States as a free nation.

The Northwest Ordinance was more than legislation that addressed slavery, of course. It was nothing less than a seminal step in the nation’s growth, enacting a host of precedents that would shape the United States forever. So impactful was the Ordinance that it serves as a stark rejoinder to
those who belittle the résumé of the Confederation Congress.\textsuperscript{167} Foremost among the facets of this legislation was the establishment of a procedure by which the nation would expand. Bordered by the Great Lakes, the Appalachian Mountains and the Ohio and upper Mississippi Rivers, over 260,000 square miles would evolve from undefined territory gained from Britain in the Treaty of Paris (1783) to organized, named territories to states admitted to the union after completing several procedural steps related to local government. This was the foundation for the addition of part of Minnesota and the five states named above, which were to be added with status equal to that of the original 13 states – several of which made the Ordinance possible by relinquishing vast land claims they had harbored since 1783. Momentous and trailblazing, the Ordinance protected religious liberty, habeas corpus, fair trials and free speech four years before similar guarantees would be enshrined in the Bill of Rights. It set aside land for public education and pledged fair and friendly relations with Native Americans, although it must be said that the ineffectiveness of this last clause dwarfed that of the slavery ban.

The Northwest Ordinance was essentially the next step in a sequence that began with the Ordinance of 1784. Written principally by Jefferson, this antecedent legislation addressed an even larger territory and initially was to levy a similar sanction on slavery. By proposing a ban on slavery after 1800 in a vast area that would stretch from Mississippi to Ohio, Jefferson knew he would have helped to hasten slavery’s demise by tilting to 22:5 the ratio of free to slave states.\textsuperscript{168} Jefferson, a Congressman himself, knew how such skewed representation in the legislature would equate to a preponderance of votes against slavery. As one of his era’s most learned men, a correspondent nonpareil and the son of a land surveyor and speculator, he would have would have understood that

\textsuperscript{167} Other major accomplishments under the Confederation Congress, which preceded the bicameral legislature that has been in place since 1789, were presiding over the Treaty of Paris in 1783 and ratifying the Articles of Confederation.

the proposed ban entailed ending slavery in some places where it already existed. Though these prolific ramifications became moot when the ban was excised from the Ordinance of 1784 prior to its passage, they shed light on the contested state of slavery in the years preceding the Convention.

By the time Congress revisited the topic of the western territories, the issue of slavery still was quite urgent. Despite having grown up in a slaveholding family, Massachusetts Congressman Rufus King was undaunted in his attempts since the initial rejection to resuscitate the anti-slavery clause, seeking to secure the backing of Southern delegates with a fugitive slave clause.¹⁶⁹ King, who would go onto become an influential voice at the Convention and a candidate for both vice-president and president, was unable to do so, but his Bay State contemporary Nathan Dane was poised to step in where King had fallen short.

A five-man committee including King issued a preliminary report on the western territories on April 25, 1787, which was followed by debate and revisions for over two months. At some point in the interim, Dane stepped in and was tasked with helping to write what would become the Northwest Ordinance, formally known as An Ordinance for the Government of the Territory of the United States, North-West of the River Ohio. On July 11, meeting in New York, the full body of Congress considered the draft. A complete reading was given on July 12. And only after that did Dane introduce Article VI, the slavery ban.¹⁷⁰ It was an audacious gambit whose outcome was surprising even to its author. Wrote Dane to King three days later:

“When I drew the ordinance which proposed…I had no idea the states would agree to the sixth article prohibiting slavery, as only Massachusetts of the Eastern states was present, and therefore omitted it in the draft; but finding the House favorably

¹⁶⁹ Ibid., 141.
¹⁷⁰ Finkelman, Slavery and the Founders, 41.
disposed on this subject, after we had completed the other parts I moved the article, which was agreed to without opposition."171

The same day Dane added Article VI, the entire Northwest Ordinance, sometimes referred to as the Freedom Ordinance, was enacted without debate by a unanimous vote of 18 Congressmen. Their ranks included three Virginians, including the estimable Richard Henry Lee, and six other Southerners.172 The states represented by the members present were Massachusetts, New York, New Jersey, Delaware, Virginia, North Carolina, South Carolina and Georgia, all of which save for Massachusetts allowed slavery. Their votes, however, made an indisputable statement. With one dramatic strike, slavery had been banned from an area roughly half as large as the aggregate 13 colonies. One day earlier, 100 miles to the southwest of that propitious vote in New York’s City Hall, the delegates to the Constitutional Convention had agreed upon what would become perhaps the most opprobrious development to emerge out of Philadelphia: the Three-Fifths Compromise.

The significance of the Northwest Ordinance’s slavery ban is not to be understated. While it included a fugitive slave clause that certainly mollified Southerners, this was the first legislation of its kind in North America – unqualified, immediate and universal prohibition of enslavement. Ten years earlier, in 1777, Vermont’s first constitution had featured a partial ban, prohibiting involuntary servitude for men who had reached the age of 21 and women who had reached the age of 18. And in the 1780s, Pennsylvania, New Hampshire, Massachusetts, Connecticut and Rhode Island had enacted some manner of gradual or qualified ban. The Freedom Ordinance was a class apart, with its magnitude, geographic reach and surprising timing giving rise to considerable mystery as to how it came to be that such significant ground was broken. Most notably, how was it that the measure garnered unanimous support from Southern congressmen?

171 Nathan Dane, letter to Rufus King, July 16, 1787.
172 Goldstone, Dark Bargain, 133.
The bulk of the answer is that Southern opposition to slavery was not as ironclad and intransigent as is typically suggested. David Brion Davis contends that “[n]o one can doubt” that the 1780s’ rise in the anti-slavery movement, long recognized in the American North as well as in Britain, penetrated the Upper South to a substantial degree.\(^{173}\) Many Southern powerbrokers were devout proponents of black slavery, but some were not, and their ranks included a considerable number who were willing to bend. They were willing to compromise, to negotiate, to deal. In the summer of 1787, this was true in New York City and true in Philadelphia, as the Convention was awash in a daily current of demands, compromises, hyperbole and ultimata - none of which was fully resolved until the delegates adjourned on September 17 and left the Pennsylvania State House for the last time. One factor facilitating the Confederation Congress’ surprising vote on the Northwest Ordinance was the role of one Manasseh Cutler.

Preceded by several generations of clergymen in his family, Cutler was born in 1742 in Connecticut and went onto become a schoolteacher, storekeeper, attorney, minister, medic and botanist, the hindmost accomplished enough to merit his induction into the American Academy of Arts and Sciences at its first meeting.\(^{174}\) He was a chaplain in the Revolutionary War and later served two terms in Congress as a Representative from Massachusetts. Despite Cutler’s varied interests, talents and contributions, he would have faded completely into obscurity if not for the historical moment during which he shuttled from New York City to Philadelphia in July 1787.

One month earlier in Massachusetts, where Cutler had lived since 1771, a privately funded militia quashed an economically and politically driven rebellion that had been led in part by veteran Daniel Shays. Nine months of raids on debtors’ courts and seizure of property had jolted upper-


class Americans, in particular, as they perceived a threat to the stability and system that had allowed them to prosper. The tardiness and weakness of the government response spurred much support for the Constitutional provisions that strengthened the government. It also prompted Cutler, who roundly disparaged the rebellion, to push for the Ohio Company to settle of the land that would become known as the Northwest Territory. With Cutler having been a co-founder in March 1786, the Ohio Company of Associates, as it formally was known, was a joint-stock outfit of land speculators who sought to capitalize on the economic opportunities that lay west of Pennsylvania and Virginia. There was a social component as well.

Contrasting the tumult of Massachusetts with the inchoate west in a 1787 promotional pamphlet, Cutler boasted that “there will be no wrong habits to combat and no inveterate systems to overturn… no rubbish to remove, before you can lay the foundation.” The state of slavery would become one of the primary factors differentiating the Ohio Company’s target from the 13 colonies. Paul Finkelman has advanced the argument that Congress accepted Dane’s Article VI partly in order to satisfy Cutler, whose Ohio Company was poised to purchase upwards of 5 million acres of land from the federal government. The soundness of this theory is evident when one considers the new nation’s finances. In the wake of massive expenditures needed to defeat the British, tax policy in response to Massachusetts’ economic straits was the primary trigger for Shays’ Rebellion. The rest of the country, meanwhile, was so hamstrung by debt that Alexander Hamilton would launch a radical plan for the federal government to assume debts belonging to states so that they would have a better shot at financial viability in that most vulnerable stage of the nation’s infancy. An opportunity for a financial windfall such as the Ohio Company’s land purchase was highly enticing.

176 Finkelman, Slavery and the Founders, 42.
Although Rufus Putnam may have been first among equals within Ohio Company leadership, it was the amiable and experienced Cutler who was dispatched to New York to open and close the deal that ultimately would shape the nation in profound ways. He had a dual mission: to buy land and to see to it that the land would be governed and regulated to his liking. Cutler arrived on July 5, 1787, and was introduced to various legislators on the floor of Congress as soon as the next day. Cutler quickly ingratiated himself to a litany of Congressmen, prominent citizens and government officials such as Secretary of War Henry Knox. He spent much of his time in the subsequent days developing a particularly easy rapport with Southern Congressmen, whose support he would need most of all regarding the slavery ban that the Ohio Company sought to effect. He mixed business with pleasure, often joining associates new and old on expeditions to peruse the town and country.

Initially, Cutler found it easier to socialize with his new associates than to lead them to common ground on the proposition he had placed before them. He found the Congressmen “so wide apart that there seems to be little prospect of closing a contract” on the land sale. On July 10, Cutler was working the other half of his mission when he asked for and received a draft of the Northwest Ordinance – an indicator of just how richly privileged his status suddenly had become - and promptly suggested revisions to it.

Poised to help the federal government with its ailing finances, Cutler was fully aware of the leverage he possessed. While the exact nature of his revisions was not recorded, what is known is that decades later the Cutler family records turned up a note in which Dane beseeched Cutler to

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177 William Frederick Poole, *The Ordinance of 1787, and Dr. Manasseh Cutler as an Agent in its Formation* (Cambridge, Mass.: Welch, Bigelow and company, 1876), 25.
179 Goldstone, *Dark Bargain*, 137.
offer his input on the evolving legislation pertaining to religion, education and slavery. And what is further known is that in his diary entry of July 19, 1787, Cutler wrote that “the amendments I proposed have all been made except one,” referring to a taxation clause that was rejected. This was a lobbying effort that had very nearly reached full fruition. Two days after Cutler passed along his desired modifications, Dane submitted the draft of the Ordinance for a vote, having tacked on Article VI. The tally was 18 for and none against. If there was any debate or formal discussion about the slavery ban, nary a participant made note of it. Cutler, who left New York the day before the vote, seems to have been confident about such a swift and smooth resolution. The Freedom Ordinance, then, had been ratified to the satisfaction of this lobbyist par excellence – and more importantly, it was good enough for the nine Southern Congressmen who voted for it. Finkelman attributes this to their general ignorance that slavery already existed in that territory, a state of mind that seems improbable given their interest and connections there. The land deal, the very reason that had brought Cutler to New York, was another matter entirely.

It took three weeks for Cutler and Congress to come to terms on the latter half of the quid pro quo. This was not for want of utmost effort on Cutler’s part, as he clearly understood the magnitude of the task at hand. Having left New York for Philadelphia on July 11, moving between the two cities like many legislators that summer, Cutler immediately earned an audience with an elite group of Convention delegates including Madison, Mason, Rutledge and Charles Pinckney. Such entrée was a telltale indicator of the utmost attention and respect which many in government

devoted to Cutler. That initial meeting extended until 1:30 on the morning of July 13, including only fellow Bay Staters Elbridge Gerry, Nathaniel Gorham and King by the end.\footnote{Goldstone, \textit{Dark Bargain}, 138.}

Cutler’s clout and genial personality enabled him to move easily among the delegates despite their now-famous vow to maintain secrecy as to the proceedings. He exhausted all of the tools at his disposal, flashing his resolve sometimes and deploying his considerable charm on other occasions. He dined at legislators’ homes, spent evenings at their boarding houses and attempted to wield influence before audiences large and small. Cutler’s diary entry of July 21 details the elaborate strategy with which he attempted to curry favor with one legislator, who could in turn be used to win over the next and so forth.\footnote{Cutler, \textit{Life, journals and correspondence}, 297.} There were several aspects of the land sale that still needed to be ironed out – most especially, the size and type of payment the Ohio Company was willing to put forth.

By the waning days of July, Cutler had neared his breaking point. He had nurtured a good rapport with many Congressmen since arriving in New York on July 5 but was yet unable to capitalize fully on it. Trying to win support back in New York in late July, he was getting nowhere. Having declared his intention to leave town straightaway with his money in his pocket, Cutler was persuaded by Virginia’s Lee on July 27 to wait until Congress had one more opportunity to discuss the matter. Later that day, the drama had abated for the moment. Cutler received word that his proposal had been accepted “without the least variation.”\footnote{Ibid., 305.}

The Confederation Congress had acceded to sell 5 million acres of Western land – 30 percent directly to the Ohio Company and the rest to other well-placed speculators waiting in the wings. The agreed-upon amount of $3.5 million was misleading once several mitigating factors were
accounted for – much of the payment was to be made in military warrants rather than cash, and an allowance was made for potentially infertile or otherwise inhospitable land. Thus was consummated “one of the great giveaways in American history” as “an almost-bankrupt government received only about $42,500 in real money” Little wonder that Hamilton, who two years later became Washington’s first Secretary of the Treasury, felt compelled to take dramatic steps to strengthen the financial foundation of the fledgling country.

So it was that a small-town pastor, a man lacking both personal fortune and extensive personal connections, was able to descend upon the Constitutional Convention and the halls of Congress and hold sway over the leaders of the new nation. Cutler dictated the terms of what would become one of the most important pieces of legislation in early America, and two weeks later, secured a cut-rate price on a massive land acquisition that would shape the future of western settlement. Southern intransigence on the slavery issue was exposed not as flimsy, but as finite. The Southern Congressmen’s acquiescence to the proscription of slavery in the Northwest Territory is proof positive that this issue was not the sine qua non that historians such as Rakove, Bailyn and Catherine Drinker Bowen have suggested.

Part of the Southern willingness to accede to Article VI of the Northwest Ordinance can be traced to economic roots. Finkelman has pointed to a letter by a Congressman who sat alongside Dane on the committee that drafted the Ordinance. On Aug. 8, 1787, William Grayson confessed to fellow Virginian James Monroe that the ban was accepted out of Southern self-interest. The Ordinance, wrote Grayson, “was agreed to by the Southern members for the purpose of preventing

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185 Goldstone, Dark Bargain, 139.
186 Ibid.
187 Finkelman, Slavery and the Founders, 42.
Tobacco and Indigo from being made” outside the South. Those crops were so labor-intensive as to compel landowners to utilize slaves to tend to them. Without slaves, tobacco and indigo could not be grown at a high profit margin. Because Southern farmers had no interest in helping the Northwest siphon off market share, they opposed the spread of slavery there.

Peter Onuf advances another possible explanation for Southern approval of Article VI. Stipulating a slavery ban specifically for the Northwest, and only the Northwest, implies its present and possibly future legality in other parts of the country. In addition, the Ordinance’s fugitive slave clause strengthened the position of Southern slaveholders, particularly in Virginia, which bordered three of the five states that would be hewn out of the new land. Again, this would have appealed to the self-interest of Southerners – and in effect, set the stage for a similar clause to be added to the draft Constitution six weeks later in Philadelphia. Onuf cites this angle as evidence that the Ordinance was less than a grand milestone for the anti-slavery movement. To the contrary, it corroborates the idea that multiple agendas could be intertwined, compromises could be adopted and leverage could be harnessed in reining in slavery during the summer-long discussions at the Pennsylvania State House.

Further, Onuf makes a dubious assertion in stating that it was “unlikely” that all 18 Congressmen who voted for the Ordinance actually “saw the provision as antislavery.” It would be more accurate to infer that the legislators did not consider this law a death sentence for the institution of slavery. But given the clarity of the language Dane and the committee used - “[t]here

189 Peter S. Onuf, Congress and the Confederation (London: Routledge, 1991), 337.
190 Ibid., 345.
shall be neither slavery nor involuntary servitude in the said territory”\textsuperscript{191} – it remains problematic to challenge the meaning of the text itself. It is more reasonable to examine its impact.

Historians, Finkelman among them, who have tried to substantiate the ineffectiveness of the Northwest Ordinance cite the lack of enforcement clauses within Article VI. Parts of the Northwest Territory continued to have slavery well after the passage of the law. Part of the lore of Abraham Lincoln is that his family did not make a true escape from slave territory when heading north from his native Kentucky. When the Lincolns lived in southern Indiana and southern Illinois during the third and fourth decades of the 19\textsuperscript{th} century, both areas had extant, albeit small, enslaved populations. Other former Northwest Territories did, too: as late as the 1830 census, the government counted three slaves in Indiana, six in Ohio, 32 in Michigan and 747 in Illinois,\textsuperscript{192} where pro-slavery factions were especially stubborn.\textsuperscript{193} Further, it is possible, given slaveowners’ desire not to face legal sanction, that the enumeration of enslaved persons produced undercounts.

There are several reasons for the disparity between the de jure and de facto state of slavery there. Many of the Constitutional amendments ratified in the 19\textsuperscript{th} and 20\textsuperscript{th} centuries included a clause stipulating that “Congress shall have power to enforce this article by appropriate legislation,” but Article VI of the Northwest Ordinance did not. If the government was not specifically authorized to enforce or execute the ban, the odds of such enforcement or execution taking place were not high. Article VI was not the only clause whose enforcement provision was lacking. Secondly, territorial governor Arthur St. Clair, who served from 1788-1802, was scarcely interested in extirpating slavery from his jurisdiction. Conversely, he placed high priority on catering to the

\textsuperscript{191} Northwest Ordinance, July 13, 1787; (National Archives Microfilm Publication M332, roll 9); Miscellaneous Papers of the Continental Congress, 1774-1789; Records of the Continental and Confederation Congresses and the Constitutional Convention, 1774-1789, Record Group 360; National Archives.

\textsuperscript{192} United States Bureau of the Census, “Abstract of the Returns of the Fifth Census” (Washington: House of Representatives, 1832.) http://www2.census.gov/prod2/decennial/documents/1830a-01.pdf (accessed June 12, 2015.) Data for Wisconsin, which would not become a state until 1848, was not included.

\textsuperscript{193} Davis, \textit{Inhuman Bondage}, 154.
interests of white slaveowners in the territory.\textsuperscript{194} Even under the direction of a motivated executive, a nascent government would have had difficulty summoning the resources to root out slavery in a new territory that was populated largely by Native Americans, lightly mapped and devoid of local officials.

Legions of questions would long remain unanswered, such as how the government would interpret the law vis-à-vis slaveholders who left prior to the Ordinance and then returned. Would there be any allowances for the French slaveholders who had lived under French government in what was now the Northwest Territory? Would the federal legislature or courts, both of which were in a state of transition amid the launch of the Constitution, be able or willing to resolve individual disputes regarding slavery? And since slaves had been considered property, what of the property rights that were so cherished by many white Americans of the day? This last question informed the position of Hamilton and others on slavery, which proved vexing for anti-slavery advocates hoping the Ordinance would occasion a sea change.

The Northwest Ordinance of 1787 neither wiped the new territory clean of slavery nor reshaped the political landscape on slavery issue in any holistic way. Still, the significance of its sixth article, added to the legislation in the 11\textsuperscript{th} hour and under a highly unusual set of circumstances, was quite meaningful. It discouraged slaveholders from moving into the territory because they found it a much safer proposition to stay where slavery was protected than to migrate to an area where it had been given a death sentence. It put the slaveholders of the territory on the defensive, forcing them in many cases to leave or petition for an indulgence. For slaves living south of the Ohio River, Article VI of the Northwest Ordinance turned the territory into somewhat of a promised land, giving rise to the Underground Railroad for those who would escape and head north. It separated north from

\textsuperscript{194} Onuf, \textit{Congress and the Confederation}, 358.
south in a way that would shape the national debate on slavery and ultimately spawn the Civil War. In short, it made the boldest and most sweeping statement on slavery of the pre-Constitutional period.

This was an unambiguous law, bereft of qualifiers, exceptions and the gradual phase-in of other legislation. This was a law whose purview stretched across a vast expanse of some of the most valuable land under American control. And having been approved by a unanimous vote in the Confederation Congress, it was proof that the institution of slavery was vulnerable amid the political climate of the day. As of July 13, 1787, this was an institution wounded by anti-slavery forces and their ability to effect compromise with a willing South.

5 ENTRENCHMENT: EARLY VICTORIES FOR SLAVERY AT THE CONSTITUTIONAL CONVENTION

The Articles of Confederation, drafted amid the Revolution’s early stages in 1776-77, had been ratified by all 13 state legislatures over the subsequent three-and-one-half years. Realizing that achieving sovereignty was less a finish line than a starting point, many colonists, particularly in the political and merchant classes, grew vexed by a raft of issues such as defense, commerce, sovereignty and governance. Underlying it all was what David O. Stewart calls a “monetary anarchy” that prevailed by the middle of the 1780s. And while the financial woes were pressing, they were accompanied by ever-present concerns about the vulnerability of being surrounded by British, French, Spanish and Native American neighbors. Americans had no shortage of reasons for seeking improvements to the system of government. Several years of growing pains had provided the impetus for the colonies to send delegates to Philadelphia in May of 1787.

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195 Stewart, Summer of 1787, 21.
Slavery was on the front burner of the Constitutional Convention from the start, either as an explicit agenda item or as subtext. It was on June 11, roughly two weeks after the de facto commencement of the Convention, that the delegates first considered the three-fifths compromise that would ignominiously treat slaves as a fraction of a human being in terms of political status. In the subsequent three months, nearly every issue on the delegates’ expansive table went through alterations, iterations and reconfigurations; all manner of proposals were floated as to the very nature of the chief executive, the structure of the legislature, the rights to be held by citizens and the format of elections, among other matters. Motions to authorize Congress to appoint the President, an idea which seems radical to modern American sensibilities, were passed on five occasions. In the subsequent three months, nearly everything changed - and changed a great deal. Everything but the three-fifths compromise. The preeminent way slavery was addressed by the new nation had inexplicably been set in stone.

When the convention adjourned in mid-September, the Constitution’s fate having been cast to the winds and whims of the 13 states, one of its foundational pillars was the concept that slavery would not only be permitted, it would be protected in the representation scheme that formed the backbone of the government’s new structure. By July 12, the fateful compromise had been sealed, yielding a burst of conspicuous phrasing that with only slight changes would be consecrated in a most prominent and symbolic location four scant paragraphs after the Preamble. In Ellsworth’s words,

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“the rule of contribution by direct taxation for the support of the Government of the U. States shall be the number of white inhabitants, and three fifths of every other description in the several States.”

The Constitution would be celebrated upon its ratification with parades, speeches and song, in a state-by-state eruption of patriotic ardor over the next two-and-one-half years. For more than two centuries hence, it would be praised, admired and even copied by other nations. And enshrined at its core was a sanction of slavery. Five provisions of the Constitution – Art. 1, Sec. 2, Par. 3; Art. I, Sec. 9, Par. 1; Art. I, Sec. 9, Par. 4; Art. IV, Sec. 2, Par. 3; and Art. V – explicitly protect slavery and several others implicitly safeguard either the institution or the trade.

Emerging at a time when many states had been legislating a retreat from slavery, this outcome was anything but a foregone conclusion. In fact, there was ample reason at the Convention’s onset to envisage threats to slavery’s legality on the state, regional and national levels. Public and private threats to slavery were commonplace in the Revolutionary Era. Although Matthew Mason overreach with his claim that “the Revolution bequeathed a dislike for slavery to almost every Northerner,” it was clear that the Enlightenment ethos of natural rights influenced many Americans’ conception of what liberty was and ought to be places.

In the wake of the wartime tumult of the Revolution, the stability of the institution of slavery had been shaken considerably, and the nation had yet to find equilibrium. Anti-slavery laws had been passed, private manumissions had occurred and religious opposition to slavery was gaining

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199 Federal taxes on exports are prohibited in Art. I, which prevented slave states from facing an additional hindrance on their profitmaking. Art. II bestows disproportionate power on the slave states by its establishment of the electoral college. Art. IV allows the federal government to quell “domestic Violence” such as slave rebellions in the states.

traction. Thirty-two years after the Convention, Madison wrote a letter to American diplomat Robert Walsh reflecting on the anti-slavery climate surrounding that seminal event. As Madison saw it, "(t)he African trade in slaves had long been odious to most of the States, and the importation of slaves into them had been prohibited."201

Slavery had long been evaluated through an array of economic and social perspectives, but when the delegates gathered in Philadelphia, what was at stake most of all was political power. At the time of the Convention, none of the 13 state legislatures was based on a representation scheme that counted slaves. Not New Hampshire, with its paucity of enslaved persons. Not Virginia, the Old Dominion so heavily reliant on slaves that it had almost as many people in bondage as the three next-highest states combined.202 Slaves lived in each of the 13 states, but not a single one of the states considered its enslaved population for representational purposes. “If Negroes are not represented in the States to which they belong,” wondered New Jersey’s William Paterson at the Convention, “why should they be represented in the Genl. Government?”203 After all, as Paterson pointed out, representation is a means to exert the will of the people, but slaves were presumed to have no political will or voice. Yet when the delegates convened in Philadelphia, a new political philosophy materialized regarding representation, a philosophy that like Athena emerged fully formed and plenipotent. At the Convention, it was not long before a representation system including slaves was pushed to the front of the agenda, empowering those states that soon would double down on slavery. Slaves would count. And slave states would benefit.

201 Rakove, Madison: Writings, 737.
202 According to the 1790 census, Virginia’s 292,627 slaves were the most in America. The aggregate enslaved population of states ranking second, third and fourth was 310,913, comprised of South Carolina’s 107,094; Maryland’s 103,036 and North Carolina’s 100,783.
203 Goldstone, Dark Bargain, 113.
One of the Convention’s stiffest challenges, the settling of the representation question has been interpreted a variety of ways. Rakove sees the three-fifths compromise as “the closest approximation in the Constitution to the principle of one person, one vote,”204 given that the issue’s starting point was the nonexistence of political representation for slaves in any state legislature. Unfazed by the inconsistency of slaves counting for representation without being eligible to vote, Wood defends the three-fifths compromise as reasonable in part because women and children were also non-voters who were represented. There is no denying it was a grand compromise. The other pole of the Convention debate had been staked out by Pierce Butler, whose proposal that blacks fully count was backed by his own South Carolina, Georgia and Delaware. Goldstone argues that Delaware supported the proposal so as to increase opposition to the Constitution and the likelihood of retaining the Articles of Confederation.205 That moribund set of laws provided for representation on an egalitarian basis for each state, irrespective of population. The Constitution could have done the same. Although Southwestern expansion would have benefited slaveholding states in such a system, the existing Southern states generally opposed it – in the case of Madison and Edmund Randolph, because it would have negated Virginia’s influence amid the emergence of other, smaller states.206 Garry Wills joins Waldstreicher and Davis in asserting that embedding the enslaved population into a representation scheme profoundly empowered the South for decades,207 although Earl Maltz holds that the eventual plan for the Electoral College was less favorable to the South than other proposals that had been considered.208

204 Rakove, Original Meanings, 74.
205 Goldstone, Dark Bargain, 120.
206 Bowen, Miracle at Philadelphia, 129.
207 Garry Wills, Negro President: Jefferson and the Slave Power (Boston: Houghton Mifflin, 2003.) Wills calculates that not only was Jefferson’s election enabled by slave-augmented Southern voting clout, but so were crucial slavery protections such as the Missouri Compromise of 1820 and the Kansas-Nebraska Act of 1854.
The three-fifths compromise was not part of the Articles of Confederation, though it was very nearly so. After James Madison proposed such a representation scheme in 1783, 11 states approved it but were not joined by New Hampshire and Rhode Island. Since the Articles of Confederation required unanimous consent among the states to amend it, the proposition died, leaving untouched the original plan basing representation solely on land values. Such a land-based scheme – not a population-based calculation - was indeed the starting point for discussions at the Convention.

The Northwest Ordinance had been passed under the Articles of Confederation, the first set of laws that the new nation adopted. Adopted in 1777 but not fully ratified until 1781, the Articles of Confederation provided for a fledgling government that pointedly lacked much of the power that had aggrieved so many colonists while under British rule. This new set of laws did not stipulate much in the way of specific governmental powers or citizens’ rights, and it essentially ignored the issue of slavery. The Articles of Confederation neither allowed nor disallowed slavery. With priority given to state sovereignty, the national government’s de jure position on the issue was one of neutrality and deference. States were free to legislate slavery as they saw fit.

This deference ultimately was a boon to the anti-slavery cause because, in a country where forced labor always had been legal, it left the door open for oppositional action. In no way were slaveholding interests entitled or empowered by the Articles of Confederation. The Articles’ lack of a fugitive slave clause, which was later included in the Constitution, meant that no state was compelled to support or aid slaveholders. This is not to say that masters of runaway slaves experienced systematic lack of cooperation from northern entities, whether state governments, local governments or individuals. Yet it is of considerable significance that such assistance was not mandated. Those who opposed slavery were not legally bound to defer to those who supported it.
Amid this legal landscape, the institution of slavery was being hindered and hurt. As detailed in Chapter 2, eleven of the 13 states had banned the importation of slaves. Vermont’s founding Constitution of 1777 had enacted a partial ban on slavery. Pennsylvania approved gradual abolition in 1780, four years before Rhode Island and Connecticut followed suit. And in the several years following the Quock Walker court cases of 1781, slavery in Massachusetts died off rapidly, officially ceasing to exist by the time of the first federal census in 1790. While slavery was increasing throughout most of the Americas, it was under duress in the United States. The very war that birthed the nation had helped to roil the inertia of the slave system. And in July of 1787, it suffered its biggest blow with the passage of the Northwest Ordinance. The opponents of slavery were scoring victories and gaining momentum across the 13 states.

This was the climate in which 40-odd delegates huddled in the Pennsylvania State House from May to September of 1787. Their express objective was to revise the Articles of Confederation, but they swiftly steered the agenda to replacing it. In doing so, the Convention delegates would profoundly shape the nation in untold ways, not least of which was to make it possible for slavery to proliferate in such a way that it would dominate the economic and political landscape for the better part of the century to come. The momentum and strength of the anti-slavery movement absorbed a major blow from which it would take over 40 years to recover.

The Convention was to begin on May 14, 1787, but with only eight delegates having materialized at the State House, it would not be until late in the month that business began in earnest. The delegates, who trickled in as fast as their transport and varying senses of urgency would allow, did stake out important ground in the early going. The Committee on Rules, consisting of George Wythe, Charles Pinckney and Hamilton, delivered 21 rules on May 28-29, including a host

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of procedural stipulations and the famous code of silence to which all delegates generally adhered throughout the summer.\textsuperscript{210} The next day, six of the eight states with sufficient representation approved the proposal to form a government with three branches, legislative, executive and judicial, and on May 31, the delegates agreed that the legislature would have two chambers.\textsuperscript{211} The next 10 days saw discussion and decisions on fundamental issues pertaining to the structure, powers and election of the three branches. Several proposals seem radical in hindsight: that the state executives choose the national executive, that the first chamber of the legislature should elect the second, that the national legislature would be able to reject any state law, that the executive serve one seven-year term. The delegates even needed debate and discussion to settle on a single, rather than multiple executive. It was clear from the early days of the Convention that everything was on the table.

On June 11, the Convention took its first foray into the issue of slavery. Harkening to a failed 1783 amendment to the Articles of Confederation, Pennsylvania’s James Wilson suggested that representation in the first legislative chamber be based on the free population of each state plus three-fifths of its enslaved population.\textsuperscript{212} That this was an entreaty for southern support was a bit ironic, given the history of such a convoluted calculation. Under the Articles of Confederation, the formula was to be used to determine each state’s tax burden, and since the states naturally sought as light a contribution as possible, slaveholding states were reluctant to sign up for any plan that would increase it. Southerner states initially proposed a 2:1 or 4:1 ratio of enslaved to free people to counter the North’s suggested 4:3 ratio. Madison broached a compromise calculation of 5:3 that


would satisfy both regions. Ultimately, the South shifted on the issue, voting in support for that amendment; it was New Hampshire and New York whose opposition prevented the unanimous vote required at the time. At the Constitutional Convention four years later, it was the northerner Wilson - a richly learned scholar and staunch patriot becoming one of the most impactful voices at the Convention – who brought to the table the formulation that would evolve into one of the most potent catalysts for the expansion of slavery. Wilson, who spoke against slavery for years after the Convention, shared the resolve of many delegates who placed consensus above all else.

With South Carolina’s Pinckney having seconded Wilson’s motion, there immediately emerged a north-south axis of support, the likes of which would be the backbone of slavery-related matters throughout the summer. Dissent was equally quick to appear. Massachusetts’ Elbridge Gerry wasted no time in defying the three-fifths proposition. Characteristically provocative, Gerry challenged the logic that “the blacks, who were property in the South, be in the rule of representation more than Cattle and horses of the North.” He knew the South wanted to have its cake and eat it, too, and he wasn’t having it. If slaveholding states were credited for what they considered property, all states should be able to do the same. And if that were the case, the South instantly would lose any legislative advantage it hoped to glean from its enslaved population. The votes made this scenario moot. Wilson’s proposal was approved 9-2, with New Jersey and Delaware casting the no votes.

Although it would be debated in various contexts for the next two months, the ratio of “three fifths of all other persons” was there to stay, marking the first of many times that slavery

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would be protected at the Convention. The word “slavery” never was written into the Constitution, but this was stylistic sleight of hand. In debate after debate, vote after vote, delegates were comfortable treating slavery as a front-burner issue to be dissected from multiple perspectives, but the delegates time and again opted to soften its edge with vague phrasing, euphemisms and allusions. This had the net effect of creating the illusion of a document that was not undergirded with approval of and leeway for the institution of slavery. It was easier on the delegates’ conscience, and given Jefferson’s and Franklin’s message management abroad during the Revolutionary War, may have been a way to avoid alienating French support.

On June 12, the day after the three-fifths ratio appeared at the Convention, a 7-4 vote approved the election of the legislature’s first chamber to three-year terms. Gerry thought this too infrequent, stemming from the same fear of tyranny that arose in him when considering the prospect of a hereditary executive.\(^{216}\) His Massachusetts colleague, Nathaniel Gorham, was given similar pause, along with the delegations from Connecticut and both Carolinas. But the measure had ample support, passing with a 7-4 vote. And on the question of term length for the second chamber, the proposal of seven years was supported by eight states, with two split and one opposed.\(^{217}\) Both chambers’ term length was reduced by one year later that summer, which, again, suggests that nothing was written in stone. Decisions were never final, despite protestations and proclamations to the contrary.

In fact, there was no small number of matters that took long, winding roads to their final resting place within the Constitution. It was amid this climate of brainstorming and bartering that the agenda turned again to slavery, one month to the day after Wilson had introduced the three-fifths ratio. It was halfway through the Convention and a critical moment had arrived in the life


\(^{217}\) Ibid.
cycle of slavery in the United States. On July 11, Pinckney and Pierce Butler, also of South Carolina, moved to jettison the three-fifths ratio in favor of counting enslaved people as fully as any other. Gerry insisted that three-fifths was as much weight as could be given to slaves, because in every other way they were legally considered to be of a lesser class than whites. Gorham was in agreement. It was at this point that some of the more innovative and provocative arguments enlivened the State House.

Butler, though he was a minor player throughout much of the summer, stood up here in a major way to protect his own interests and those of his fellow South Carolinian elites. A very wealthy individual with vast slaveholdings, Butler could speak from first-hand knowledge on the slave economy. And since the question was one of fairness, he tried to convince the delegates that race or status had nothing to do with it. According to Madison’s notes, Butler “insisted that the labour of a slave in S. Carola. was as productive & valuable as that of a freeman in Massts., that as wealth was the great means of defence and utility to the Nation they were equally valuable to it with freemen.” A laborer was a laborer, in Butler’s view, be he free or enslaved, Northern or Southern. Amid a lack of consensus as to how a state’s population ought to be calculated, Butler sought to shift the discourse away from partial representation and toward full representation of enslaved people.

At first blush, this seems a fascinating and contorted contention from a man whose livelihood was predicated on the buying, selling, ownership and control of human beings who were not considered whites’ peers in any way. But at the same time, this proposal may not have been as much of a philosophical departure as it appeared, for Butler was among the many Framers whose

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views on slavery were conflicted. One Butler scholar likens the statesman to Washington and Jefferson in that for him, slavery was “not only contrary to his principles but also an infernal nuisance.”\textsuperscript{220} Butler, too, faced the epochal struggle of reconciling the multiple realities at play - economics, social climate, personal beliefs, legal strictures. In writing letters to “radical” friends from Britain and his native Ireland, Butler criticized slavery as immoral and unjust, contrasting it with the ideals behind the founding of the United States. He even echoed Washington’s approach in terms of the most feasible solution. Rather than trusting slavery to die an organic death over time, as predicted and desired by Jefferson and others, Butler saw the most wisdom in a simple governmental solution: abolition.\textsuperscript{221} The Convention, however, did not strike him as the right time and place for that.

After Butler shared his proposal for full representation of enslaved people, Mason countered with a rejoinder that once again gives the lie to representations of the south as a pro-slavery bloc of political bedfellows. In short, Mason said he could not concur with Butler's plan even though it would significantly advantage his beloved Virginia and the rest of the South. Mason conceded that slaves were an engine of economic production, and in truth it would have been folly for anyone North or South to deny that. But he went further. Mindful of the Revolutionary War that had ended just four years prior, he acknowledged that the money slaves helped generate could be used to support the military. This was a major consideration for a nation vulnerable to foreign incursion and domestic unrest, whether in the vein of Shays’ Rebellion or in the form of a slave insurrection. Still,


\textsuperscript{221} Lipscomb, \textit{The Letters of Pierce Butler}, xxix.
there was something holding Mason back. He said he “could not however regard them as equal to freemen and could not vote for them [to be understood] as such.”

There was no ostensible reason for a Southern slaveholding politician not to support Butler’s proposition. It would have given the South an immediate increase in legislative clout, which would have been parlayed into untold benefits in the political and economic spheres. Since the question of how to choose the chief executive still hung in the air, more Congressional representation for the South even could have dictated who ended up as President. Mason, himself a slaveholder, did not ignore any of those factors. His opposition to full representation of slaves had much to do with his own torn conscience. As evidenced by his staunch advocacy of a ban on slavery importation, Mason simply was not comfortable with the prospect of the new nation doubling down on slavery. In addition, as Van Cleve has argued, Virginia could stand to stanch the influx of slaves in a way that states with smaller enslaved populations could not. Further, Carl Van Doren points out that the rice cultivation popular in South Carolina and Georgia had higher mortality rates than Virginia agriculture, which constricted those two Deep South states’ ability to depend on natural increase to sustain their slave demography.

The day imports ended would be the day Virginia’s relative position grew even stronger. For this reason Peter Wallenstein argues that Mason “acted in behalf of Virginia slaveholders, not Virginia slaves” with his opposition to importation. Still, as the nation collectively faced forward, with the Southwest’s plantation-ready conditions an element of anyone’s vision of the future, any limitation on the institution of slavery should be seen as a step away from strengthening and protecting it. Mason fought for such a limitation.

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http://www.jstor.org/stable/4249431?seq=1#page_scan_tab_contents
The vote on Butler’s motion was 7-3 against, with only Delaware, Georgia and South Carolina advocating full representation of enslaved persons. Massachusetts’ Gorham and North Carolina’s Hugh Williamson said that in light of previous debates, they were willing to support the three-fifths ratio. All sides realized that each delegation seemed to be playing the same game: pushing for one representation formula on certain measures but backing another when a different matter was pending. Principles were adaptable, flexible. They changed along with the shifting sands of political expediency. It was at this point that Morris, like Gerry a consistent anti-slavery presence on the State House floor, began to engage in a three-day showdown in which he would give all he had to shape the slavery debate.

Like the other delegates, Morris could see the way that the issue of slavery was being twisted and turned depending on the particular angle of the day’s discussion. He pointed out that if slaves were considered to be inhabitants in a representation scheme, most of the northern states would not support it. And if slaves were considered to be a form of wealth for taxation purposes, the southern states would not stand for that. Were other revenue-generating types of property to be taxed as wealth? Morris asked, “[W]hy is no other wealth but slaves included?” He was unwilling to equate population with strength, either. Unlike many other delegates, who only selectively drew lessons from their experience under Great Britain’s rule, Morris reminded the Framers that the enemy’s numerical superiority during the Revolution hardly translated to superiority.

After Morris’ lengthy speech, King credited him with having made abundant sense. Then King said he would “accede to the proposition for the sake of doing something.” This conciliatory spirit, although rarely articulated as such in the relatively few notes the delegates left behind, seemed commonplace, and borne of pragmatism and fatigue amid a relentless string of negotiations. King’s

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225 Ibid.
approach falls under what David Waldstreicher referred to as delegates’ willingness to stomach flaws in the Constitution so as to continue progress toward the ultimate goal of ratification.

Meanwhile, Rutledge hedged. He proposed that after the legislature’s first session and periodically thereafter, each state’s representation be reallocated based on wealth and population. That wasn’t concrete enough for Mason’s liking. Other delegates spoke up, generally questioning the practicability of the propositions on the table, and then Morris jumped in again, questioning how the Convention’s decisions would stand up as the country evolved and grew. And thinking of the people in his adopted home of Pennsylvania, where a gradual emancipation law had been passed in 1780, he said they “would revolt at the idea of being put on a footing with slaves.” This was not, however, the endorsement of slavery it appears to be.

Morris knew that if there was to be slavery, inferiority was implicit. Here was one of many instances in which the transplanted New Yorker, whose 173 known Convention speeches outpaced every other delegate’s, would not brook hypocrisy. Morris consistently denounced slavery and in this moment was attempting to goad delegates into considering abolition. If Southern states wanted more representation, they could have it – provided they ended slavery. What they could not do, in Morris’ mind, was to support gross, systematic inequality but at the same time petition for granting slaves one sliver of political equality in terms of their apportionment value.

Many delegates had qualms about the representation scheme and how it would serve the country given the way migration to the south and west was widely expected to continue. Debate continued as to the merits of assessing taxes or devising representation schemes based on wealth or population. But King was one who was fixed on the particular aspect of slave representation. Although he had pledged to remain open to all matters pending before the Convention, he drew a

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226 Ibid.
hard line on this one. King thought it an outrage on behalf of the northern states that the south would be handed any degree of influence and power on account of their enslaved population. He cited the temporary representation allotments that were being bandied about and insisted that the South was overcompensated. Sherman rebutted that Georgia was the only case where that was true, which did not bother him because its population was on the rise. Like a child growing into a too-large shoe, Georgia soon would earn its generous apportionment. Madison’s notes reveal that Sherman, who repeatedly was willing to ally with the South for the sake of compromise, may have felt it necessary to yield ground on this issue; “in general the allotment might not be just, but considering all circumstances, he was satisfied with it.”

Here Sherman aligns with the mindset identified by Eric Slauter, who cites in the Constitution’s backers an emphasis on its virtues rather than a tendency to be waylaid by its “putative deformities.”

Gorham recalled that, during debates over the Articles of Confederation, the citizens of Massachusetts objected to full representation of enslaved people, which they saw as hypocritical. He predicted similar opposition in this circumstance. As for Wilson, he echoed Morris’ umbrage with the ideologically unsound alternatives that were presented: various proposals would have classified slaves as wealth, property or perhaps a citizen with some degree of rights. But like Sherman, Wilson thought compromise was the order of the day. He fought the issue no more. Morris, on the other hand, was steadfast, acknowledging that he was compelled to “do injustice” either to the South or to “human nature,” and that he chose the former. Morris said “he could never agree to give such encouragement to the slave trade as would be given by allowing them a representation for their negroes.”

Aware of the ramifications of such a stance, he conceded that the South would never

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ratify the Constitution absent protections for the slave trade. In an atmosphere where principles were sacrificed at the altar of compromise, Morris sacrificed nothing. And on this day, he was not alone.

The vote to use the three-fifths ratio in Congressional representation was rejected 6-4 on July 11. Connecticut lined up alongside Georgia, Virginia and North Carolina as three-fifths advocates, while South Carolina, likely holding out for full representation, sided with the majority.\(^{230}\) Three southern states, whose delegations consistently had voted to steer more clout to the south, were willing to back off the hard line that South Carolina drew. This was yet another example of the South being more philosophically diverse and more politically flexible than is typically argued. There were times when the southern states stood together and times when they did not. The great wall of inveterate support for slavery was gapped and cracked.

Day 2 of the three-day showdown on slavery featured another ultimatum. This time it came by the hand of William Davie of North Carolina. Davie, who ended up leaving Philadelphia one month before the Convention adjourned, was alarmed at the desire among Morris and others to disallow representation of slaves. He spoke on behalf of his state’s delegation in saying that it would never sign the Constitution if it featured anything less than three-fifths representation for enslaved people: “If the Eastern States meant to exclude them altogether (\textit{sic}) the business was at an end.”\(^{231}\) This sort of categorical declaration was made on several occasions throughout the summer but never carried out.


While it cannot be asserted that it was impossible for state delegations to leave, what can be said with certainty is that it never happened. There were individual delegates who left, to be sure; sixteen of the 55 delegates took their leave of Philadelphia days, weeks or months before the September 17 signing. Aside from those who departed due to circumstances at home, those who vacated the Convention for philosophical reasons did so because of an accumulation of issues rather than one utterly radioactive one. And there were some 19 individuals who, after being tapped as delegates by their state legislature, decided not to join the proceedings at all. Patrick Henry, famously, declined his invitation because he “smelt a rat,” and maintained his opposition by fighting against ratification in Virginia. As far as entire state delegations, though, none withdrew as a whole; Rhode Island came closest, it can be argued, by refusing to send a delegation, which explains why only 12 states are represented among the 39 Framers who signed the Constitution. Davie’s ultimatum was likely a bluff.

William Samuel Johnson, known to tread the middle of the road throughout his political career, followed Davie’s dramatic proclamation with a show of support for his southern allies. Like Roger Sherman and Oliver Ellsworth, his more high-profile Connecticut colleagues, Johnson prioritized unity among the states above other issues such as slavery. He acknowledged the variety of representation schemes that had been broached and insisted at this point that the best course was to agree that slaves should be represented – to what degree would be settled later.

Morris then spoke up with a direct attack on the rationale Sherman had put forth the day before. By now establishing himself as the Convention’s most strident opponent of slavery, Morris skewered the suggestion that Northern states would purport to know what the South would or would not do. If Southern delegates wanted to deliver an ultimatum, a la Davie, let them do so. Or

more accurately, Morris sought to make them do so, rather than presuming to speak for them or infer their stance on the issue. Morris proclaimed that he sought to join with any states that wanted to confederate; those who opted not to join could carve their own path.

It is the prospect of losing states that hit hardest in Philadelphia. Just four years removed from the Treaty of Paris granting independence from Britain, the Americans already had weathered substantial turmoil. There was economic hardship borne of debt from the Revolutionary War. States undercut each other on trade matters and agreed on little when it came to questions of sovereignty. There was the ever-present possibility of incursion by Spain from the west and south and Britain from the north, in addition to the threat of conflict with Native Americans in the Northwest Territory and elsewhere. Undergirding all of these dynamics was the fundamental, constant struggle of a federal government that needed the states to fall in line – economically, militarily, politically - but lacked the power to compel it. This became the primary objective of the Annapolis Convention in September 1786 and the resultant decision to have the states send delegates to Philadelphia the following May.

After Morris threw down the gauntlet, several legislators from north and south – Pinckney, Ellsworth, Butler, Randolph, Wilson – tried to reach an accord on the question of slave representation and how it would stand the test of time. King, who helped birth the anti-slavery provision of the Northwest Ordinance and would fight against slavery for decades after the Convention, was troubled by what he foresaw as the future of such a representation scheme.²³³ It is difficult to tell how seriously King took Davie’s secession threat, but it clearly grabbed his attention and compelled him to fear what such a stance would augur when the South inevitably had more population, representation and power. Wondered King, “If they threaten to separate now in case

injury shall be done them, will their threats be less urgent or effectual, when force shall back their demands[?]. Even in the intervening period, there will no point of time at which they will not be able to say, do us justice or we will separate.”

While the South may not have negotiated from a position of great strength in 1787, King knew the region’s leverage would only increase.

The strength of states and regions remained central to the agenda when the delegates convened the next day, July 13. When the question came up as to calculating representation in the second branch of the legislature, Morris revisited his claim that it was incoherent to consider slaves as wealth-generating property as well as full citizens for the purposes of legislative apportionment. He confessed he reluctantly had abandoned his belief that the North and South were more alike than different; for one, the South would “not be satisfied unless” a foundation were laid for it to dominate the legislature in the future. What this shift would entail, in Morris’ view, was a transfer of power from shipping and commercial concerns to the agricultural interests that would predominate in the South and on the Western frontier. This concern loomed even larger given the events of that very day. One hundred miles away, the Confederation Congress voted to enact the Northwest Ordinance with its provisions for incorporating new states. Highly attuned to regional balance, Morris opposed the admission of western states on an equal footing with the original 13 on the grounds that they would not provide a suitable caliber of representative. By July 13, when the Ordinance was passed, this opposition had become moot. Looking toward the west was not an abstraction. It was reality, and it had arrived.

Morris’ other concerns, of course, were far from being resolved. When it came to guarding against Southern dominance, he thought the least of the evils was to accept equal representation in
the legislature’s second chamber. This was a substantial concession for a dyed-in-the-wool big-stater; Morris represented one big state (Pennsylvania) and had been born and raised in another (New York.) If regional demands truly were insatiable, though, Morris said he would meet Davie’s ultimatum with one of his own: “let us at once take a friendly leave of each other.”  

Nine weeks into the Convention, suggesting its dissolution was not a serious proposition, but it was as much as indicator of Morris’ resolve as Davie’s ultimatum was of his. Morris knew the regions would have to temper the relentless pursuit of security for their own concerns – the North primarily with its “fishery” and the South for its “peculiar objects,” or slaves – else intersectional feuding was sure to follow.  

Morris concluded his impassioned argument by warning of the risk of war with Spain. The South and West would instigate it, desirous of control of the Mississippi River, but the Northern and middle states, with more of an orientation toward the Atlantic Ocean, would have to fight it. The prospect of such a conflict was no small concern for a nation fresh off war with another European power. And for it to unfold according to Morris’ prediction was no small concern for the Northern and middle states.

Butler confessed to the South’s insistence on protecting its slaves such that the government would not take them away, and admitted that he, too, foresaw population growth for the Carolinas and Georgia. Wilson echoed the latter sentiment and challenged delegates from every region to think about the true meaning of fairness.  

If certain states should grow, they would deserve more power. If that meant a comparative disadvantage for states that remained smaller, so be it. Clinging to status or influence of the past, Wilson asserted, was selfish and counterproductive. Things change.

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237 Ibid.
238 Ibid.
239 Ibid.
The summer’s most pivotal question of fairness – that of the legislative structure - was soon answered. On July 16, the so-called Connecticut Compromise, nicknamed in honor of Sherman’s and Ellsworth’s efforts to implement it, was approved, establishing a bicameral legislature that would feature proportional representation in one chamber and equal representation in the other. Representation in the lower house would be based largely on number of inhabitants - but three-fifths of enslaved inhabitants. Southerners like Butler who had pushed a hard line did not attain their objective of full representation, but as far as compromises go, it was unmistakably the North that came up short. This compromise not only empowered the South on the spot; Southwestern population growth lined up the votes to enable nation-changing triumphs such as the Missouri Compromise, the Mexican-American War, and the election of eight Southern men among the first 12 presidents elected. Ripple effects such as these corroborate Finkelman’s assertion that the three-fifths compromise had a devastating impact that rode the wave of Southwestern population expansion.

One of the summer’s highest hurdles had been cleared, relieving an impasse that for a time had seemed likely to derail the Convention entirely. Other sticking points, remained, however. Agreement on how to handle the issue of slavery was a long way off.

6 CAPITULATION: NORTHERN DELEGATES YIELD AGAIN

The Convention was in recess from July 27 to Aug. 5, and when the delegates reassembled, the Committee of Detail issued a slate of provisions that made their way into the final version six weeks later. Much of the structure of the three branches was set; many of their powers and

240 Lloyd, “Constitutional Convention Attendance Record.”
procedures had been determined. Included was a clause that guaranteed the forced return to his home state of a person who was fleeing from “justice,” per the demand of that state’s executive. This would be used in part to justify the apprehension of fugitive slaves.

The subject of slavery did not get another substantial airing until August 8, when King questioned the propriety of including slaves in any representation calculus. Aware that the issue already had been dissected at length, he explained his relative reticence with the curious theory that letting things play out would have helped solidify confidence in the government. To the contrary, King could see that dissension and tension still ran high. Many in the State House seemed to be opposed to ceasing slave importation, and to make matters worse, those assembled seemed similarly reluctant to tax exports. This was King at his most pragmatic. If slavery were to be permitted, he thought it would make sense for the government to benefit from it. Taxing exports would generate revenue the government could use to put down slave rebellions, the specter of which was as terrifying as ever. But the South was poised to have its cake and eat it, too – perpetuating slavery, importing more slaves, parlaying them into more political representation and paying not a dime for the exports they generated. King was flabbergasted. An ultimatum of sorts: “There was so much inequality and unreasonableness in all this, that the people of the Northern States could never be reconciled to it. No candid man could undertake to justify it to them.”242 Then, speaking for himself, King stipulated that he never could stand for it.

Sherman, while pointing out his own opposition to slavery, stifled this avenue of debate by observing that it would be imprudent to revisit a representation question that already had been settled. Morris, perhaps emboldened by King’s stand, was undeterred. He delivered one of the Convention’s most strident critiques of slavery, rivaled only by George Mason’s on August 22.

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Morris attacked slavery from multiple angles. First, as an unconscionable moral evil—“nefarious,” according to Madison’s notes of the speech. But more than that, Morris tried to convince the delegates of the ill effects of slavery on society, not just on the enslaved people. Describing the institution as “the curse of heaven on the States where it prevailed,” Morris expounded on the differences one noticed when passing into areas rife with slavery. As Mason had pointed out as early as a public paper he wrote in 1765, these areas were undeveloped, poor and devoid of the trappings of progress. Morris also reprised the argument he and King had made earlier, challenging the coherence of the delegates who wavered between considering slaves citizens for one purpose and a special type of property for another. To protect slavery was to cultivate aristocracy, which the delegates ostensibly would condemn. Morris railed against slave importation, which depended on snatching people from their home “in defiance of the most sacred laws of humanity.” Compounding the offense was the obligation of the Northern states to support the Southern states in quelling slave insurrections, while the South would evade much of the tax burden it rightfully should have borne. Morris ended his harangue by declaring he would rather pay a tax to help manumit all the slaves in the United States than to burden the new nation with a Constitution as presently conceived. This was a bold statement, to be sure, and not a wholly serious one, but certainly was indicative of the strength of Morris’ feelings.

New Jersey’s Jonathan Dayton spoke up on one of the few occasions all summer to express agreement with Morris. Although a slaveholder himself, Dayton knew that he represented a state where slavery was on the way out. He also thought it proper that he share his views even though he

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243 Ibid.
244 This point presages the argument made by Hinton Helper, a white Southerner who published The Impending Crisis of the South in 1857. Without delving into moral or humanitarian reasons for abolition, Helper’s book focused on the economic and educational advances that the slaveless North made while the South was crippled by its dependence on the slave system.
believed them to be contrary to those of his state’s delegation – David Brearly, William C. Houston, William Paterson and William Livingston. Sherman once again defused the anti-slavery perspective, and this time he was supported by Pinckney’s claim that “fisheries” and the “Western frontier” encumbered the nation to a greater degree than slavery did.\textsuperscript{246} Morris’ motion to have representation based on the number of free inhabitants was rejected 10-1, with only New Jersey in support.

August 21 saw a surge from the few delegates still charged to weaken the institution of slavery. When the Convention revisited the issue of taxing exports, which was not terribly popular at any point during the summer, it was inevitable that the discussion would turn to slavery, which made possible a large portion of the country’s exports. The characteristic North-South division was rendered irrelevant given the salience of other factors, such as the location and trade profile of each state, and each delegate’s stance on the degree of power befitting the national government.

Luther Martin seized the occasion to advocate the insertion of language that would allow a ban on slave importation or, at the very least, a tax on it. He cited the three-fifths ratio as an “encouragement” to the slave trade and sought a counter to it. A devout states-rights advocate, he also shared Mason’s objection to the military burden that would fall to the North on the occasion of slave insurrection. Foremost among his concerns was the nature of slavery itself, given the ideals that had midwifed the birth of the nation. The protection of slavery in the Constitution as presently drafted was, according to Martin, “inconsistent with the principles of the revolution and dishonorable to the American character.”\textsuperscript{247} Here Martin, a slaveholder from a state largely dependent on slavery, sounded a note similar to that of the staunchest Northern abolitionist.

\textsuperscript{246} Ibid.

Marylanders’ and Virginians’ entreaties for a ban on slave importation are often plumbed for ulterior motives by historians such as George William Van Cleve. The auspicious slave demography in the Chesapeake region prompted its elite to look forward to a time when other Southern states, prevented from importing slaves, were hindered from competing successfully.\(^{248}\) Relegated to natural increase, Virginia and Maryland would be in a stronger position than states with smaller or older enslaved populations. The limitation of Van Cleve’s argument is that it does not fully explain the stand Martin took at this juncture of the Convention. Martin was not making an economic, legal or sectional argument. He was striking a blow at the hearts of every delegate in the Pennsylvania State House, challenging them, implicating them in a brand of hypocrisy that certainly would have hit home. The agreed-upon protections for slavery were, in Martin’s view, nothing less than un-American.

The cogency of this salvo, accentuated by the fact that it came from a man of Martin’s profile, was such that it flummoxed one of the sharpest minds at the Convention. Rutledge, who became the second Chief Justice of the U.S. Supreme Court and claimed never to have lost a case during his 26-year legal career, attempted weakly to refute Martin. It was, in the words of David Waldstreicher, “the most skilled stonewalling the convention had yet witnessed.”\(^{249}\) In the first place, he said the three-fifths ratio in no way promoted the institution of slavery, a claim belied by the self-interest that compelled southern states to support as much representation for slaves as possible. With personal slaveholdings numbering in the sixties, Rutledge went on to say that he was unconcerned about the prospect of slave insurrection. If this were true, it would have made him a distinct minority among his peers, who had spoken, written and acted for decades in ways that made plain their deep-seated fear of this very sort of rebellion.

\(^{248}\) Van Cleve, *A Slaveholders’ Union*, 147-49.

\(^{249}\) Waldstreicher, *Slavery’s Constitution*, 94.
Not only did Rutledge purport to be undaunted by the threat of slave insurrections, he claimed a willingness to absolve other states from any obligation to help suppress them. This, again, strains credulity, as it would have set him apart from many other experienced delegates – Morris, King, Mason, Morris among them – who spoke of such an obligation as inevitable. Months after the sluggish suppression of Shays’ Rebellion in Massachusetts, the consensus among the elite was that federal military force could be sorely needed in the event of local or regional unrest. Public safety was a top priority and less than fully secure, given that nine states chose to maintain their own navy as of 1787. Such a circumstance was addressed the very next week, on August 30, when the states were promised national-level protection against “domestic insurrection.” This was understood to apply to rebellions such as Shays’, and slave uprisings as well. Rutledge was being either disingenuous or unrealistic with his disavowal of the want and need for federal force to be available in case of slave insurrection.

Rutledge concluded his speech with something of an ultimatum, which by then had become fairly commonplace at the Convention amid the high stakes of latter-stage negotiations. Sidestepping the ideological inconsistency Martin had spotlighted, Rutledge sought to shift the focus of the debate. “Religion and humanity (have) nothing to do with this question… The true question at present is whether the Southn. States shall or shall not be parties to the Union.” Here Rutledge aggrandizes his position, subsuming the interests of Maryland, Virginia, North Carolina under the point of view of South Carolina, which had more at stake because it had the highest percentage of enslaved persons in the union. Another way to interpret Rutledge’s remark is that he was referring only to South Carolina and Georgia because of their avowed willingness to draw a hard line.

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252 1790 U.S. Census.
Evidently sensing a need to sway Northern minds, Rutledge stated that allowing slavery to thrive would generate economic benefits outside the South. He pointed in particular to the dependence of the North’s shipping industry on commodities produced by Southern slaves. It is an indicator of the vulnerability of the South’s position that Rutledge would find it necessary to tell Northern delegates what was good for them, hoping they would evaluate the economic-moral equation the same way he did.

The efforts of South Carolina’s “most powerful and respected political figure” found a receptive audience. Lending it strength was what Christopher Collier calls a “Connecticut-South Carolina axis” that served as the “hinge” of the North-South coalition.” Ellsworth followed Rutledge’s speech by striking a note for state sovereignty, that each state should be able to make its own assessment of the “morality or wisdom of slavery.” The Connecticut jurist also amplified Rutledge’s point regarding the nation’s economic symbiosis: “What enriches a part enriches the whole.” The mutual enrichment would have been abundantly clear to all. An example from Rhode Island, which had a tiny enslaved population, is illustrative. Eight of the ten wealthiest individuals on Newport’s 1772 tax rolls either owned slave ships or trafficked in molasses or rum, which had their origins in slave labor. The final prong of Ellsworth’s argument was that he preferred the status quo: the Articles of Confederation had made slavery a state matter and he wanted to keep it that way. While Don Fehrenbacher’s view holds that Ellsworth’s vision was intact by Convention’s end, Waldstreicher and Finkelman have argued that the Constitution bound the entire nation in a pro-slavery stance.

253 Goldstone, Dark Bargain, 67.
Pinckney followed with what Madison recorded as the final remarks of the day. It was yet another ultimatum. South Carolina, the young firebrand said, would not join any union that barred the slave trade. This, despite the fact that at the time of Pinckney’s remarks, slave importations were banned in his state, along with 10 others. No matter. The South stood firm, holding fast to a position that conspicuously departed from the status quo. Viewed one way, this stance was retrograde. While the nation was moving away from slavery, this step would represent a return to the importations that were implicitly or explicitly legal from 1619 until 1774, when the Continental Congress’ Declaration of Resolves enacted an importation ban that was echoed by similar legislation on a colony-by-colony basis.

Another way to look at the Southern insistence on protecting importation was that it was designed to nurture the future that many expected and desired. If the swell of population would flow to the Southwest, as was widely predicted, the original Southern colonies could enhance their own standing. Slave ships would arrive on the Atlantic coast, whereupon local economies would surge as the slaves were housed, auctioned, purchased and transported to the Southwest.

Pinckney concluded his remarks with a startling concession. He said that if the states were left alone, South Carolina eventually may enact some sort of gradual abolition, as had been done in Virginia and Maryland. This seemed like a stab at appeasement. Northern delegates unable to make much headway on other slavery matters could be contented by the promise, however faint, of a future more to their liking. It is not as if they were duped into buying an unrealistic bill of goods. Pinckney’s suggestion was entirely credible from the perspective that the other two states he mentioned were largely dependent on slavery. If those states could back away from slavery – banning importation, legalizing private manumission - it was feasible that South Carolina could as

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well. As Lacy Ford points out, the state legislature, with votes of assent from Rutledge and Pinckney, had elected in March 1787 to close the international and domestic slave trades for three years.\(^{258}\)

Perhaps South Carolina was genuinely willing to budge; Charles Cotesworth Pinckney, for one, showed willingness to yield when he softened on the original fugitive slave proposal he and Butler submitted on August 28.\(^{259}\)

Sherman opened the next day’s discussions with a statement that embodied the perspective of many of those gathered in the Pennsylvania State House. He declared that he opposed the slave trade but did not see a compelling need to abolish a right the states then had.\(^{260}\) Broadly speaking, Sherman was incorrect. All states except Georgia and North Carolina, which deterred importation with a high import tax, had banned importation by the time of the Convention.\(^{261}\) Sherman then went onto safer ground, observing that abolition measures were taking root around the country and that he foresaw the ultimate completion of this progress in good time. He reiterated that he was devoted to his top priority – completing the Constitution – and that it trumped all other concerns. This, in short, explains why the South got its way on so many slavery issues. As articulated by legal historian William M. Wiecek, the South, with its clear and concrete demands, pushed hard on slavery - much harder than the North, which was divided in its slavery-related goals but unified in its desire to craft a Constitution to carry the nation forward.\(^{262}\)

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\(^{261}\) Stewart, *Summer of 1787*, 195.

Mason followed with what is widely considered the Convention’s most notable speech on slavery. Just as Sherman’s address was representative in its own way, Mason’s thunderbolt presaged the tenor of the next several decades of abolitionist discourse. He called slavery “infernal,” argued that it discouraged societal progress and pointed out that it discouraged what would be a beneficial stream of immigration. A lifelong slaveholder, Mason went beyond condemning importation, which he had done before, and loosed an unbridled moral condemnation: “Every master of slaves is born a petty tyrant. They bring the judgment of heaven on a Country. As nations can not be rewarded or punished in the next world they must be in this… [P]rovidence punishes national sins, by national calamities.” Mason cast slavery in a broader light, denouncing its impact on everyone who touched it. While not as strident, Jefferson had trod similar ground several years earlier in his Notes on the State of Virginia.

While taking care not to absolve Northern states enticed by “a lust of gain,” Mason also looked beyond the typical North-South calculus. He drew attention to the clamor for slavery of the Western states and pointed out that it would be an extraordinary boon to them to authorize South Carolina and Georgia to import slaves. Mason was prescient on this point, as the early 19th century unfolded just as he had predicted. Engaging in the question of federalism that was laced throughout many Convention debates, he closed by insisting that the government ought to have the power to prevent the expansion of slavery, an issue that would be contested for decades.

Ellsworth, partial to Southern compromise from the beginning, then defused Mason’s attack with a strategic rejoinder. If the issue were to be examined through a moral lens, he suggested,


264 Nearly 80 years later in his Second Inaugural Address, Abraham Lincoln would echo this theme, suggesting that God could levy the mightiest of punishments for the national sin of slavery.

perhaps the best course would be to emancipate all the slaves. At this point in the Convention, such a proposal was doomed to get little to no traction. Instead, Ellsworth used this straw man to make his position seem more reasonable. Sounding very much like South Carolinians Rutledge and Charles Cotesworth Pinckney, he argued that ceasing slave importation would be unfair to South Carolina and Georgia because their climate and work environment did not allow natural increase the way that the Chesapeake states’ did. And with just as much intellectual dishonesty as his Connecticut colleague Sherman, Ellsworth augured that slavery was moribund – “in time (it) will not be a speck in our Country.”

Judging from the lack of dissension by other delegates, it seems few were troubled by the logical fallacy of predicting and hoping for slavery’s demise while taking steps to nurture its future. This was the path chosen by the Connecticut and South Carolina delegations in particular.

Both Pinckney’s and Georgia’s Abraham Baldwin followed in short order, happy to find themselves in the unusual position of echoing an argument that a Northerner had just put forth. Pinckney submitted that the Southern states would end importation on their own, but that as a South Carolinian, he would insist on having the right to import at the moment. His older cousin spoke of the need to be fair to South Carolina and Georgia regarding continued imports, and like Rutledge reminded the assembly of the holistic economic benefits that accrued from slavery. Baldwin, who rarely spoke all summer, jumped in with an assertion that by now was quite familiar: “If left to herself, (Georgia) may probably put a stop to the evil.”

He also advocated for state sovereignty on the grounds that local matters should be regulated locally – a dubious claim given the common understanding that slavery, which was supplied by an international trade, affected and indeed benefited the entire nation.

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267 Ibid.
With a show of boldness rarely seen all summer, Wilson called the Southerners’ bluff. Having heard delegate after delegate predict that the Southern states would move toward banning importations, he asserted that their ultimata were empty threats. If they were comfortable and confident about the prospect of being unable to import slaves, he figured, an immediate ban would not be a very likely deal-breaker. Wilson – the man who had introduced the three-fifths compromise, the man who had valued compromise above all else for much of the summer – suddenly seemed to seize upon the weaknesses in the Southern position. Furthermore, he pointed out that as things stood, all imports but slaves were to be taxed – an exception to which he took exception. Although he may not have had much company among Northerners, Wilson realized just how much ground the North had given up to the South. Others would later reach the same conclusion; Charles Cotesworth Pinckney, for example, boasted of the completeness of the victory the South achieved during the Convention’s slavery negotiations.  

The Convention seemed stirred by the twists and turns of the day’s proceedings – a Southern slaveholder railing against slavery, another salvo in the debate on federalism, and an unexpected stance taken by Wilson, who was ranked by Clinton Rossiter as the second-most influential presence at the Convention. Dickinson, of Delaware, rebutted Baldwin’s characterization of slavery as a local matter and thought it “inadmissible on every principle” that decisions on it would not be made at the national level. This was an assertion echoed by New Hampshire’s John Langdon, a shipping entrepreneur involved in the triangular trade, later in the day’s debate. Indeed, as the Convention moved farther away from the state sovereignty so essential under the Articles of Confederation, there were many powers that the delegates already had ascribed to the national government – trade, some taxation matters, the coinage of money and road-building

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268 Ellis, Founding Brothers, 95.
among them. Allowing states to dictate their own slave policy would have been, in a sense, a triumph for the faction that would become the anti-Federalists - and a contradiction for the vast proportion of delegates who sought to empower the national government. Most would not admit to perceiving a contradiction. Dickinson, however, sought to shift the question to one of national interest. Would the national welfare be helped or hindered by slave importations? That, he said, was the essential question.

Dickinson also followed Wilson in doubting the veracity of some delegates’ claim that the Southern states would refuse to confederate without protections against a national restriction of the importation of slaves – “especially as the power was not likely to be immediately exercised by the Genl. Government.” David Waldstreicher interprets Dickinson’s remarks here as calling the bluff of the Carolinas, in particular.

Gary Nash argues that Georgia and South Carolina were not in a position to make good on their threats to walk away from the Convention or, more to the point, to risk severing its bond with the union. Delegates such as Baldwin were as intransigent as any Southerners in terms of their ultimata: no protections for slavery would mean no support for the Constitution. This was a bluff of momentous consequence.

Had Virginia or New York intimated it would not ratify, their size, strength and wealth would have rendered the threat considerably more viable. Conversely, as Albert Saye has pointed out, Georgia had a tiny white population, generated relatively little income and was “the most exposed” of any state. Spanish Florida lay to the south, and the Spaniards were only too happy to

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271 Ibid.

Georgia needed the nation far more than the nation needed Georgia. Having been subsidized by the British crown for decades after its 1733 founding, Georgia’s dubious distinction under the Articles of Confederation was being the only state not to pay one cent of the federal requisitions.\footnote{Saye, “Georgia: Security Through Union,” 79.} Madison attested to this imbalanced relationship on the eve of the Convention - “[o]f the affairs of Georgia I know as little as of those of Kamskatska”\footnote{James Madison, as quoted in Van Doren, \textit{The Great Rehearsal}, 15.} – and Washington felt even more strongly. Months after the unanimous vote at Georgia’s December 1787 ratification convention, he suggested that outcome, achieved through one day’s discussion, had been a foregone conclusion: "If a weak State, with powerful tribes of Indians in its rear & the Spaniards on its flank, do not incline to embrace a strong general Government there must, I should think, be either wickedness, or insanity in their conduct."\footnote{George Washington, letter to Samuel Powell, January 18, 1788.}

Georgia did embrace that strong general government, and it was clear it had no alternative. Its delegates had a feeble presence at the Convention, giving few speeches and fewer still of note. Baldwin and William Few were the only Georgians to sign the Constitution at summer’s end, as the other two delegates were not around. Both William Pierce and William Houston, whose own family was divided on the idea of Revolution in the first place, had quit Philadelphia by the end of July.\footnote{“The Constitution of the United States: America's Founding Fathers,” National Archives and Records Administration. Accessed June 1, 2015. http://www.archives.gov/exhibits/charters/constitution_founding_fathers_georgia.html.}
As for South Carolina, its four-man delegation – Rutledge, the Pinckneys and Butler - made a far greater imprint on the Convention. Rutledge trailed only a few delegates in terms of his influence on the drafting process, and the other three South Carolinians were pivotal in winning the South concessions related to taxation and slavery. Still, outside the sanctum of the Pennsylvania State House, it was evident that South Carolina was not strong enough to survive on its own. Charles Pinckney suggested as much during the 1788 ratification convention in Charleston, when he echoed other delegates in referencing the state’s military weakness: “Without union with the other States, South Carolina must soon fall.” Otherwise susceptible to invasion, South Carolina could scarcely afford not to ratify the Constitution. Yet the Northern delegates extended a degree of deference that radiated from their own interests, their own desire to capitalize on a southern region that was ripe for expansion and fortune-seeking. The Southern hard-liners were so effective that, as David Brion Davis has shown, the debate on slavery shifted from one of principle to one of concrete negotiation. And on those grounds, the trump card was held by anyone suggesting that the Convention – and the union - could fall apart.

On that momentous day of August 22, North Carolina’s Hugh Williamson was the next to bluff. Despite being a moderate among Southerners for most of the summer – he conceded three days later he was “in opinion and in practice he was against slavery” – he drew a line in the sand alongside several others when he said Southern states would not support a Constitution that forbade slave importation. It was at that point that King, who echoed Wilson’s objection to allowing slave importations alone not to be taxed, made an assertion that proved hollow by the time the

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278 Charles Pinckney, as quoted in Goldstone, Dark Bargain, 6.
Convention adjourned.\textsuperscript{281} King was as resolute as Williamson when he turned to the matter of utmost importance: If two Southern states rejected a Constitution with an importation ban, he said, there would no doubt be two Northern states that would reject a Constitution without it.\textsuperscript{282} When the dust in the State House had settled, however, there was no import ban, nor were there states that refused to confederate. All summer long, there were bluffs and threats, there were bombastic proclamations, there was hyperbole – all, as often as not, tactics of negotiation calculated to persuade the Framers’ most discerning minds.

Then there emerged a moment of candor from Pinckney the elder. He admitted foreseeing nothing more than sporadic importation bans from South Carolina, repudiating the assurances of several Southerners.\textsuperscript{283} He would let others suggest that a moratorium on the international slave trade would be anything resembling permanent. Importantly, Pinckney also said he could support a tax on slaves equal to the tax placed on other imports. Rutledge agreed, stressing once again that the import ban would have been a deal-breaker for the three most Southern states.\textsuperscript{284} Then commenced a discussion of the propriety of import taxes, export taxes and the terms under which navigation treaties could be signed. Back and forth the delegates went until Randolph laid the issue bare. It was, he said, a choice between alienating those in non-slave states and losing the two states that vowed not to remain in the Union without proper protections for slavery.\textsuperscript{285} Williamson put it just the same way three days later.\textsuperscript{286} Evidently taking Randolph’s vow at face value, Ellsworth advocated taking


\textsuperscript{282} Jack Rakove alludes to the same dynamic but does not fully explore why, then, the North deferred to the South if there were states in both regions that seemed willing to draw a hard line on importations.


\textsuperscript{285} Ibid.

\textsuperscript{286} Madison, “James Madison's Notes of Debates in the Federal Convention of 1787: Wednesday, August 22.”
whatever steps necessary to prevent the 13-state confederation from crumbling. This eventuality was a fear common to all the delegates north and south – Ellsworth, for example, broached the possibility of one or several splits if certain issues remained unresolved.

A committee on slavery was formed with one member of each state delegation. Several of the members were among the Convention’s most voluble on this issue – Charles Cotesworth Pinckney, Martin, Madison, Dickinson and King – in addition to Williamson, Baldwin, Langdon, Johnson, Clymer and Livingston.²⁸⁷

Two days later, on Aug. 24, the Committee reported to the whole. The first item shared by Livingston was a clause banning Congress from prohibiting slave importation until 1800 but permitting a tax on slave importations at or below the average import tax on other goods. The following day, General Pinckney proposed extending the protection on slave importation until 1808 – 20 years after the Constitution would be ratified – and was seconded by Gorham of Massachusetts. This was challenged in different ways by one southerner and one northerner. Said Madison, “Twenty years will produce all the mischief that can be apprehended from the liberty to import slaves. So long a term will be more dishonorable to the National character than to say nothing about it in the Constitution.”²⁸⁸ Madison’s words were plain. A clinical calculus as to the reasonable window to import slaves was one thing; to baldly impugn the nation’s character was another. The man later dubbed the Father of the Constitution sounded a note very similar to Mason’s from three days prior. It was a note disregarded by most.

²⁸⁷ Ibid.
Pinckney’s proposal was passed 7-4, with dissent coming from New Jersey, Pennsylvania, Delaware and Virginia.\(^{289}\) Morris sought more transparency in the language of the provision and suggested that it specify the protection of imports into the Carolinas and Georgia, which Mason rightly suspected would bother the representatives of those three states. Williamson circled back to Randolph’s argument and emphasized the dire risk of losing states from the union. Sherman, a Southern ally as ever, pointed out that the restriction on the amount of the tax indicated the priority was to generate a bit of revenue rather than to discourage states from importing slaves. Before day’s end, the amount of 10 dollars per capita was agreed to.\(^{290}\)

On Aug. 28, the trade issue came to the forefront. During the debate on import and export taxes, Morris spoke up with an eye toward protecting the Western states. If the Constitution were to include provisions that did not acknowledge the value of the Mississippi River, Morris thought, the Western states would be compelled to seek support and protection from Great Britain. The fate of the Western states would be examined with greater depth the very next day, when Morris would reveal the limitations to his magnanimity toward the Western states.

August 29 emerged as one of the most consequential days of the Convention. Before the delegates adjourned, they had waded through a thicket of issues – among them, the rights of slaveholders, sectional disputes regarding commerce, the terms of admitting new states to the union, the obligations of one state to honor another’s laws.

One of the key matters resolved on August 29 was that slave interests were granted explicit protection and support in a way that rarely occurred throughout the summer. One day after Butler and Charles Pinckney advocated for its inclusion, the Butler-drafted Fugitive Slave Clause was

\(^{289}\) Ibid.
\(^{290}\) Ibid.
approved unanimously – once again, evading the word “slave” but stipulating that no state could nullify the obligations of any escaped “person bound to service or labor in any of the United States,” who “shall be delivered up to the person justly claiming their service or labor.”291 This wording of this provision, agreed to without any debate that was recorded or acknowledged by the delegates, was at once clear and opaque.

William Wieck has described the Fugitive Slave Clause as a concession to the south, a protection of slave interests, because slaveholding states otherwise would have had paltry legal backing in any efforts to recapture escaped slaves. Yet Akhil Amar holds that this clause presented a silver lining to the opponents of slavery because former slaves who had been brought by their masters onto free soil could reasonably be protected in being construed as something other than a fugitive.292 Since the clause addressed fugitives, any non-fugitive could have occupied a space outside its purview, with at least a chance to be viewed as a free person by the legal system.

Like so many of the slavery-related provisions of the Constitution, the language of the clause was vague in that it did not specify who would carry the burden of delivering the fugitive to the claimant. This was a considerable problem in a historical moment when the government was widely understood, even among federalists like Madison, to wield only powers that were specifically enumerated.293 As Don Fehrenbacher points out, it was left unclear whether the federal or state government was obligated to honor the demands of the slaveowner. This was a gray area that remained muddled for decades, was frequently fought over in court, and would not gain great clarity until the passage of the 1850 Fugitive Slave Act requiring state officials to arrest anyone suspected of

being a runaway slave and penalizing civilians for aiding a runaway slave. But in 1787, the Constitution’s treatment of fugitive slaves could be interpreted as somewhat of a victory for the North or the South.

Overlaying sectional differences was a sort of victory that could be appreciated by delegates from all regions. Empowering slaveholders to be able to recapture fugitive slaves was a salve to all those who feared slave insurrection. This longstanding concern, justly harbored by whites no matter their stance on slavery, was alleviated to some degree by at least opening the door for a mechanism to capture runaways. As Terry Lipscomb has pointed out, the Fugitive Slave Clause sucked wind out of the sails of those who opposed the Constitution because it went a step farther than the Articles of Confederation, which did not address the issue at all. Conversely, of course, the law bolstered the case of the Federalists. It also pushed the new nation farther away from its British forebears. In 1772, the seminal British case *Somerset v. Stewart* had yielded a ruling that denied slaveowners the right to recapture slaves once they had reached a territory where slavery was banned. This principle would be opposed by decades of American judicial interpretation up to and including the *Dred Scott v. Sandford* case of 1857 only four years before the Civil War.

The same day as the Fugitive Slave Clause was nearly finalized – on September 15 one more tweak would occur, attempting to make slavery a legal question rather than a moral one - Gorham took a novel angle when addressing the possibility of disunion that had loomed spectrally over the Convention. The oldest of the four-man Massachusetts delegation, Gorham sought to strike at the heart of the matter. He said the Northern states had no need to confederate other than the economic; security against attack was not the vulnerability it was for the Southern states, who as

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294 This law infuriated many in the North, sparking new levels of resistance and opposition, and helped cement the sectional divide during the subsequent decade that led up to the Civil War.

295 This fear would be magnified in the coming decades, such as when the Saint-Domingue slave revolt beginning in 1791 introduced the specter of former slaves flooding into the United States from aboard.
Charles Cotesworth Pinckney had admitted were weaker.\textsuperscript{296} Perhaps it was the Northern states who could afford to deliver an ultimatum. From this rhetorical stance, Gorham assailed the proposal advocated by Charles Pinckney, Martin and others – that the passage of navigation acts would require a two-thirds vote. This was a pressing concern for Southerners who feared the North would stonewall on access to the Mississippi.

So great were the differences within the country that Butler proposed sometime in August that the Constitution authorize the creation of three states united under one flag. His rationale was as much a hedge against an overbearing central government as it was a concession to the stark differences within the nation: “the Security of equal liberty and general welfare will be best preserved and Continued by forming the States into three Republicks [sic], distinct in their Governments but United by a Common League Offensive and Defensive.”\textsuperscript{297} Though the specifics of Butler’s vision cannot be ascertained, it is likely that he had in mind geographic delineations along the lines of the New England Colonies, Middle Colonies and Southern Colonies. The colonial period, which would have been his frame of reference, had featured scant communication or collaboration among the colonies. The experiences and perspectives of a cooper from Rhode Island would have had precious little overlap with those of a Georgia rice farmer, to the point that it was rather miraculous that the colonists mustered enough unanimity to stand together in overthrowing the British.

These differences may have appeared even more pronounced with the emphasis on slavery around the time of the Convention. Butler’s vision for the new nation seemed a nod toward acknowledging and accepting the nation’s regional differences, and could have paved the way for clearer lines to be drawn regarding slavery in the Constitution. His proposal, however, seems not to


have made much of a ripple, as it was neither recorded nor remembered by Madison, the assiduous Convention scribe.\textsuperscript{298} The underlying issue did take root, however, as the delegates, allowing for a defection or two, on Aug. 31 agreed to require no more than a nine-state majority to ratify the Constitution.

Many Southern delegates had trepidation that the Northern and Middle states would pass laws favoring the manufacturing and mercantile interests that were much more prevalent there. They figured that a simple majority would be easy to come by, putting the minority of five Southern states at perpetual disadvantage. But due to Madison’s mitigating perspective and the South’s recognition of the concession they had won in being able to import slaves for at least 20 years, the delegates voted to drop the two-thirds requirement. This was a victory for the Northern states they were happy to have in exchange for acceding to Southern demands on slavery.

The final matter to be parsed on August 29 pertained to the admission of new states to the union. With untrammeled ambition that would characterize the nation’s first decades, and indeed all of American history, the Philadelphia assemblage already was intent on the country’s growth. Coloring a tremendous number of the debates throughout the summer was talk of the eventualities and circumstances that could arise as the years unfurled; never did any delegate doubt that expansion would occupy a prominent place in that dreamed-about future.

The day’s debate turned to expansion and how it would be regulated. Madison, whose motions were rejected with surprising frequency throughout the Convention,\textsuperscript{299} yet again found


\textsuperscript{299} Forrest McDonald, as quoted in Stewart, Summer of 1787, 105, calculated that 40 of the 71 proposals that Madison originated, seconded or strongly supported were defeated, often because most delegates did not share his predilection for strong federal government.
himself in the minority in this instance by arguing that the Western states “neither would nor ought to” accede to terms that placed them on anything but an equal legal and political footing with the original states.\textsuperscript{300} Morris insisted that what he had in mind was not a handicap on new states but rather a degree of latitude for the legislature to handle expansion as it saw fit. A 9-2 vote, with only the Chesapeake states dissenting, proved that at least some measure of moderation tempered the delegates’ alacrity for expansion.\textsuperscript{301} That this was a departure from the Northwest Ordinance, which stipulated that that territory be divided into states that were the equal of the original 13, ultimately proved irrelevant. True to Morris’ vision, within four years of ratification, Congress admitted Vermont and Kentucky as equals and proceeded to do the same for the subsequent 35 states that joined the U.S. New states would have to ratify the Constitution - whose Supremacy Clause in Article VI ensures a certain level of uniformity and cohesiveness throughout the land - and would be regarded just the same as the states that had done so in 1787-89.

In terms of their stance on expansion, the original 13 states found common ground at the same time as there were factors that divided them. First and foremost, they were every bit as self-centered as could be expected of any polity. Along the path that led them to Philadelphia, they had weathered many storms, experienced a litany of growing pains and fought several wars – not just winning independence from Britain but facing a substantial number of conflicts with Native Americans. If the states were in a position to launch the nation anew, they had earned it. Deferring to new states, yielding political capital to them, bestowing economic advantages to them – none of this was remotely appealing to those who had toiled and sacrificed to shepherd the nation into this auspicious moment.


\textsuperscript{301} Ibid.
Yet the delegates had vision if nothing else. Routinely throughout the summer, they spoke of circumstances beyond that which immediately surrounded them. They spoke of population growth, of immigration, of potential disputes between federal and state officials, of the risk of corruption and greed, of the foreign affairs that might present themselves as the United States asserted itself on the global landscape. Wilson, the vastly influential Pennsylvanian whose Convention speeches were outnumbered only by Morris’, provided a broad perspective encapsulating the epochal wisdom and insight of the Framers. Just past the halfway point of the Convention, Wilson elicited no dissension upon declaring, “We should consider that we are providing a Constitution for future generations, and not merely for the peculiar circumstances of the moment.” This mindset was central to the Constitution’s success not just in the nation’s youth but has been throughout its history. And it helps explain why the discussions in the Pennsylvania State House so often veered beyond the 13 original states and into the great beyond.

By the time of the Convention, Maine, Vermont, Kentucky and Tennessee each numbered into the tens of thousands of white inhabitants; all but Tennessee compared favorably to the populaces of Rhode Island, Georgia and Delaware. The Northwest Territory was sparsely populated but the framework for its growth had been established with the Ordinance of 1787. A half-dozen of the Convention delegates were heavily involved in land speculation; in addition, Washington himself had vast land holdings that included tracts in four states, plus Kentucky and the Ohio Territory.

After the flurry of slavery-related discussion at the end of August, the Convention’s only other substantive matter pertaining directly to slavery was resolved on Sept. 10. With only six days left before the delegates would adjourn for the final time, Rutledge sought to provide additional

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protection for the slaveholding interests, introducing a safeguard on the government’s moratorium on restricting slave importation before 1808. No amendments altering or affecting that moratorium could be passed, he proposed. The delegates signed off on this with barely a murmur.\textsuperscript{304}

On Sept. 17, the business of the Constitution in the Pennsylvania State House, as orchestrated by 40-odd delegates from 12 states, ceased once and for all. The arc of four months of discussion had spanned an enormous distance, broaching at one point or another possibilities as radical as an executive who would serve for life and a legislature whose members would serve for free. No matter, save for the name of the country, was set in stone. Just two weeks in, however, the three-fifths compromise was struck, setting the tone for a summer full of concessions to slaveholding interests that belied the leverage of the northern states and betrayed the strength of the antislavery movement.

Slavery had been protected in an array of ways, leaving open the possibility that it would grow along with a nation that was primed and prepared to do just that. That eye toward expansion was central to the reason why the northern delegates opposed slavery protections with such little vigor. To say nothing of the political and philosophical reasons for separation, the economic impetus for breaking away from Britain was so strong that both North and South shared a commitment to maximizing the opportunities the future held.

In the decades that followed ratification, the institution of slavery was severely constricted in the north, whether banned immediately or subjected to gradual abolition. It was simultaneously bolstered in the south - so much so that it proved impossible to extirpate without a civil war that would have been anathema to the Convention delegates who were focused on nothing more than compromise. The late 18\textsuperscript{th} and early 19\textsuperscript{th} centuries saw a continuation of the abolition movement,

but more than anything else, it was an era marked by the staggering expansion of plantation-based slavery in the south. This growth was centered not in the longtime slave bastion of Virginia but in the Deep South and new Southern states, capitalizing on full use of the Mississippi River in ways that exceeded even the most optimistic projections of the Revolutionary and founding generations. While nationwide abolition had seemed possible during the 1770s and 1780s, by the time the engine of cotton production had reached full bore a few decades later, the economic profile of the nation would brook no such thing.

7 CONCLUSION

Though it was not yet fully under U.S. control, the Mississippi River was at the forefront of the Constitution framers’ minds when they spoke of navigation matters. The Mississippi stretched from the far reaches of the newly organized Northwest Territory – what is now Minnesota – southward to the western limits of Georgia’s land claim in the present-day state of Mississippi. Under Spanish governance was the southernmost section, a stretch of several hundred miles that included New Orleans, the Mississippi Delta and access to the Gulf of Mexico.

Unlike many other issues encountered by the young nation, the dream of expansion was one with scant sectional discord. Americans, whether at the Convention or not, believed their future should and would include a move into what was then Spanish West Florida, the only tract preventing the United States from unfettered access to one of the world’s mightiest rivers. The colonial period had evinced the commercial importance of waterways, to be sure, but that had more to do with the Atlantic Ocean than anything else. The Atlantic was an essential catalyst for vexatious British legislation such as the Boston Port Act, the Navigation Acts and the Tea Act; colonial economic sectors such as shipping, fishing and shipbuilding; and the Triangular Trade fueling
colonial lifelines to and from Europe and Africa. The centrality of water was borne out by the fact that the colonies’ 10 most populous cities – led by New York, Boston, Philadelphia, Charleston and Baltimore – all featured coastal access.

As the new nation gained its bearings soon after independence, the importance of waterways grew because Americans suddenly had to maintain, expand and regulate the economy without the assistance of the wealthy and long-seafaring British. Americans historically had made good use of rivers such as the Hudson, the Delaware, the Roanoke, the Potomac and the Savannah, each of which flowed 300-400 miles, sustained population centers and were a boon for both trade and transportation. Westward expansion made these rivers seem meager by comparison. They were dwarfed by the prodigious Mississippi, whose length of roughly 2,300 miles made it infinitely more valuable as a waterway linking several regions and providing ocean access.

Two decades earlier, Britain had rankled the colonists by issuing the Proclamation of 1763, which banned them from setting west of the Appalachian Mountains. This edict on the heels of French and Indian War was taken as an affront by the colonists, who had helped make possible the British victory and acquisition of the vast expanse of land between the Appalachians and the Mississippi River. Independence allowed the Americans to release their pent-up ambitions, and they looked westward with a desirous eye. The Mississippi beckoned.

A year prior, upon the signing of the Jay-Gardoqui Treaty, the nation came close to ceding access to the portion of the Lower Mississippi between Natchez and New Orleans. It was to remain under Spanish control for 25-30 years and would place a ceiling on the dreams of American prosperity in the west. This was not of major concern to the Northern states, who were enticed by the treaty’s provision of American access to Spanish ports abroad, but it did alarm the Southern
states. They had gotten a taste of such limits from 1784-86 as Spain forbade use of the port of New Orleans, and they did not like it. The vote on Jay-Gardoqui was 7-5, two votes shy of the nine required for approval by the Articles of Confederation; every state south of Delaware, which did not vote, rejected the treaty.

From the Southern perspective, the future was clear. The prospects for prosperity had much to do with expansion and with the waterway known to the Ojibwe as Misi-zíibi, or Great River. Madison was bullish on the Mississippi in a 1785 letter to Lafayette: "If there be any who really look on the use of that river, as an object not to be sought or desired by the United States I can not but think they frame their policies on both very narrow and very delusive foundations." With the Lower Mississippi, western states intending to export were relegated to transporting goods across the Appalachian Mountains, a long trek both difficult and dangerous. With it, however, linkages to European markets became much more attainable. The agricultural bounty of many states could be floated south on the Mississippi and then into the Gulf of Mexico, which opened up to the Atlantic Ocean.

That their produce would be bountiful was beyond question. Crops like cotton and sugar that had grown in some southern states were identified as valuable components of the regional economy. Tobacco, corn and hemp had flourished in the western section of Virginia that as of 1792 became Kentucky. Hemp was so common and so esteemed that it was permitted as a form of tax payment by Virginia. Corn also was a staple in Tennessee, which was useful as a way to feed families, process into whiskey and feed hogs that in turn were used for lard and other pork products.

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As for cotton, it would not be until the 1820s that it began to thrive in West Tennessee.\textsuperscript{307} Paralleling the ascension of Kentucky tobacco, Tennessee cotton took a huge leap forward after farmers gained access to the Mississippi and its exporting capacity.

There were other Southwestern rivers, too, that fed into the Gulf of Mexico but remained under Spanish control. These waterways - the Apalachicola, Tombigbee, Mobile and Pearl – were tantalizing in their own way and to Americans seemed destined to fall under the new nation’s possession.\textsuperscript{308}

Heretofore hemmed in east of the Appalachians, the Americans looked avidly to the west and began making plans for it as soon as they had the opportunity. Earlier in the 1780s, Virginia and South Carolina had ceded swaths of western lands to the federal government, just as Massachusetts and Connecticut did in order to make possible the Northwest Ordinance’s partition. It was obvious North Carolina and Georgia would be compelled to do the same, which they did, respectively, two and 15 years later. In the three decades after ratification of the Constitution, eight western states joined the union after having been carved from the original 13. States were willing to cede territory for the good of the whole – the ideology suffusing this era was a preference for local government closer to the people - but insisted on recognition of preexisting land claims by residents of the original states.

So vital was the Mississippi expected to be that unsatisfactory resolution of this issue could have had catastrophic consequences. Catherine Drinker Bowen has suggested that there was concern at the Convention, especially among Southern delegates, that Kentucky and Tennessee

would form sovereign nations if the United States did not manage to procure access to and use of the river.  

And Pauline Maier argues that, given Spain's control of the land west of the Mississippi, it would have targeted Kentucky for acquisition if the Constitution were not ratified, just as Britain, still a strong presence in Eastern Canada, may have plucked Vermont.  Those scenarios became moot, but the underlying trepidation was justified. The economic promise of the southwest was so great that it may have enticed treachery from within. Although he was acquitted of treason, there is strong evidence to suggest that former Vice-President Aaron Burr mounted a plot to establish military control over the southwest – whose slave-based economy was by then more lucrative by the day - and secede from the United States.

The Revolutionary War had had deleterious effects on the American economy, particularly early on in the South.  Trade with Britain and British colonies ground to a halt, which included a dramatic decline in slave importations and a closing of many markets to American exports. Generally speaking, the instability and violence of war disrupted the rhythm and infrastructure of economic activity, and this hit hardest for the upper class, who were enmeshed in the global economy to a greater extent than were the masses. Sylvia Frey holds that these effects spurred whites to invest more heavily in slavery so as to rejuvenate the economy. Slave labor was a factor of production that could be amplified in order to increase the output of the agricultural sector in particular.

Emerging from the tumult of the nation's birth and struggling to find its bearings on the Anglo-French axis of power, the United States was hungry for economic growth. Edward Baptist

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312 Frey, *Water from the Rock*. 
provides compelling evidence that Northern speculators, shipping magnates and budding industrialists had a profound interest in Southern and Southwestern slavery, with financial involvement that nearly rivaled that of the slaveholders themselves.\textsuperscript{313} Rhode Island shipping outfits, for example, transported more slaves than any other state, north or south.\textsuperscript{314} Classical economic principles hold that capital follows opportunity. This held true during the nation’s first few decades. As the cotton boom resonated outward from the Deep South, its lifeblood was infused with a supply of capital from the north and supportive land policies by the federal government, sources whose spirited participation ensured the prosperity that had been envisioned in 1787 in Philadelphia.

In the view of Walter Johnson, this process marks the slave economy as a deeply capitalistic one. Slavery in the Deep South could not have flourished nearly as much without the capitalistic confluence of banks, credit and debt, risk and reward, dynamic internal markets, linkages to external markets, the centrality of technology and the primacy of those who controlled the means of production.\textsuperscript{315} This was not an economic system whose factors of production nor beneficiaries were geographically constricted to the states in which slavery was legal. Just as support for slavery at the Constitutional Convention emanated in some ways from North and South alike, the institution’s geometric growth beginning in the early 19\textsuperscript{th} century depended on the deep-seated involvement of principals from all over the United States. The result was what Sven Beckert calls “spectacular opportunities for profits and power,” opportunities that were on many delegates’ minds in the summer of 1787.\textsuperscript{316}

\textsuperscript{314} Farrow, \textit{Complicity}, 97.
\textsuperscript{315} Walter Johnson, \textit{River of Dark Dreams: Slavery and Empire in the Cotton Kingdom} (Cambridge, Ma.: Harvard University Press, 2013.)
The evolution of this region, primed for growth, exceeded even the proto-capitalists’ boldest dreams. Its ascension was exponential. In 1791, three years before Eli Whitney’s cotton gin began to anoint King Cotton, the entirety of the United States produced 9,000 bales of cotton. Three decades later, thanks to the confluence of motivated entrepreneurs, government support and an ample supply of slaves, Mississippi alone produced 20 million bales. The New South – the Deep South – became one of the United States’ primary economic engines, enabling the young nation to emerge as a substantial presence on the international stage. The mere availability of slaves was not enough to make this growth possible; those slaves had to be driven to generate ever higher levels of output.

For this reason, Edward Baptist considers the torture to which the slaves were subjected a “factor of production.” What planters called the pushing system drove slaves to work harder, work faster, rest less and complain less. They did this at the point of the whip; overseers utilized “innovation in violence” to maximize the effects of physical suffering, threats and intimidation. Consequently, per-person productivity in the cotton fields nearly tripled from 1805 to 1825. Unlike the increasing efficiencies that were supercharging the textile mills, the skyrocketing output among slaves had nothing to do with technology and everything to do with the effects of torture.

It was against this backdrop of coercion and abuse that slaveholders had reason to tap into the fear of slave insurrection that had been extant since early in the colonial period. Running the gamut of views on slavery, whites ranging from Thomas Paine to George Whitfield to George Washington had long acknowledged the magnitude of their fears of slave insurrection. The 1790s stoked these fears even further as revolution in Saint-Domingue “shook many whites to their boots,

319 Ibid., 127.
including some abolitionists.” These fears were far from idle. The 1811 German Coast rebellion in Louisiana; a 1816 plan in Camden, S.C.; and Denmark Vesey’s 1822 revolt in South Carolina – which were variously quashed inside and outside of the legal system – exemplified the types of large-scale insurrection that compelled state legislatures in the early 19th century to pass an array of laws designed to prevent and punish threats to white power.

Amid this environment, with industrialization afoot, the economy churned ever harder, and the importance of Southern slavery rose ever higher. It continued to rise through the 1830s, when William Lloyd Garrison led a revitalization of abolitionism, and the 1840s, when the first World Anti-Slavery Convention was held and the Ottoman Empire abolished the slave trade from Africa. It continued to rise through the 1850s, when anti-slavery pressure from the north peaked, thanks to John Brown, Frederick Douglass, Charles Sumner, Harriet Beecher Stowe and a host of others bent on ridding the nation of what they saw as its original sin.

There were opponents of slavery at the Constitutional Convention as well. Some spoke up with vigor; others buried their principles in an effort to solidify the bonds of national union. While blows against slavery were commonplace in the Constitutional era, most notably with all manner of bans passed by state legislatures throughout the country, they were countered by the inescapable truth that the nation’s future would be much brighter with Southern slavery intact. Expansion into the Southwest, which dominated the three decades following the Convention, ensured that slavery was not going anywhere. The enslaved population of the United States had nearly tripled from 1787 to 1830, and with that growth came increasing difficulty in extirpating the institution of forced labor.

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320 Nash, Race and Revolution, 44.
Ten days into the Convention, Madison referred to slavery as “the most oppressive dominion ever exercised by man over man.”\textsuperscript{321} Surrounded by ambivalence, misgivings and conflicting priorities regarding slavery, he could not have known just how entrenched it would become. He could not have known that the ripest opportunity for abolition was there and then, Philadelphia 1787, and that the nation would tear itself asunder before managing to level a mortal blow against slavery three-quarters of a century later.

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