AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 5: The Jacksonian Era—Equality/Race/Basic Principles

Jacksonians Debate the Constitutional Status of Slavery (and Race)

Americans expressed a wide range of opinions on the constitutional status of slavery. Such pro-slavery extremists as John C. Calhoun (1782–1850) believed that slavery was a positive good, that the federal government had a special obligation to protect slavery, and that slaveholders had a constitutional right to bring slaves into all American territories. More moderate slaveholders tolerated bans on slavery in some territories as long as the territories were equally divided between the free and slave states. Stephen Douglas (1813–61), the leader of the Northern Democrats, championed popular sovereignty. He asserted that the people of every territory were constitutionally empowered to decide whether to ban slavery. Abraham Lincoln (1809–65) was a moderate anti-slavery advocate. He insisted that Congress ban slavery in all American territories, but did not urge the repeal of the Fugitive Slave Act or propose racial equality. Salmon Chase (1808–73) and other abolitionists insisted that the federal government provide no support for slavery. They insisted on racial equality.

When reading the following excerpts, consider the following questions. To what extent do various participants rely on claims about government powers? To what extent do they rely on claims about individual rights? Can you detect clear distinctions between these claims? Compare Abraham Lincoln to Salmon Chase. What are the differences between their positions? Do you believe Lincoln had political reasons for publicly championing constitutional moderation? The members of the Nashville Convention insisted that Congress had no power to ban slavery in the territories, but nevertheless stated that they would accept an equal division of the territories. May constitutional rights be bargained away in this manner? How do such bargains take place? How are they enforced?

John C. Calhoun, "Resolutions on Slavery"[1]

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Resolved, That in delegating a portion of their powers to be exercised by the Federal Government, the States retained, severally, the exclusive and sole right over their own domestic institutions and police.

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Resolved, That the intermeddling of any State or States, or their citizens, to abolish slavery in this District, or any of the Territories, on the ground, or under the pretext, that it is immoral or sinful; or the passage of any act or measure of Congress, with that view, would be a direct and dangerous attack on the institutions of all the slaveholding States.

Resolved, That the union of these States rests on an equality of rights and advantages among its members; and that whatever destroys that equality, tends to destroy the Union itself; and that it is the solemn duty of all, and more especially of [the Senate], which represents the States in their corporate capacity, to resist all attempts to discriminate between the States in extending the benefits of the Government to the several portions of the Union; and to refuse to extend to the Southern and Westerns States any advantage which would tend to strengthen, or render them more secure, or increase their limits or population by the annexation of new territory or States, on the assumption or under the pretext that the institution of slavery, as it exists among them, is immoral or sinful, or otherwise obnoxious,

[1] *Congressional Globe*, 25th Cong., 2nd Sess. (1837), 55.

would be contrary to that equality of rights and advantages which the Constitution was intended to secure alike to all the members of the Union, and would, in effect, disfranchise the slaveholding States, withholding from them the advantages, while it subjected them to the burdens, of the Government.

Resolves of the Southern Convention at Nashville, June 10, 11, 1850[2]

1. *Resolved*, That the territories of the United States belong to the people of the several States of this Union as their common property. That the citizens of the several States have equal rights to migrate with their property to these territories, and are equally entitled to the protection of the federal government in the enjoyment of that property so long as the territories remain under the charge of that government.

2. *Resolved*, That Congress has no power to exclude from the territory of the United States any property lawfully held in the States of the Union, and any acts which may be passed by Congress to effect this result is a plain violation of the Constitution of the United States.

. . .

4. *Resolved*, That to protect property existing in the several States of the Union the people of these States invested the federal government with the powers of war and negotiation and of sustaining armies and navies, and prohibited to State authorities the exercise of the same powers. They made no discrimination in the protection to be afforded or the description of the property to be defended, nor was it allowed to the federal government to determine what should be held as property. Whatever the States deal with as property the federal government is bound to recognize and defend as such. . . .

5. *Resolved*, That the slaveholding States cannot and will not submit to the enactment by Congress of any law imposing onerous conditions or restraints upon the rights of masters to remove with their property into the territories of the United States, or to any law making discrimination in favor of the proprietors of other property against them.

6. *Resolved*, That it is the duty of the federal government plainly to recognize and firmly to maintain the equal rights of the citizens of the several States in the territories of the United States, and to repudiate the power to make a discrimination between the proprietors of different species of property in the federal legislation. The fulfillment of this duty by the federal government would greatly tend to restore the peace of the country and to allay the exasperation and excitement which now exists between the different sections of the Union. . . .

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11. *Resolved*, That in the event a dominant majority shall refuse to recognize the great constitutional rights we assert, and shall continue to deny the obligations of the Federal Government to maintain them, it is the sense of this convention that the territories should be treated as property, and divided between the sections of the Union, so that the rights of both sections be adequately secured in their respective shares. That we are aware this course is open to grave objections, but we are ready to acquiesce in the adoption of the line of 36 deg. 30 min. north latitude, extending to the Pacific Ocean, as an extreme concession, upon considerations of what is due to the stability of our institutions.

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24. *Resolved*, That slavery exists in the United States independent of the Constitution. That it is recognized by the Constitution in a three-fold aspect, first as property, second as a domestic relation of service or labor under the law of a State, and lastly as a basis of political power. And viewed in any or all of these lights, Congress has no power under the Constitution to create or destroy it anywhere; nor can such power be derived from foreign laws, conquest, cession, treaty or the laws of nations, nor from any other source but an amendment of the Constitution itself.

[2] *State Documents on Federal Relations, ed.,* Herman Ames (Philadelphia, PA: Longmans, Green & Co., 1911), 263–69.

Stephen Douglas on Popular Sovereignty[3]

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I hold that Illinois had a right to abolish and prohibit slavery as she did, and I hold that Kentucky has the same right to continue and protect slavery that Illinois had to abolish it. I hold that New York had as much right to abolish slavery as Virginia has to continue it, and that each and every State of this Union is a sovereign power, with the right to do as it pleases upon this question of slavery, and upon all its domestic institutions. Slavery is not the only question which comes up in this controversy. There is a far more important one to you, and that is, what shall be done with the free negro? We have settled the slavery question as far as we are concerned; we have prohibited it . . . . We must leave each and every other State to decide for itself the same question. In relation to the policy to be pursued towards the free negroes, we have said that they shall not vote; whilst Maine, on the other hand, has said that they shall vote. Maine is a sovereign State, and has the power to regulate the qualifications of voters within her limits. I would never consent to confer the right of voting and of citizenship upon a negro, but still I am not going to quarrel with Maine for differing from me in opinion. Let Maine take care of her own negroes and fix the qualifications of her own voters to suit herself, without interfering with Illinois, and Illinois will not interfere with Maine. . . .

Now, my friends, if we will only act conscientiously and rigidly upon this great principle of popular sovereignty which guarantees to each State and Territory the right to do as it pleases on all things local and domestic instead of Congress interfering, we will continue at peace one with another. Why should Illinois be at war with Missouri, or Kentucky with Ohio, or Virginia with New York, merely because their institutions differ? Our fathers intended that our institutions should differ. They knew that the North and the South having different climates, productions and interests, required different institutions. This doctrine of Mr. Lincoln's of uniformity among the institutions of the different States is a new doctrine, never dreamed of by Washington, Madison, or the framers of this Government. Mr. Lincoln and the Republican Party set themselves up as wiser than these men who made this government, which has flourished for seventy years under the principle of popular sovereignty, recognizing the right of each State to do as it pleased. . . . And why can we not adhere to the great principle of self-government, upon which our institutions were originally based. . . .

Abraham Lincoln, On Slavery[4]

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[T]his is the true complexion of all I have ever said in regard to the institution of slavery and the black race. This is the whole of it, and anything that argues me into his idea of perfect social and political equality with the negro, is but a specious and fantastic arrangement of words, by which a man can prove a horse chestnut to be a chestnut horse. I will say here, while upon this subject, that I have no purpose directly or indirectly to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so. I have no purpose to introduce political and social equality between the white and the black races. There is a physical difference between the two, which in my judgment will probably forever forbid their living together upon the footing of perfect equality, and inasmuch as it becomes a necessity that there must be a difference, I, as well as Judge Douglas, am in favor of the race to which I belong, having the superior position. I have never said anything to the contrary, but I hold that notwithstanding all this, there is no reason in the world why the negro is not entitled to all the natural rights enumerated in the Declaration of Independence, the right to life, liberty and the pursuit of happiness. I hold that he is as much entitled to these as the white man. I agree with Judge Douglas he is not my equal in many respects—certainly not in color, perhaps not in

[3] "Mr. Douglas's Speech, First Debate with Stephen A. Douglas at Ottawa, Illinois," *Collected Works of Abraham Lincoln* ed., Roy Basler, vol. 3 (New Brunswick, NJ: Rutgers University Press, 1953), 11–12.
[4] Ibid., 16–18.

moral or intellectual endowment. But in the right to eat the bread, without leave of anybody else, which his own hand earns, he is my equal and the equal of Judge Douglas, and the equal of every living man.

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. . . I leave it to you to say whether, in the history of our government, this institution of slavery has not always failed to be a bond of union, and, on the contrary, been an apple of discord and an element of division in the house. I ask you to consider whether, so long as the moral constitution of men's minds shall continue to be the same, after this generation and assemblage shall sink into the grave, and another race shall arise, with the same moral and intellectual development we have—whether, if that institution is standing in the same irritating position in which it now is, it will not continue an element of division? If so, then I have a right to say that in regard to this question, the Union is a house divided against itself, and when the Judge reminds me that I have often said to him that the institution of slavery has existed for eighty years in some States, and yet it does not exist in some others, I agree to the fact, and I account for it by looking at the position in which our fathers originally placed it—restricting it from the new Territories where it had not gone, and legislating to cut off its source by the abrogation of the slave trade, thus putting the seal of legislation *against its spread*. The public mind *did* rest in the belief that it was in the course of ultimate extinction. But lately, I think—and in this I charge nothing on the Judge's motives—lately, I think, that he, and those acting with him, have placed that institution on a new basis, which looks to the *perpetuity and nationalization of slavery*. And while it is placed upon this new basis, I say, and I have said, that I believe we shall not have peace upon the question until the opponents of slavery arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction; or, on the other hand, that its advocates will push it forward until it shall become alike lawful in all the States, old as well as new, North as well as South. Now, I believe if we could arrest the spread, and place it where Washington, and Jefferson, and Madison placed it, it *would be* in the course of ultimate extinction, and the public mind *would*, as for eighty years past, believe that it was in the course of ultimate extinction. The crisis would be past and the institution might be let alone for a hundred years, if it should live so long, in the States where it exists, yet it would be going out of existence in the way best for both the black and the white races.

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Salmon Portland Chase and Charles Dexter Cleveland, Anti-Slavery Addresses of 1844 and 1845[5]

Thus, fellow citizens, we come to THE GREAT OBJECT OF THE LIBERTY PARTY. IT is, in the words of the Constitution, "TO ESTABLISH JUSTICE; TO SECURE THE BLESSINGS OF LIBERTY." It is, ABSOLUTE AND UNQUALIFIED DIVORCE OF THE GENERAL GOVERNMENT FROM ALL CONNECTION WITH SLAVERY. . . . Let the whole North in a mass, in conjunction with the patriotic of the South, withdraw the moral sanction and legal power of the Union from the sustainment of slavery." We would employ every CONSTITUTIONAL means to eradicate it from our entire country, because it would be for the highest welfare of our entire country. We would have liberty established in the District, and in all the Territories. We would put a stop to the internal slave trade. . . .

We would have equal taxation. We would have the seas free. We would have a free and secure post office. We would have liberty of speech and of the press, which the Constitution guarantees to us. . . . We would have the right of petition most sacredly regarded. We would secure to every man what the Constitution secures, "the right of trial by jury." We would do what we can for the encouragement and improvement of the colored race, and restore to them that inestimable right of which they have been so meanly, as well as unjustly, deprived—the RIGHT or SUFFRAGE. . . . We would have our commercial treaties with foreign nations regard the interests of the free states. We would provide safe, adequate, and permanent markets for the produce of free labor. And, when reproached with slavery, we would be able to say to the world, with an open front and a clear conscience, our General Government has nothing.

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[5] Salmon Portland Chase and Charles Dexter Cleveland, *Anti-Slavery Addresses of 1844 and 1845* (Philadelphia, PA: J.A. Bancroft and Co., 1867), 46–49, 86–87.

One of these amendments [to the Constitution of the United States] . . . provided that "no *freeman* should be deprived of life, liberty, or property, but *by the law of the land,*" and was copied, substantially, from the English Magna Charta. Congress altered the phraseology by inserting, in lieu of the words quoted, "no PERSON shall be deprived of life, liberty, or property, WITHOUT DUE PROCESS OF LAW;" and, thus altered, the proposed amendment became part of the Constitution. We are aware that it has been held by distinguished authority, that the section of the amended Constitution, which contains this provision, operates as a limitation only on national and not upon State legislation. Without controverting this opinion here, it is enough to say that, at the least, the clause prohibits the General Government from sanctioning slaveholding, and renders the continuance of slavery, as a legal relation, in any place of exclusive national jurisdiction, impossible.

For, what is slavery? It is the complete and absolute subjection of one person to the control and disposal of another person, by legalized force. We need not argue that no person can be, *rightfully,* compelled to submit to such control and disposal. All such subjection must originate in force; and, private force not being strong enough to accomplish the purpose, public force, in the form of law, must lend its aid. The Government comes to the help of the individual slaveholder, and punishes resistance to his will, and compels submission. THE GOVERNMENT, *therefore, in the case of every individual slave, is* THE REAL ENSLAVER, depriving each person enslaved of all liberty and all property, and all that makes life dear, without imputation of crime or any legal process whatsoever. This is precisely what the Government of the United States is forbidden to do by the Constitution. The Government of the United States, therefore, cannot create or continue the relation of master and slave. Nor can that relation be created or continued in any place, district, or territory, over which the jurisdiction of the National Government is exclusive; for slavery cannot subsist a moment after the support of the public force has been withdrawn.

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