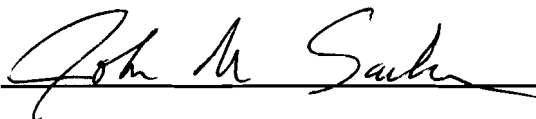


AN ABSTRACT OF THE THESIS OF

Luke Rockers for the Master of Arts

in History presented on June 15, 2004

Title: Slavery and the Constitution

Abstract approved: 

SUMMARY

The framers' of the Constitution of the United States were primarily motivated by economic forces, in the north it was commerce and in the south it was slavery. There was a consensus among the delegates at the Constitutional Convention in 1787 that protection of personal property was the main object of government. It was only natural that personal interest of the delegates played the major role in the formation of the document. In this study the focus is targeted on slavery and its influence on the Constitution. The deep southern delegations of South Carolina, North Carolina, and Georgia insisted that protection of personal property be extended to the slave holders of their states. These men demanded political representation for slaves, extension of slave trade for at least twenty years, and a fugitive slave law. If their demands were not met they would hold the union hostage. For their efforts, or threats depending on which side was taken, a Proslavery Constitution was formed.

SLAVERY AND THE CONSTITUTION

A Thesis Presented
to the Department of
Social Sciences
Emporia State University

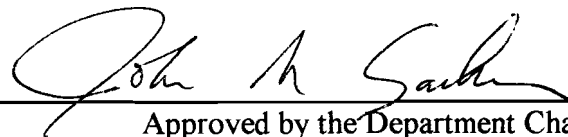
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Master of Arts

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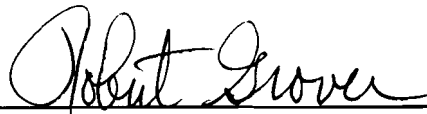
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Approved by the Department Chair



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CHAPTER 1

The United States of America is the most powerful country in the world. Public opinion attributes achievements of economic, social, political, and religious freedom to the U.S. Constitution. A document revered by democratic governments around the world, it has been studied and reformed, interpreted and reinterpreted. Yet to this day scholars fail to agree on its original purpose and meaning. James Hutson writes that professional scholars have, “created so much confusion about the writing of the document that our current understanding of its creation often seems to be as imperfect as it was during the early days of the republic.”¹

The U.S. Constitution was the ultimate result of the American Revolution, a period of world history that experienced a new and powerful idea of individual liberty. An idea that the government no longer ruled the people but was ruled by the people. Yet as much emphasis as our nation has put on such an idea present and past, it is still a struggle for our people to comprehend the reason for slavery in Revolutionary America. The Constitution was a Pro-Slavery document which secured Southern economic interests through political representation of slaves. Southern States would not agree to a Union without the protection of their slaves. Furthermore, the Constitution was a far more conservative document than the Articles of Confederation, and it reserved national power in fewer hands. I contend the combination of its conservative nature and its compromise

¹ James Hutson, “The Creation of the Constitution: Scholarship at a Standstill” *Reviews in American History*. Volume 12 Issue 4 (Dec 84) pp. 463-77

with slavery broke the principles and the idea of democracy.² Finally the motives of the framers were economic due to their belief that the primary goal of government is to secure and protect property. In this paper I hope to expand on what past historians have concluded about the existence of the “peculiar institution” in the United States. To accomplish this task I have divided my thesis into three parts. This first chapter is devoted to an explanation of the historiography of slavery and the Constitution to give the reader a better understanding of the scholarly debate on the subject. Chapter two will focus on the proceedings and debates over slavery at the Constitutional Convention of 1787. My final chapter explores the states where slavery was a major part of the society.

Historiography on the creation of the Constitution can be divided into five eras. The first era covers the first fifty years of the republic. Due to the secrecy of the Constitutional Convention little source material existed during these early years. It did not, however, stop historians from developing ideas about the Constitution. Several of these men were members of the state ratifying conventions such as John Marshall and David Ramsey. These historians believed in the “critical period” thesis. Early intellectuals who sought an explanation of the Constitution concluded that the Articles of Confederation created a “critical period” that left the government inefficient and unable to solve the young nation’s problems. A stronger central government was needed. Heavy

² My definition of democracy is as an idea, not a government, in which participants in government are declared eligible by law. Certain restrictions, defined by law, determine the voter population. In 1787, there were many restrictions and as a result only white males who owned the required amount of property could take part in government. Today the restriction of age defines the pool of eligible voters. The United States as a republican form of government incorporates the idea of democracy to best represent the will of the people and the three-fifths clause destroyed the principles of that idea.

emphasis was placed on Shays' rebellion to show a need for a new government.³

Early historians viewed the Constitution as another great accomplishment by the patriots of the Revolution. Also, they believed its objectives complimented those of the Declaration of Independence. In 1819, Congress approved the publication of the official, *Journal, Acts, and Proceedings of the Convention*. This began a process of releasing documents covering the Constitutional and state ratifying conventions. Two years after the publication of the *Journal*, the notes of Robert Yates, a delegate to the Constitutional Convention from New York, were published. Then in 1827 Jonathan Elliot produced his *Debates of the Several State Conventions*. Throughout the 1830's the creation of the Constitution enjoyed very limited coverage in the history books. Timothy Pitkin, Noah Webster, and Joseph Story each integrated the Constitution into their histories of the United States, yet documented that the Declaration of Independence and the Constitution were not contradictory documents even with the institution of slavery's existence.⁴

In 1840, the original perception of the Constitution changed dramatically due to the posthumous publication of James Madison's notes of the Constitutional Convention debates. Abolitionists like William Lloyd Garrison and Wendell Phillips used *Madison's Notes* to prove that the Constitution was a pro-slavery document. Garrison believed it to be the "bulwark of slavery" and a "covenant with Death and an agreement with Hell,

³ Hutson, p. 465

⁴ Jonathon Elliot, *Debates of the Several State Conventions* (Washington D.C., 1836); Timothy Pitkin *Political and Civil History of the United States* (New Haven, 1828); Noah Webster, *American Selection of Lessons in Reading and Speaking, Eleventh Edition* (Boston, 1787); Joseph Story, *Commentaries on The Constitution of the United States* (Boston, 1833)

involving both parties in atrocious criminality - and should be immediately annulled.”⁵

Phillips in his work, *The Constitution: A Pro-slavery Compact*, argued for five elements of compromise on slavery: 1) the three-fifths clause; 2) extension of slave trade for twenty years; 3) fugitive slave clause; 4) authority granted to Congress to suppress insurrection; and 5) authority to act against domestic violence. He compiled all of the debates that involved slavery, from the Articles of Confederation to the First Congress, in an attempt to reveal the compromise the founders made with slavery. The extracts he contended:

developed most clearly all the details of that ‘compromise,’ which was made between freedom and slavery, in 1787; granting to the slaveholder distinct privileges and protection for his slave property, in return for certain commercial concessions on his part toward the North.⁶

Phillips further commented that the nation as a whole was fully aware of the bargain between the two interests and entered into the union with full knowledge of the situation.

Post-Civil War writers also promoted the thought of “counter revolution.” This argument stressed that the Articles were the true government which produced self government for the people through state legislatures. The Constitution, in turn, supplanted the self government of the states with a national government. Post Civil War writers argued it was due to socioeconomic issues instead of morality. Henry Dawson, in 1871, challenged the thought of early historians and contended that the “critical period”

⁵ Wendell Phillips, *The Constitution: A ProSlavery Compact* (New York, 1856), p. 106; Walter M. Merrill. *Against Wind And Tide- The Life of William Lloyd Garrison* (Cambridge, 1963), p. 204

⁶ Ibid. p. 1

was not critical at all. He insisted that from 1783 to 1787 the status of the United States “revealed every possible evidence of prosperity and peace... prevailed throughout the Union.”⁷ Dawson therefore believed that the Constitution was not needed, it was rather a document “antagonistic to the great republican principles.”⁸ In other words it was a government designed for the wealthy to check the opinion of the masses.

In 1913, two Progressive historians produced books which dealt with the origins of the Constitution. Max Farrand, a noted scholar and Yale University professor, argued in *The Framing of the Constitution* that slavery was not an important issue at the Constitutional Convention, but rather became a question of morality in the early nineteenth century. Charles Beard’s view differed. His *Economic Interpretation of the Constitution of the United States* contested that not only was slavery a factor but its economic implications were the driving force behind the Constitution along with commercial interests. The members of the Constitutional Convention, “were immediately, directly, and personally interested in, and derived economic advantage from the establishment of the new government.”⁹ Therefore slavery was protected as the southern interest in the same manner that the commercial interest was protected by the North. Beard’s thesis challenged the traditional view that the founders were fervent patriots committed to the democratic principles of the new republic. Beard was not the first to highlight the economic origins of the Constitution. As early as 1817, David

⁷ Henry B. Dawson. “The Motley Letter” *The Historical Magazine*. 2nd Series, March 1871 p. 200

⁸ Ibid. p. 198-201

⁹ Charles Beard, *An Economic Interpretation of the U.S. Constitution* (New York, 1913), p. 324

Ramsey recognized the importance of public security holders, and Orin Libby's work, *The Geographical Distribution of the Vote of the Thirteen States on the Federal Convention, 1787-8(1894)* showed the different economic groups' interests in the new government. But Beard was the first to research the treasury records and other financial sources which previous historians had neglected to study. He maintained while his research was incomplete, further research of the like would yield proof to his economic theory. Beard's conclusions provoked a great debate among historians. Charles Warren produced *The Making of the Constitution(1928)* in which he reiterated the "critical period" thesis. But Beard had greatly influenced the scholarship of the Constitution and his theory continued to dominate until the late 1950's.¹⁰

In 1956, Robert E. Brown in *Charles Beard and the Constitution* heavily criticized Beard's conclusions and accused him of having done "great violence" to historical methods. Brown asserted that Beard had altered evidence, purposely misquoted authorities, and used statistics that could not be applied to the question of original intent. He proved that Beard's emphasis on the "economic determinism" of the framers was not wholly founded on concrete evidence. The new historical methods Beard uncovered though were a significant achievement that overshadowed Brown's assault on his methodology.¹¹

Two years after Brown's attack, Beard was attacked again, this time by Forrest

¹⁰ Max Farrand, *The Framers of the Constitution* (New Haven, 1913); Orin Libby, *The Geographical Distribution of the Vote of the Thirteen States of the Federal Convention* (Madison, 1894); Charles Warren, *The Making of the Constitution* (Boston, 1929)

¹¹ Robert Brown, *Charles Beard and the Constitution* (Princeton, 1956)

MacDonald. MacDonald's *We the People* was more thorough in its test of Beard's thesis. He used the same approach that Beard had used in 1913, accumulating economic profiles of both the members of the constitutional and state ratifying conventions. The result was an overwhelming defeat for Beard's interpretation. MacDonald proved by Beard's own methods that the personal and realty interests of the framers did not necessarily coincide with their votes on the Constitution. MacDonald concluded that the issue of economic interest was too complex to place into Beard's model of personal versus realty interests. In his opinion there was no measurable relationship between specific interests and the voting behavior of the delegates. MacDonald explained that the Antifederalists were richer than the Federalists, which he contends is proof economic interests were not a major issue at the Constitutional Convention. Therefore, there is no certain economic explanation for slave interest of the delegates of the southern states according to MacDonald. MacDonald and Brown had ended the prominence of the Beardian school of thought.¹²

Douglas Adair criticized Progressive historians altogether. He believed these men had neglected the role of ideas in the formation of the Constitution. Adair explained that the motives were not those of self-interested politicians but rather motives produced by the principles of "justice, liberty, and stability" through the protection of property. This thesis promoted a more democratic interpretation of the Constitution. The Founders would be able to be raised back to a position of men of great ideas and patriots. Adair believed the framers created a movement toward a democratic government, even if the

¹² Forrest McDonald, *We the People* (Chicago, 1958)

Constitution's provisions did not always show the intention of democracy. His argument was followed by Martin Diamond, a political scientist, who examined Madison's political theory in Federalist #10. He contended it was from this essay that the Constitution was based which proves the intention of a democratic government. While the framers were not fond of popular government, they knew they needed democracy even if they had their own definition of the word. Diamond affirmed the framing of the Constitution was an "effort to constitute democracy." He concluded it was fair to acknowledge the consistency between it and the Declaration of Independence. Essentially Adair and Diamond emphasized what early historians had argued, the Constitution was an attempt by the founders to cure the inefficient government of the Articles. Both authors' thoughts emphasized the significance of ideas at the Philadelphia Convention. These were men who gained individually, but they believed all citizens would benefit from the new government. It was evident that James Madison, the man with the largest impact at the Convention, was the delegate with the least economic interest. After one hundred and twenty years it appeared as if the pendulum had finally swung back in favor of the framers.¹³

Throughout the 1960's scholarship on the Constitution continued to promote the democratic interpretation. Clinton Rossiter's, *1787 The Grand Convention*, appeared in 1966 and favored the traditional "critical period" thesis. He illustrates each delegate's life and their contribution to the Constitution. He explains some delegates had a skewed

¹³ Douglas Adair, *Fame and the Founding Fathers* (New York, 1974); Martin Diamond, "Democracy and the Federalist: A Reconsideration of the Framers' Intent" *American Political Science Review* 52 (March, 1959) p. 60-68

view of liberty, while as a group the men were committed patriots. The Convention, he suggests, was a culmination of the great principles of Revolution philosophy. The democratic interpretation, however, was once again denied as an explanation for the creation of the Constitution. Paul Eidelberg in *The Philosophy of the American Constitution*(1968) disputed the thought, as Diamond had suggested, that ideas of the framers were an indication of the foundation of a democratic government. He concluded it was the framers' fear of the popular government of the masses which, they believed, had caused the state legislatures to fail in the Confederation period. Gordon Wood followed Eidelberg the next year with *The Creation of the American Republic*(1969). Wood emphasized the role of social conflict. The power of democracy was recognized by the Framers and to check that power the Constitution was formed. The Federalists flavored their democratic rhetoric to win the confidence of the people. Also, according to Wood, they intended on controlling national offices by creating large electoral districts. In their minds this would stop the democratic movement of the back country. The document therefore, "was intrinsic an aristocratic document designed to check democratic tendencies of the period."¹⁴

Over the last twenty years scholarship on the Constitution has found its home in journals. The recent studies of the document have been conducted mostly by political scientists who have tried to solve the question by using multi-variant analysis to decipher voting patterns at the Convention. In 1981, Calvin Jillson established an empirical

¹⁴ Clinton Rossiter, *1787: The Grand Convention* (New York, 1966); Paul Eidelberg, *The Philosophy Of the American Constitution* (New York, 1968); Gordon Wood, *The Creation of the American Republic* (Chapel Hill, 1969)

description of the voting alignments which occurred during the Constitutional Convention. Using factor analysis of the roll call votes, Jillson presented a line graph which suggests coalition voting among the states and reflects the common interests among the states. In 1986, Robert McGuire and Robert Ohsfeldt offered a theoretical model study of the delegates' voting behavior through the use of multi-variant statistical techniques. The authors maintain individual roll call votes strongly suggest that those who owned slaves or who represented slave owning constituents more often opposed issues which promoted a national form of government. Historians have argued these methods do offer proof of things such as coalition forces in the Convention, but they do not offer explanations of why delegates voted on certain issues. For example, on the three-fifths clause Jillson's graph lists Massachusetts and Pennsylvania in the group with the four southern slave owning states. Why would two anti-slavery states align themselves with states favoring slavery? Methods like factor analysis and multi-variant statistics leave important questions unanswered. Also the determination of roll call votes is far from finite. Through diaries certain delegates can be placed at the Convention on certain dates. Yet we do not seek to find how someone voted on an issue but rather their rationale of their vote.¹⁵

Another tendency of some historians, such as William Freehling, in their coverage of the subject of slavery, has been to hold the views of Thomas Jefferson as

¹⁵ Calvin Jillson, "Constitution-Making: Alignment and Realignment in the Federal Convention" *The American Political Science Review* 10 (August, 1966), p. 280-303; Robert A. McGuire and Robert Ohsfeldt, "An Economic Model of Voting Behavior Over Specific Issues at the Constitutional Convention of 1787," *Journal Economic History* (March, 1986), p. 79-111

representative of the framers. Freehling argues the legacy of the Framers' attitudes concerning slavery "eventually doomed it as an institution, thanks to gradual abolition, antislavery in the Northwest Ordinance of 1787, closure of the slave trade in 1807, and the general notion that they promoted slavery as an evil." Don Fehrenbacher takes a similar view, or as he phrased it, a "bifocal" view of the Constitution. He believed the Framers acknowledged the existence of slavery, yet at the same time used restrictions which would help eventually doom it. Fehrenbacher states that the Constitution was neither proslavery or antislavery, but rather "carefully phrased to treat slavery as an entity owing its legal existence solely to state law. As years passed, however, slavery tended increasingly to become an institution honored and protected by federal law. That was the most striking difference between the original Constitution and the living Constitution of 1860."¹⁶ Fehrenbacher and Freehling belong to a school of historians who maintain the prevention of using the term "slavery" allowed for demise of slavery and thus it was an antislavery document. They fail, however, to recognize that of the original southern state Constitutions written in 1776-77, the term "slavery" is not mentioned in any of them. John Kaminski argues slavery was very important issue to the framers. Drawing on their extensive letters and speeches, he shows the deep thought and debates these men engaged in over slavery.¹⁷

The idea of racial slavery created a major problem in the United States. While

¹⁶ Paul Finkelman, *Slavery and the Founders* (New York, 1996); William Freehling, "The Founding Fathers and Slavery," *American Historical Review* (February, 1972), p. 81-93; Don Fehrenbacher, "Slavery, the Framers, & the Living Constitution," *Slavery & Its Consequences*, Robert Goldwin And Art Kaufman, ed. (Washington, 1988), p. 16-17

¹⁷ John Kaminski, *A Necessary Evil* (Madison, 1995)

Thomas Jefferson declared that it was King George III who was at fault for its presence in the colonies, the decision was ultimately left to the founders. In fact there were two such opportunities where slavery could have been banished from American society, first with the Articles of Confederation and second with the Constitution. At the Constitutional Convention of 1787, after two attempts at dissolving slavery, not only did this not happen but the institution had grown stronger both as a political and economic institution.¹⁸

The major problem in understanding the Constitutional Convention is the lack of written evidence to support any solid conclusions regarding the framers' intentions. Also the validity of the sources that have survived must be questioned. There have been several records that have survived but many have been discredited. Robert Yates' notes of the convention were considered by Max Farrand the second most important record. They were copied by John Lansing of New York whose copy was published by Citizen Genet. Later Genet's version was compared to the two pages of the original copy that were discovered, and it was found that Genet had altered many sentences. James Madison's notes are the only complete written evidence that allow historians any understanding of the proceedings of the Convention. In 1953, this source too came under attack. William Winslow Crosskey presented a two volume work, *Politics and the Constitution in the History of the United States*, in which he declared the notes a scandalous distortion of the documentary record. He maintained Madison deliberately changed his notes to reconcile conflicts in his political career. Max Farrand acknowledged that Madison altered his notes as late as 1821, yet most historians

¹⁸ Pauline Maier, *American Scripture* (New York, 1997), p. 146-47

considered his motive for changes as an attempt to improve the accuracy of the notes by incorporating the official journal and Yates' notes.¹⁹

Historians have studied the Constitution in the environment, of politics, a political culture dominated by a two party system. We have tried to label the founders as liberals, democrats, progressives, pro-slavery men, abolitionists, and conservatives, among others groups. Yet the founding fathers belonged to no political parties. They did not have a consistent view of all the issues presented before them. Rather they approached each issue independently. All votes at the Constitutional Convention were votes taken on separate measures whether it was slave representation or the proper wording for a certain clause. So in order to determine the true origins of the Constitution we must separate the parts from the whole because this is how the framers approached their work.

¹⁹ William Crosskey, *Politics and the Constitution in the History of the United States* (Chicago, 1953)
Max Farrand, *Framing the Constitution of the United States* (New Haven, 1913)

CHAPTER 2

The Constitution of the United States is a document of the finest quality in all of the world. Many nations have used it as a basis for their own constitutions, and it is highly praised for its democratic flavor. Yet, the existence of slavery under its provisions damages its genius. Perhaps the most astonishing element is the nature of such provisions. While the Constitution was necessary to establish a stronger central government, it strengthened the institution of slavery in three ways; states where slavery existed gained additional representation from the three-fifths clause; the document guaranteed continuation of the slave trade for at least twenty years; and it established a fugitive slave clause. In essence the Constitution legitimized slavery as an acceptable component of society. The states most interested in these benefits were the deep southern delegations of Georgia, South Carolina, and North Carolina. They expressed that only if these concessions were made would they enter the Union. Thus, in the case of slavery the delegates of the deep southern states used the Constitution to cement their economic interests. The same economic motivations appear for the northern and eastern states. In their case, it was the protection of commercial interests. The Convention became a playground for the financial welfare of the states with slavery being its most obvious and costly feature.

The purpose of the Federal Convention was to address problems found in the Articles of Confederation. The Articles of Confederation were the constitution of the United States from 1781 to 1789. The Congress of the Confederation held very little power. There was no general executive or judiciary. Monies could only be obtained from

the states by asking them to contribute their quotas for government expenses. Most states did not fulfill these quotas. Furthermore, Congress was not a general legislature but a diplomatic assembly, in which each state had an equal vote. The result was a union where the several states maintained much of their sovereignty and the general government could not apply the appropriate measures needed for the common defense and general welfare of the nation. Merrill Jensen maintains the fact that the Articles “were supplanted by another constitution is no proof of their success or of their failure.” It was the result of the revolutionary movement within the American colonies between radicals and conservatives. The government acknowledged slavery and applied it to taxation. Under Article XI, Congress had resolved that each colony’s proportion of the bills emitted by Congress should be determined according to the total population, including negroes and mulattoes. This was the situation the delegates faced as they entered the Convention.¹

In May of 1787 delegates arrived in Philadelphia at the Constitutional Convention to “form a more perfect union.” To achieve this goal there would have to be compromise among the states. Each state had interests to protect, so delegates were reluctant to concede authority that might jeopardize those interests. To the southern states, the issue of most importance was slavery, especially in South Carolina and Georgia where it was an economic concern. Their strategy was simple, no slavery no union. It was a bold and very effective strategy. After four months of debate on the new government, not only did they retain the right of states to decide the issue of slavery, but they increased their influence in the government through intelligent schemes that were backed by the threat of

¹ Merrill Jensen, *The Articles of Confederation* (Madison,), p. 146-239

disunion. For the northern states, slavery was an attack on liberty. Throughout the Convention, the institution was attacked from religious, economic, political, and social perspectives. All cases were strong arguments but in the end they proved irrelevant. The threat of disunion far outweighed any argument, no matter how plausible, the northern states advanced. Because of this fact, the Constitution heavily favored the continuation of slavery and provided for no gradual abolition of any kind.²

To understand any debate it is crucial to understand the players in that debate. So let us examine the southern delegates sent to the Constitutional Convention and thus, answer the question of why slavery was such a major issue to them. Many of the delegates from states located below the Mason-Dixon line had personal interest in slaves. Three of the five delegates from Maryland owned slaves. Daniel Carroll owned a large estate in Prince George County. He was member of a prominent Maryland family of Irish descent. Daniel's older brother was John Carroll, the first Roman Catholic bishop in the United States. Daniel was born in 1730 at Upper Marlboro, Maryland. Befitting the son of a wealthy Roman Catholic family, he studied for six years (1742-48) under the Jesuits at St. Omer's in Flanders. Then, after a tour of Europe, he sailed home and soon married Eleanor Carroll, apparently a first cousin of Charles Carroll of Carrollton. Not much is known about the next two decades of his life except that he backed the War for Independence reluctantly and remained out of the public eye. No doubt he lived the life of a gentleman planter. In 1781, Carroll entered the political arena. Elected to the Continental Congress that year, he carried to Philadelphia the news that Maryland was at

² Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, Mass., 1967)

last ready to accede to the Articles of Confederation, to which he soon penned his name. During the decade, he also began a tour in the Maryland senate that was to span his lifetime and helped George Washington promote the Patowmack Company, a scheme to canalize the Potomac River so as to provide a transportation link between the East and the trans-Appalachian West.³

Daniel Carroll did not arrive at the Constitutional Convention until July 9. He spoke about twenty times during the debates and served on the Committee on Postponed Matters. After the convention, he campaigned for ratification of the Constitution but was not a delegate to the state convention. In 1789, Carroll won a seat in the U.S. House of Representatives, where he voted for the location of the Nation's Capital on the banks of the Potomac and for the federal assumption of state debts. In 1791, he was chosen by George Washington as one of three commissioners to survey and define the District of Columbia, where he owned a large amount of land. Ill health caused him to resign this post four years later, and the next year at the age of 65 he died at his home near Rock Creek in Forest Glen, Maryland. He was buried there in St. John's Catholic Cemetery. He owned fifty three slaves in 1790.⁴

Daniel of St. Thomas Jenifer was a member of the old aristocracy. Jenifer was born in 1723 of Swedish and English descent at Coates Retirement (now Ellerslie) estate, near Port Tobacco in Charles County, Maryland. Little is known about his childhood or

³ James Marshall, *The United States Manuel of Biography* (Philadelphia, 1856); Mary Geiger, *Daniel Carroll, A Frammer of the Constitution* (Washington D.C., 1943) pp. 3, 19-35, 124-46

⁴ Forrest McDonald, *We the People*. (Chicago, 1958), p. 68. All records for slave holdings comes from the 1790 census which McDonald used in this book.

Martin prosecuted Loyalists and while still attorney general, Martin joined the Baltimore Light Dragoons. Martin married Maria Cresap on Christmas Day 1783. After the war he went back to his law practice which grew to become one of the largest and most successful in the country. In 1785, Martin was elected to the Continental Congress, his public and private duties prevented him from traveling to Philadelphia. At the Constitutional Convention Martin opposed the idea of a strong central government but disapproved of the secrecy of the proceedings. He sided with the small states and voted against the Virginia Plan. Martin served on the committee formed to seek a compromise on representation, where he supported the case for equal numbers of delegates in at least one house. Before the convention closed, he and another Maryland delegate, John Francis Mercer, walked out.⁶

In an address to the Maryland House of Delegates in 1787, Martin attacked the proposed new form of government through 1788. Martin opposed including slaves in determining representation and believed that the absence of a jury in the Supreme Court endangered freedom. The assumption of the term "federal" by those who favored a national government also irritated Martin. Martin was the defense counsel in two controversial national cases. In the first Martin won an acquittal for his close friend, Supreme Court Justice Samuel Chase, in his impeachment trial in 1805. Two years later Martin was one of Aaron Burr's defense lawyers when Burr stood trial for treason in 1807. After a record twenty-eight consecutive years as state attorney general, Luther Martin resigned in December 1805. He was reappointed attorney general of Maryland in

⁶ Paul Clarkson, *Luther Martin of Maryland* (Baltimore, 1970), pp. 9-19, 34-80

1818, and in 1819 he argued Maryland's position in the landmark Supreme Court case *McCulloch v. Maryland*. The plaintiff, represented by Daniel Webster, William Pinckney, and William Wirt, won the decision, which determined that states could not tax federal institutions. In 1826, at the age of 78, Luther Martin died in Aaron Burr's home in New York City and was buried in an unmarked grave in St. John's churchyard.⁷

James McHenry was born at Ballymena, County Antrim, Ireland, in 1753. He enjoyed a classical education at Dublin, and emigrated to Philadelphia in 1771. The following year, the rest of his family came to the colonies, and his brother and father established an import business at Baltimore. James continued schooling at Newark Academy in Delaware and then studied medicine for two years under the Dr. Benjamin Rush in Philadelphia. During the Revolution, McHenry served as a military surgeon. Late in 1776, while on the staff of the 5th Pennsylvania Battalion, he was captured Fort Washington, New York. He was paroled early the next year and exchanged in March 1778. He was assigned to Valley Forge, Pennsylvania, and became secretary to George Washington. McHenry quit the practice of medicine to devote himself to politics and administration. In 1784, he married Margaret Allison Caldwell. McHenry played a very minor role at the Constitutional Convention. He did maintain a private journal that has been useful to historians and campaigned for the Constitution in Maryland and attended the state ratifying convention. From 1789 to 1791, McHenry in the state assembly and in the years 1791-96 again in the senate. A staunch Federalist, he then accepted Washington's offer of the post of Secretary of War and held it into the administration of

⁷ *Ibid.*, pp. 275-300

John Adams. McHenry looked to Hamilton rather than to Adams for leadership. As a result McHenry's performance and distrustful of his political motives and in 1800 forced him to resign. McHenry returned to his estate near Baltimore and to semiretirement. He remained a loyal Federalist and opposed the War of 1812. James died in 1816 at the age of 62 and was buried in Baltimore's Westminster Presbyterian Cemetery. He did not own any slaves.⁸

John Francis Mercer, born on May 17, 1759, was the fifth of nine children born to John and Ann Mercer of Stafford County, Virginia. He attended the College of William and Mary, and in early 1776 he joined the 3d Virginia Regiment. Mercer became General Charles Lee's aide-de-camp in 1778, but after General Lee's court-martial in October 1779, Mercer resigned his commission. He spent the next year studying law at the College of William and Mary and then rejoined the army. Later he represented Virginia in the Continental Congress. Mercer married Sophia Sprigg in 1785 and soon after moved to Anne Arundel County, Maryland. He attended the Constitutional Convention as part of Maryland's delegation when he was only twenty-eight years old, the second youngest delegate in Philadelphia. Mercer was strongly opposed to centralization, and voted against the Constitution. He and fellow Marylander Luther Martin left the proceedings before they ended. After the convention, Mercer continued in public service. He allied himself with the Republicans and served in the Maryland House of Delegates in 1778-89, 1791-92, 1800-1801, and 1803-6. Between 1791 and 1794 he also sat in the U.S. House of Representatives for Maryland and was chosen governor of the state for two

⁸ Marshall, p.143-44

terms, 1801-3. During Thomas Jefferson's term as President, Mercer broke with the Republicans and joined the Federalist camp. Illness plagued him during his last years. In 1821, Mercer traveled to Philadelphia to seek medical attention, and he died there on August 30. His remains lay temporarily in a vault in St. Peter's Church in Philadelphia and were reinterred on his estate, "Cedar Park" in Maryland. McDonald does not acknowledge if Mercer owned any slaves, but he does mention Mercer had large plantations in Virginia and Maryland. It is hard to believe that he did not own slaves.⁹

All of the Virginia delegates owned slaves. George Washington owned an enormous amount of land. The eldest of six children from his father's second marriage, George was born into the landed gentry in 1732 at Wakefield Plantation, Virginia. Until reaching 16 years of age, he lived there and at other plantations along the Potomac and Rappahannock Rivers, including the one that later became known as Mount Vernon. After he lost his father at the age of eleven, his half-brother Lawrence, who had served in the Royal Navy, acted as his mentor. At the age of 16, in 1748, Washington joined a surveying party sent out to the Shenandoah Valley by Lord Fairfax, a land baron. For the next few years, Washington conducted surveys in Virginia and present West Virginia and gained a lifetime interest in the West. Washington wed Martha Dandridge Custis, a wealthy widow and mother of two children. From 1759 to 1774, he managed his plantations and was a member of the Virginia House of Burgesses. Washington represented Virginia at the First and Second Continental Congresses and in 1775, after Lexington and Concord, Congress appointed him as commander in chief of the

⁹ *Ibid.* p. 145, McDonald, p.68

Continental Army. Once the Treaty of Paris (1783) was signed, he resigned his commission and returned once again to Mount Vernon. His wartime financial sacrifices and long absence, as well as generous loans to friends, had severely impaired his extensive fortune, which consisted mainly of his plantations, slaves, and landholdings in the West. At this point, however, he was to have little time to repair his finances, for his retirement was brief. Dissatisfied with national progress under the Articles of Confederation, Washington advocated a stronger central government. He presided over the Constitutional Convention, but rarely spoke out. Following ratification in 1788, the electoral college unanimously chose him as the first President. He died at the age of 67 in 1799. During his life he possessed well over two hundred slaves.¹⁰

George Mason was another member of the Virginia aristocracy. In 1725, George Mason was born to George and Ann Thomson Mason. George's father died when he was ten years of age and was left in the care of his uncle, John Mercer. Mason established himself as an important figure in his community. As owner of Gunston Hall he was one of the richest planters in Virginia. In 1750, he married Anne Eilbeck, and in twenty-three years of marriage they had five sons and four daughters. In 1752, he gained an interest in the Ohio Company, an organization that speculated in western lands. When the crown revoked the company's rights in 1773, Mason, the company's treasurer, wrote his first major state paper, *Extracts from the Virginia Charters, with Some Remarks upon Them*. Mason pursued his political interests. He was a justice of the Fairfax County court, and

¹⁰ William Sterne Randall, *George Washington: A Life* (New York, 1997), pp. 13-17, 203-55, 269-87, 433-36

between 1754 and 1779 Mason was a trustee of the city of Alexandria. In 1759, he was elected to the Virginia House of Burgesses. When the Stamp Act of 1765 aroused outrage in the colonies, George Mason wrote an open letter explaining the colonists' position to a committee of London merchants to enlist their support.¹¹

In 1776, Mason framed the Virginia's Declaration of Rights, which was widely copied in other colonies and served as a model for Jefferson in the first part of the Declaration of Independence, and was the basis for the federal Constitution's Bill of Rights. The establishment of a government independent of Great Britain required the abilities of persons such as George Mason. His early work, *Extracts from the Virginia Charters*, influenced the 1783 peace treaty with Great Britain, which established the Anglo-American boundary at the Great Lakes instead of the Ohio River. Mason drew up the plan for Virginia's cession of its western lands to the United States. He married his second wife, Sarah Brent, in 1780. At Philadelphia in 1787, Mason was one of the most frequent speakers at the Constitutional Convention, but refused to sign the document. He explained the reasons at length, his main concern being the absence of a declaration of rights. He discussed the provisions of the Constitution point by point. Mason concluded the new government was destined to either become a monarchy or be run by a corrupt aristocracy. Mason was guided by his belief in the rule of reason and in the centrality of the natural rights of man. Mason died on October 7, 1792, and was buried on the grounds of Gunston Hall. He owned over 75,000 acres of land and three hundred slaves in 1790.

¹¹ Helen Hill Miller, *George Mason, Gentleman Revolutionary* (Chapel Hill, 1975), pp. 22-25, 30-41, 214

Ironically he strongly urged the end of slavery and was opposed to the Constitution with its provisions that favored slavery.¹²

James Madison devoted his life to politics, yet managed to own nine slaves. The oldest of ten children and a scion of the planter aristocracy, Madison was born in 1751 at Port Conway, King George County, Virginia, while his mother was visiting her parents. He received his early education from his mother, from tutors, and at a private school. In 1771, he graduated from the College of New Jersey(Princeton). Madison embraced the revolution and helped frame the Virginia constitution. His ill health precluded any military service. In 1780, Madison was chosen to represent Virginia in the Continental Congress (1780-83 and 1786-88). He wrote extensively about the problems in the Articles of Confederation was clearly the major figure at the convention. His journal of the convention is the best single record of the event. Madison collaborated with Alexander Hamilton and John Jay in 1787-88 on the Federalist Papers(1788) which spelled out republican principles that dominated the framing of the Constitution. He also assisted in organizing the executive department and creating a system of federal taxation. As leaders of the opposition to Hamilton's policies, he and Jefferson founded the Democratic-Republican Party. In 1794, Madison married Dolly Paine Todd. In 1798, he wrote the Virginia Resolutions, which attacked the Alien and Sedition Acts and served as Secretary of State from 1801 to 1809. In 1809, Madison succeeded Jefferson as President and served two terms. In retirement after his second term, he devoted long hours to editing his journal of the Constitutional Convention. Although a slaveholder all his life,

¹² Ibid. pp. 207-08, 262-87, 329

he was active during his later years in the American Colonization Society, whose goal was to resettle slaves in Africa. Madison died at the age of 85 in 1836, survived by his wife and stepson.¹³

James McClurg was born near Hampton, Virginia, in 1746. He attended the College of William and Mary and graduated in 1762. McClurg studied medicine at the University of Edinburgh and received his degree in 1770. He pursued postgraduate medical studies in Paris and London. In 1773, McClurg returned to Virginia and served as a surgeon in the state militia during the Revolution. He was appointed professor of anatomy and medicine at the College of William and Mary. In 1779, he married Elizabeth Seldon. McClurg accepted the invitation to serve as representative to the Constitutional Convention in 1787. He left the convention in early August, refused to sign the Constitution. James died in Richmond, Virginia, on July 9, 1823. The census of 1790, showed he owned nine slaves.¹⁴

George Wythe, a lawyer, owned three slaves. George, the second of Thomas and Margaret Wythe's three children, was born in 1726 on his family's plantation on the Back River in Elizabeth City County, Virginia. Both parents died when Wythe was young, and he grew up under the guardianship of his older brother, Thomas. He received very little formal education. Wythe's brother sent him to Prince George County to read law under an uncle. In 1746, at age 20, he joined the bar. In 1747, he married his partner's sister,

¹³ Ralph Ketchum, *James Madison: A Biography* (Charlottesville, 1990), pp. 1-23, 51-54, 68-69, 239-49, 381-82, 628, 669

¹⁴ Marshall, p. 143-44

Ann Lewis, but she died the next year. When Wythe's brother died and he inherited the family estate. In 1755, he married Elizabeth Taliaferro and their only child died in infancy. He served in the House of Burgesses from the mid-1750s until 1775. He also directed the legal studies of young scholars, notably Thomas Jefferson. Wythe first exhibited revolutionary leanings and was one of the first to express the idea of separation of the colonies from the British Empire.¹⁵

During the Revolution, Wythe was sent to the Continental Congress. He signed the Declaration of Independence after the formal signing in August 1776, and in the same year, Wythe, Jefferson, and Edmund Pendleton undertook a three year project to revise Virginia's legal code. In 1777, Wythe also presided as speaker of the Virginia House of Delegates and he educated America's earliest college-trained lawyers of whom two were John Marshall and James Monroe. In 1787, he attended the Constitutional Convention but played an insignificant role, left the proceedings early, and did not sign the Constitution. He did support the Federalist leaders at the Virginia ratifying convention where he presided over the Committee of the Whole and offered the resolution for ratification. He continued to teach and opened a private law school and among his last pupils was Henry Clay. Reflecting a lifelong stance against slavery, Wythe emancipated his slaves in his will. His grave is in the yard of St. John's Episcopal Church in Richmond.¹⁶

John Blair owned over a thousand acres of land and held twenty-six slaves. Blair

¹⁵ Imogene Brown, *George Wythe, American Aristides* (Rutherford, 1981), pp. 19-22, 47-49, 75-79

¹⁶ *Ibid.* pp. 144, 200-22, 294

was born at Williamsburg in 1732 to a prominent Virginia family. He was the son of John Blair, a colonial official and nephew of James Blair, founder and first president of the College of William and Mary. Blair graduated from that institution and studied law at London's Middle Temple. He was a member in the Virginia House of Burgesses as the representative of William and Mary from 1766 to 1770. He participated in the Virginia constitutional convention (1776), and served on the Privy Council (1776-78). Blair attended the Constitutional Convention religiously but never spoke or served on a committee. He usually sided with the position of the Virginia delegation and at state ratifying convention, Blair joined the Federalist cause for the new government. In 1789, Washington chose Blair as an associate justice of the U.S. Supreme Court. He resigned the post in 1796 and spent the remainder of his life in Williamsburg. He died in 1800 at the age of 68. His tomb is in the graveyard of Bruton Parish Church.¹⁷

Edmund Randolph belonged to one of the most prominent families in Virginia that owned land throughout the state. On August 10, 1753, Edmund Randolph was born in Tazewell Hall, Williamsburg, Virginia. His parents were Ariana Jenings and John Randolph. Edmund attended the College of William and Mary and continued his education by studying the law under his father. When the Revolution broke out John Randolph, a Loyalist, followed the royal governor, Lord Dunmore, to England, in 1775 while Edmund stayed with his uncle Peyton Randolph, a prominent figure in Virginia politics. During the war Edmund served as an aide-de-camp to General Washington and also attended the convention that adopted Virginia's first state constitution in 1776. He

¹⁷ Marshall, p. 145

was the youngest member of the convention at age 23. The same year Randolph married Elizabeth Nicholas. He continued to advance in the political world in Virginia where he became mayor of Williamsburg and attorney general. In 1779, he was elected to the Continental Congress, and in November 1786 Randolph became Governor of Virginia. In 1786, he was a delegate to the Annapolis Convention. Four days after the opening of the federal convention in Philadelphia, on May 29, 1787, Edmund Randolph presented the Virginia Plan for creating a new government. This plan proposed a strong central government composed of three branches, legislative, executive, and judicial, and enabled the legislative to veto state laws and use force against states that failed to fulfill their duties. The Virginia Plan became a basis for the Constitution. Randolph agreed the Articles of Confederation were inadequate, but the proposed new plan of union contained too many flaws. Randolph was a strong advocate of the process of amendment and feared if the Constitution were submitted for ratification without leaving the states the opportunity to amend it, the document might be rejected. Randolph supported the Constitution and helped to win Virginia's approval of it. In 1813, Randolph died while visiting Nathaniel Burwell at Carter Hall. Even though he owned sixteen slaves in 1790, he disapproved of the Constitution and refused to sign it.¹⁸

Four of the five delegates from North Carolina held interest in slaves. Richard Dobbs Spaight belonged to the planter class. Spaight was born at New Bern, North Carolina of distinguished English-Irish parentage in 1758. When he was orphaned at 8 years of age, he was sent to Ireland where he obtained an excellent education. He

¹⁸ McDonald, p. 71-75

graduated from Scotland's Glasgow University before he returned to North Carolina in 1778. He became an aide to the state militia commander and in 1780 took part in the Battle of Camden, South Carolina. He served in the Continental Congress from 1783 to 1785. In 1787, at the age of 29, Spaight joined the North Carolina delegation to the Philadelphia convention. He spoke on several occasions and numbered among the few who attended every session. After the convention, he worked in his home state for acceptance of the Constitution. Spaight met defeat in bids for the governorship in 1787 and the U.S. Senate two years later. In 1795 he married Mary Leach and they had three children. In 1798, Spaight entered the U.S. House of Representatives as a Democratic-Republican and remained in office until 1801. At 44 years of age in 1802, Spaight died in a duel at New Bern at the hands of a political rival, John Stanly. He was buried at Clermont estate, near New Bern. He inherited all of his property and possessed seventy-one slaves in 1790.¹⁹

William Blount was another member of the planter class. He was the great-grandson of Thomas Blount, who came from England to Virginia soon after 1660 and settled on a North Carolina plantation. William was born in 1749 while his mother was visiting his grandfather's Rosefield estate, on the site of present Windsor near Pamlico Sound. After the War for Independence began, in 1776, Blount enlisted as a paymaster in the North Carolina forces. He married Mary Grainier (Granger) in 1778. He held a seat in the lower house of the North Carolina legislature from 1780 to 1784, and in the upper house from 1788 to 1790. Blount also served in the Continental Congress in 1782-83 and

¹⁹ Ibid. p. 75-78

1786-87. Appointed as a delegate to the Constitutional Convention at the age of 38, Blount was absent for more than a month due to his decision to represent his state at the Continental Congress. He said very little at the convention signed the Constitution. He favored his state's ratification of the completed document.²⁰

William held speculative land interests and had represented North Carolina in dealings with the Indians. He settled in what became Tennessee, to which he devoted the rest of his life. He resided first at Rocky Mount, a cabin near present Johnson City and in 1792 built a mansion in Knoxville. Washington had appointed Blount as Governor for the Territory South of the River Ohio (included Tennessee) and also as Superintendent of Indian Affairs for the Southern Department. In 1796, he presided over the constitutional convention that transformed part of the territory into the State of Tennessee. He was elected as one of its first U.S. senators in 1796. During this period, Blount's affairs took a sharp turn for the worse. In 1797, his speculations in western lands led him into serious financial difficulties. He devised a plan involving use of Indians, frontiersmen, and British naval forces to conquer for Britain the Spanish provinces of Florida and Louisiana. Blount was caught and the House impeached him, but the Senate dropped the charges in 1799 on the grounds that no further action could be taken beyond his dismissal. He died in 1800 at Knoxville and is buried there in the cemetery of the First Presbyterian Church. He owned thirty slaves in 1790.²¹

William Davie was a lawyer and a war hero. Davie was born in Egremont,

²⁰ William Masterson, *William Blount* (Baton Rouge, 1954), pp. 1-15, 37, 126-33

²¹ *Ibid.* 137-38, 177-85, 321-22

Cumberlandshire, England, on June 20, 1756. In 1763, Archibald Davie brought his son William to Waxhaw, South Carolina, where the boy's maternal uncle, William Richardson, a Presbyterian clergyman, adopted him. Davie attended Queen's Museum College in Charlotte, North Carolina, and graduated from the College of New Jersey (Princeton) in 1776. Davie's law studies in Salisbury, North Carolina, were interrupted by military service, but he won his license to practice before county courts in 1779 and in the superior courts in 1780. When the War for Independence broke out, he helped raise a troop of cavalry near Salisbury and eventually achieved the rank of colonel. After the war, Davie continued his career as a lawyer, traveling the circuit in North Carolina. In 1782, he married Sarah Jones, the daughter of his former commander, Gen. Allen Jones, and settled in Halifax. His legal knowledge and ability won him great respect, and his presentation of arguments was admired. Between 1786 and 1798 Davie represented Halifax in the North Carolina legislature. At the Constitutional Convention, Davie favored plans for a stronger central government. He favored election of senators and presidential electors by the legislature and insisted on counting slaves in determining representation. Although he left the convention early, Davie fought hard for the Constitution's ratification and took a prominent part in the North Carolina convention. Davie's legacy continued as a chief founder of the University of North Carolina. He selected the location, instructors, and a curriculum that included the literary and social sciences as well as mathematics and classics. In 1798 he became Governor of North Carolina and later served as a peace commissioner to France in 1799. In 1805, after the death of his wife, Davie retired from politics to his plantation, Tivoli, in Chester County,

South Carolina. In 1813, he declined an appointment as major-general from President Madison. Davie died on November 29, 1820, at Tivoli, and he was buried in the Old Waxhaw Presbyterian Churchyard in northern Lancaster County. He owned a plantation in South Carolina and thirty-six slaves in 1790.²²

Alexander Martin was born in Hunterdon County, New Jersey in 1740. His parents, Hugh and Jane Martin, moved first to Virginia, then to Guilford County, North Carolina, when Alexander was very young. Martin attended the College of New Jersey (Princeton), received his degree in 1756, and moved to Salisbury. There he started his career as a merchant but turned to public service as he became justice of the peace, deputy king's attorney, and judge of Salisbury. From 1773 to 1774 Martin served in the North Carolina House of Commons and in the second and third provincial congresses in 1775. In September 1775, he was appointed a lieutenant colonel in the Second North Carolina Continental Regiment. Martin saw military action in South Carolina. He served in the North Carolina Senate (1778-82, 1785, and 1787-88) and as governor from 1781 to 1785. Martin represented his state in the Continental Congress, but he resigned in 1787. He was not very active at Philadelphia and left before the Constitution was signed. Martin again served as Governor of North Carolina, from 1789 until 1792. He died on November 2, 1807 at the age of 67 at his plantation, Danbury, in Rockingham County and was buried on the estate. He made his fortune in law but converted his money into land and slaves which translated into a plantation and forty-seven slaves by 1790.²³

²² McDonald, p. 77

²³ Ibid. p.78

Hugh Williamson was born of Scotch-Irish descent at West Nottingham, Pennsylvania., in 1735. He was the son of a clothier. He attended preparatory schools at New London Cross Roads, Delaware, and Newark, Delaware. He entered the first class of the College of Philadelphia (University of Pennsylvania) and took his degree in 1757. The next two years, at Shippensburg, Pennsylvania, Williamson spent settling his father's estate. Hugh trained in Connecticut for the ministry but was never ordained. He took a position as professor of mathematics at his alma mater. In 1764, Williamson abandoned these pursuits and studied medicine at Edinburgh, London, and Utrecht, eventually obtaining a degree from the University of Utrecht. Back in Philadelphia he began to practice but found it to be emotionally exhausting. His pursuit of scientific interests continued, and in 1768 he became a member of the American Philosophical Society. In 1775, Williamson wrote a pamphlet called *The Plea of the Colonies*. It solicited the support of the English Whigs for the American cause. When the United States proclaimed their independence the next year, Williamson was in the Netherlands. He settled in Charleston, South Carolina, and then in Edenton, North Carolina. There, he prospered in a mercantile business that traded with the French West Indies and once again took up the practice of medicine. He became surgeon-general of state troops. After the Battle of Camden, South Carolina, he frequently crossed British lines to tend to the wounded. After the war, Williamson began his political career. He served in the lower house of the state legislature and to the Continental Congress and was chosen as a delegate to the Constitutional Convention. He played a major role in the compromise on representation. Williamson worked for ratification of the Constitution in North Carolina

and in 1788, he was chosen to settle outstanding accounts between the state and the federal government. He died in 1819, at the age of 83, in New York City and was buried at Trinity Church. He did not own any slaves.²⁴

All of the members of the South Carolina delegation owned large numbers of slaves. John Rutledge, elder brother of Edward Rutledge, signer of the Declaration of Independence, was born into a large family at or near Charleston, South Carolina, in 1739. He received his early education from his father, an Irish immigrant and physician, and from an Anglican minister and a tutor. He studied law at London's Middle Temple in 1760. He sailed back to Charleston to begin a fruitful legal career and to amass a fortune in plantations and slaves. Three years later he married Elizabeth Grimke and moved into a townhouse where he resided most of his life. In 1761, Rutledge became politically active and he was elected to the provincial assembly and held his seat until the War for Independence. He was sent to the First and Second Continental Congress and took part in the writing of the state constitution. He was elected as governor in 1779. In 1780, the British invaded South Carolina where the American army was captured, and the British confiscated Rutledge's property. He never recouped the financial losses suffered during the war.²⁵

Rutledge was one of the most influential delegates at the Constitutional Convention, where he maintained a moderate nationalist stance and chaired the Committee of Detail. He attended all the sessions, spoke often and effectively, and

²⁴ *Ibid.*, p. 75

²⁵ Richard Barry, *Mr. Rutledge of South Carolina* (New York, 1942), pp. 6-17, 71, 171-77

served on five committees. Like his fellow South Carolina delegates, he vigorously advocated southern interests. Washington appointed him as Associate Justice of the United States Supreme Court. In 1791, he became chief justice of the South Carolina supreme court. Four years later, Washington again appointed him to the U.S. Supreme Court, this time as Chief Justice to replace John Jay. But Rutledge's outspoken opposition to Jay's Treaty (1794), and the intermittent mental illness he had suffered from since the death of his wife in 1792, caused the Federalist-dominated Senate to reject his appointment and end his public career. Rutledge died in 1800 at the age of 60 and was buried at St. Michael's Episcopal Church in Charleston. He was granted 25,000 acres as a gift for his leadership role in the revolution and acquired 243 slaves by 1790.²⁶

Charles Cotesworth Pinckney was also a planter-lawyer born into the aristocracy of South Carolina. The eldest son of a politically prominent planter and a remarkable mother who introduced and promoted indigo culture in South Carolina, Charles Cotesworth Pinckney was born in 1746 at Charleston. Seven years later, he accompanied his father, who had been appointed colonial agent for South Carolina, to England. As a result, the youth enjoyed a European education. Pinckney was tutored in London, attended several preparatory schools, and went on to Christ Church College, Oxford, where he heard the lectures of the legal authority Sir William Blackstone and graduated in 1764. Pinckney next pursued legal training at London's Middle Temple and was accepted for admission into the English bar in 1769. He then spent part of on a tour of Europe and studied chemistry, military science, and botany under leading authorities. Late in 1769,

²⁶ Ibid. pp. 328-29, 352, 363-64

Pinckney sailed home and the next year entered practice in South Carolina. His political career began in 1769, when he was elected to the provincial assembly. When South Carolina organized its forces in 1775, he joined the First South Carolina Regiment as a captain. He soon rose to the rank of colonel and fought in the South in defense of Charleston and in the North at the Battles of Brandywine and Germantown. He commanded a regiment in the campaign against the British in the Floridas in 1778 and at the siege of Savannah. When Charleston fell in 1780, he was taken prisoner and held until 1782. The following year, he was discharged as a brevet brigadier general.²⁷

After the war, Pinckney resumed his legal practice and the management of estates in the Charleston area but found time to continue his public service, which during the war had included tours in the lower house of the state legislature (1778 and 1782) and the senate (1779). Pinckney was one of the leaders at the Constitutional Convention. Present at all the sessions, he strongly advocated a powerful national government. His proposed senators should serve without pay, and exerted influence in such matters as the power of the Senate to ratify treaties and a compromise was reached concerning abolition of the international slave trade. He defended the Constitution in South Carolina. Pinckney was a devoted Federalist. Between 1789 and 1795 he declined presidential offers to command the U.S. Army and to serve on the Supreme Court and as Secretary of War and Secretary of State. He was a charter member of the board of trustees of South Carolina College (University of South Carolina). He married twice; first to Sarah Middleton in 1773 and

²⁷ Marvin Zahniser, *Charles Cotesworth Pinckney, Founding Father* (Chapel Hill, 1967), pp. 9-19, 27-42, 81-82

after her death to Mary Stead in 1786. He died in Charleston in 1825 at the age of 79. He was buried in the cemetery at St. Michael's Episcopal Church. When his property was confiscated by the British during the revolution he owned two hundred slaves. After the revolution he assumed a great debt to acquire new slaves. By 1787, his slaves numbered seventy.²⁸

One of the most aristocratic delegates at the convention, Pierce Butler was born in 1744 in County Carlow, Ireland. His father was Sir Richard Butler, member of Parliament and a baronet. Like so many younger sons of the British aristocracy who could not inherit their fathers' estates because of primogeniture, Butler pursued a military career. He became a major in His Majesty's 29th Regiment and during the colonial unrest was posted to Boston in 1768 to quell disturbances there. In 1771, he married Mary Middleton, daughter of a wealthy South Carolinian, and before long resigned his commission to take up a planter's life in the Charleston area. When the Revolution broke out, Butler took up the Whig cause. He was elected to the assembly in 1778, and the next year he served as adjutant general in the South Carolina militia. The War for Independence cost him much of his property, and his finances were in such bad shape that he was forced to travel to Amsterdam to seek a personal loan. In 1786, the assembly appointed him to a commission charged with settling a state boundary dispute. The next year, Butler won election to both the Continental Congress (1787-88) and the Constitutional Convention. In the latter assembly, he was an outspoken nationalist who attended practically every session and was a key spokesman for the Madison-Wilson

²⁸ Ibid. pp. 87-100, 111-113

caucus. Butler also supported the interests of southern slaveholders. He served on the Committee on Postponed Matters. On his return to South Carolina Butler defended the Constitution but did not participate in the ratifying convention. Service in the U.S. Senate in 1789 followed. Although nominally a Federalist, he often crossed party lines. He supported Hamilton's fiscal program but opposed Jay's Treaty and Federalist judiciary and tariff measures. Butler died there in 1822 at the age of 77 and was buried in the yard of Christ Church. He owned 143 slaves in 1790²⁹

Charles Pinckney, the second cousin of fellow-signer Charles Cotesworth Pinckney, was born at Charleston, South Carolina, in 1757. His father, Colonel Charles Pinckney, was a rich lawyer and planter, who on his death in 1782 was to bequeath Sneec Farm, a country estate outside the city, to his son Charles. The latter apparently received all his education in the city of his birth, and he started to practice law there in 1779. After the War for Independence had begun, young Pinckney enlisted in the militia, though his father demonstrated ambivalence about the Revolution. He became a lieutenant, and served at the siege of Savannah (1779). When Charleston fell to the British he was captured and remained a prisoner until June 1781. Pinckney served in the Continental Congress and in the state legislature (1779-80, 1786-89, and 1792-96). He worked to ensure the United States would be granted navigation rights to the Mississippi and strengthen congressional power. Pinckney played a major role in the Constitutional Convention. He claimed to have been the most influential one and contended he had submitted a draft that was the basis of the final Constitution, but most historians have

²⁹ Malcolm Bell, *Major Butler's Legacy* (Athens, 1987), pp. 5-6, 48-49, 73-80, 127-58, 227-29

rejected this assertion. Pinckney worked for ratification in South Carolina (1788). That same year, he married Mary Eleanor Laurens, daughter of a wealthy and politically powerful South Carolina merchant. Pinckney's political career remained strong. From 1789 to 1792 he held the governorship of South Carolina, and in 1790, chaired the state constitutional convention. He served as Thomas Jefferson's Minister to Spain (1801-1805), in which capacity he struggled, unsuccessfully to win cession of the Floridas to the United States. Pinckney died in 1824, and was buried in Charleston at St. Philips Episcopal Churchyard. In 1790, his slaves numbered 111.³⁰

Georgia sent four delegates to the Constitutional Convention. Surprisingly, only one of them owned slaves. Abraham Baldwin was born at Guilford, Connecticut, in 1754, the son of a blacksmith. He graduated from Yale in 1772. He served as a chaplain in the Continental Army in 1779. He turned to the study of law and in 1783 was admitted to the bar at Fairfield, Connecticut. Baldwin moved to Georgia. In 1785, he possessed a seat in the assembly and the Continental Congress. Baldwin attended the Constitutional Convention, from which he was absent for a few weeks. Although usually inconspicuous, he sat on the Committee on Postponed Matters and helped resolve the large-small state representation crisis. He favored representation in the Senate based upon property ownership, but possibly because of his close relationship with the Connecticut delegation he later came to fear alienation of the small states and changed his mind to representation by state. Baldwin returned to the Continental Congress (1787-89). He was then elected to the U.S. Congress, where he served for 18 years (House of

³⁰ Marshall, p. 187-188

Representatives, 1789-99; Senate, 1799-1807). He was appointed with six others in 1784 to oversee the founding of a state college and in 1798 Franklin College was founded. The college was modeled after Yale, and it became the nucleus of the University of Georgia. Baldwin died at the age of 53 in 1807, while still serving in the U.S. Senate. He was buried in Washington's Rock Creek Cemetery. He owned no slaves.³¹

William Few was born in 1748. His father's family had emigrated from England to Pennsylvania in the 1680s, but the father had subsequently moved to Maryland, where he married and settled on a farm near Baltimore. William was born there. He received minimal schooling, at ten years of age, his family moved to North Carolina. In 1771 Few, his father, and a brother associated themselves with the "Regulators," a group of frontiersmen who opposed the royal governor. As a result, the brother was hanged, the Few family farm was destroyed, and the father was forced to move once again, this time to Georgia. Although self-educated, he soon proved his leadership and won a lieutenant-colonelcy in the dragoons. He was elected to the Georgia provincial congress of 1776 and during the war twice served in the assembly, in 1777 and 1779. He served in the Continental Congress (1780-88), during which time he was reelected to the Georgia Assembly (1783). Four years later, Few was appointed as one of six state delegates to the Constitutional Convention. He missed large segments of the proceedings, and chose not to speak but did attend the state ratifying convention. Few became one of his state's first U.S. senators (1789-93). In 1796, he received an appointment as a federal judge for the

³¹ Merton Coulter, *Abraham Baldwin: patriot, educator, and founding father* (Arlington, 1987), pp. 21-35, 43-47, 97-107

Georgia circuit. For reasons unknown, he resigned his judgeship in 1799 at the age of 52 and moved to New York City. Few died in 1828 at the age of 80 in Fishkill-on-the-Hudson. Originally buried in the yard of the local Reformed Dutch Church, his body was later reinterred at St. Paul's Church, Augusta, Georgia. He owned no slaves.³²

William Houston was the son of Sir Patrick Houston, a member of the council under the royal government of Georgia. He was born in 1755 in Savannah, Georgia. Houston received a liberal education at Inner Temple in London. He returned home to join the Revolution. For many years members of Houston's family had been high officials in the colony who remained loyal to the crown, but William was among the first to challenge British aggression. Houston represented Georgia in the Continental Congress from 1783 through 1786 and among Georgia's agents sent to settle a boundary dispute with South Carolina in 1785. He was also one of the original trustees of the University of Georgia at Athens. Houston was only present from June 1 until about July 23, but he was present during the debate on the representation question. Houston died in Savannah on March 17, 1813, and was interred in St. Paul's Chapel, New York City. He did own slaves but it is impossible to calculate a definite number because of the Georgia census has not survived.³³

Very little is known about William Pierce's early life. He was probably born in Georgia in 1740, but he grew up in Virginia. During the Revolutionary War Pierce acted as an aide-de-camp to General Nathanael Greene and eventually attained the rank of

³² Marshall, p. 143-44

³³ McDonald, p. 82

brevet major. In 1783, he married Charlotte Fenwick of South Carolina. Pierce lived in Savannah started a business with his wife's dowry and formed William Pierce & Company. In 1786, he was a member of the Georgia House of Representatives and was elected to the Continental Congress. Pierce who approved of the Constitution, left in the middle of the proceedings. Pierce died in Savannah at age 49 in 1789. Pierce did produce notes on the proceedings of the convention, which were published in the *Savannah Georgian* in 1828. In them he wrote incisive character sketches that are especially valuable for the information they provide about the lesser-known delegates. He did not possess any slaves.³⁴

It is clear from these brief descriptions of the delegates that the continuation of slavery was of great personal interest to the delegates from the southern states. Seventy-five percent of them held slaves and those with a high number of slaves were more vocal and emphatic that slavery remain a right granted to the states. There were a few delegates, such as George Mason and Luther Martin, who spoke out against slavery. The fact that they owned slaves, in Mason's case a great number of slaves, proves where their true sentiments lie.

Now that we are familiar with the southern delegates let us get to the heart of the matter. In the Constitution, three main clauses deal with slavery. The first clause appears in Article 1, Section 2, Paragraph 4 and reads:

Representatives and direct Taxes shall be apportioned among the several states Which may be included within this Union, According to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those

³⁴ Ibid. p. 83-86

bound To Service for a term of Years, and Excluding Indians not yet taxed, three-fifths of all other Persons.³⁵

The vote for this measure was [Ayes-6; noes-2; divided-2]. All deep southern states including Virginia voted Aye on this measure except for South Carolina who was divided. Their reason for division was due to the delegates' emphatic demand for equal representation for slaves. On July 2, the debate at the Convention focused on representation of Congress in the new government. The states were divided on the issue. It had been established that Congress would consist of two houses. Those delegates from large states wished for both houses to be determined by population and the delegates from the small states wanted equal representation. A committee was called to settle the dispute which consisted of one delegate from each state. The result of the committee was revealed three days later and proposed that representation in the upper house be based on equal representation of the states and the lower house to be proportioned according to population, counting five slaves as three free men. The ratio was derived from the tax law of April 18, 1783 from which taxes were apportioned. Ironically, when the ratio was levied for taxation purposes southern states argued that slaves were not worth three-fifths because their production was not worth that much. Now that it was to determine representation, they argued that they deserved more than three-fifths ratio. Of course the northern delegates also flip flopped on the issue.³⁶

On July 9, the committee appointed to determine a method of representation

³⁵ Max Farrand, ed., *The Records of the Federal Convention of 1787*, Volume 1, p.591.

³⁶ Alfred Kelly and Winfred Harbison, *The American Constitution* (New York, 1970), p. 121

reported that the “Legislature shall possess authority to regulate the number of Representatives in any of the foregoing cases, upon the principles of their wealth and number of inhabitants.”³⁷ This opened the door for the inclusion of slaves into the equation. If population determined wealth, then the number of slaves must be counted. The defense of the southern delegates continued to move further and further away from the principles of immediate conditions. In the end they settled for a count that acknowledged five blacks equal to three whites from the perspective of a production ratio. That is to say the intention of the original clause was measured by wealth. The southern delegation received representation not to benefit the slaves but rather to increase that of the slaveholder. For example, the slaveholder who owned five slaves gained four units of representation in the general government, three for the slaves added to his own. To emphasize the importance of this clause, slave states until the Civil War, always had one third more seats in congress than their free population allowed. For example, in 1793 slave states received 47 seats while the free population called for 33, in 1812 the total was 76 instead 59, and in 1833 they held 98 when they should have received only 73. In addition it must be understood that if the fifteen slave states had remained in the Union, even today, they would still possess the power to kill an amendment to the Constitution on any issue. These reasons help explain why the Constitution was a pro-slavery document, and it is exactly what the southern delegates understood the situation to be in 1787.³⁸

³⁷ Farrand, Volume I p. 559

³⁸ Leonard Richards, *The Slave Power* (Baton Rouge, 2000), pp. 56, 192

On July 10, the proposal which granted each state a representative for every 40,000 inhabitants was challenged by Gouverneur Morris(PA) and John Rutledge(SC). Morris believed, “property ought to be taken into the estimate as well as the number of inhabitants. Life and liberty are generally said to be of more value than property. An accurate view of the matter will nevertheless prove that property is the main object of society.”³⁹ The main concern, Morris continued:

ought to be fixed as to secure to the Atlantic states a prevalence in the national councils. The new states(western) will know less of the public interest than These; will have an interest in many respects different; in particular, will be little scrupulous of involving the community in wars, the burdens and operations of Which will fall chiefly on the maritime states. Provision ought therefore to be made to prevent the maritime states from being hereafter outvoted by them.⁴⁰

The fear of future western states was key to the argument of slave representation because it brought the issue of wealth into the equation. General Charles Pinckney(SC) pushed for an equal number of representatives between the northern and southern states. He stated, “I do not expect the Southern states to be raised to a majority of representatives, but wish them to have something like an equality.”⁴¹ An endorsement from the north came from Rufus King(NY) who stated:

I have always expected that as the Southern states are the richest, they will not league themselves with the Northern unless some respect is paid to their superior wealth. If the latter expect those preferential distinctions in commerce and other advantages which they will derive from the connection, they must not expect to receive them without allowing some advantages in return. Eleven out of the thirteen of the states have agreed to consider slaves in apportionment of taxation, and taxation and

³⁹ Farrand, Volume I p. 533

⁴⁰ Ibid. p. 533-34

⁴¹ Ibid. p. 566-67

representation ought to go together.⁴²

Many northern delegates could not agree to representation of slaves. William Paterson(NJ) admitted, “I can regard Negro slaves in no light but as property. They are not free agents, have no personal liberty, no faculty of acquiring property, but on the contrary are themselves property, and like other property, entirely at the will of the master.” He inquired, “Has a man in Virginia a number of votes in proportion to the number of his slaves?. And if Negroes are not represented in the states to which they belong, why should they be represented in the general government? What is the true principle of representation? It is an expedient by which an assembly of certain individuals chosen by the people is substituted in place of the inconvenient meeting of the people themselves. If such a meeting of the people were actually to take place, would the slaves vote? They would not. Why then should they be represented?”⁴³ Gouverneur Morris approached the issue from a different view. He thought, “the Southern states have, by the report more than their share of representation. Property ought to have its weight but not all the weight.”⁴⁴

The northern delegations contended slave representation was unreasonable for many reasons. The most obvious concerned the notion that one white slaveholder now had more than one unit of representation. The basic principles of democracy called for one man, one vote. The final total for representation revealed how much the southern

⁴² Ibid. p. 562

⁴³ Ibid. p. 561

⁴⁴ Ibid. p. 567

states had gained. South Carolina had a population estimated at 95,000 free inhabitants compared to New York which consisted of 230,000 free inhabitants, yet representation in the general government allotted South Carolina with five delegates and New York was granted only six. It is interesting to note that after the three-fifths clause was agreed upon, the word “wealth” was struck from the clause yet the ratio remained.(Later readers of the Constitution would make the assumption that the delegates viewed African slaves as three-fifths of a human being which was not the case.) In essence what northern delegates believed was slaves could not be counted for representation because they had no stake in government. Gouverneur Morris felt that a reward for slaves gave “encouragement to the slave trade... by allowing them representation for their negroes...”⁴⁵ So in retrospect, it can be argued that the Constitution heavily favored the continuation of slavery due to the fact that it conceded an abundance of power to the slave states in the form of representation in the new government.

The delegates of the Southern states were not happy with the situation. After adjournment on July 10, it was agreed there would be sixty-five delegate in the first United States House of Representatives. Using Pennsylvania and all states to the north as Northern states and Delaware and all states south as Southern states, the balance was tipped in favor of the north by a count of thirty-five to thirty. A late appeal for a reduction of one delegate from New Hampshire and an increase of one delegate from Georgia, South Carolina, and North Carolina fell well short of approval. The southern statesmen would not go so quietly. The next day they continued to debate for extra

⁴⁵ Ibid., p. 588

representation to gain more equal number of representatives in the government.

The major question was whether slaves were people or property. To deep southern delegates their label changed as the argument changed. When it asked if slaves were property, Pierce Butler(SC) argued, “property was the only just measure of representation of that government must be determined in proportion to wealth.”⁴⁶ In many states, both North and South, slaves were declared property by law. What about slaves as people? On this question he believed that the wealth of a state could be estimated by the number of its inhabitants which included slaves. If property was to be considered, why just slaves? What about all other property that has value? Why was it not considered in representation? While these questions made sense every time the southern delegates felt trapped they insisted that unless slaves were calculated into the representation equation they could not join the Union. William Davie(NC) voiced that, “It is high time now to speak out. I see that it is meant by some gentlemen to deprive the Southern states of any share of representation for their blacks. I am sure that North Carolina will never confederate on any terms that do not rate them at least as three-fifths. If the Eastern states mean therefore to exclude them altogether, the business is at an end.”⁴⁷ Even more straight forward was Pierce Butler, “The security the Southern states want is that their Negroes may not be taken from them, which some gentlemen within or without doors have a very good mind to do.” The northern delegations had to relent on the issue.

⁴⁶ Ibid. 562

⁴⁷ Ibid. p. 593

ESTIMATED POPULATION USED FOR REPRESENTATION⁴⁸

(White/Black)

State	Pinckney	Paterson	Brearley	Average
NH	97,847	100,000	82-100,000	99,282/0
MA	374,045	400,000	352,000	375,348/0
RI	53,863	48,538/3,331	58,000	53,467/3,331
CT	220,152	192,000/6,000	202,000	204,717/6,000
NY	213,739	219,996/18,889	238,000	223,912/18,889
NJ	138,930	129,000/10,000	138-145,000	136,643/10,000
PA	341,983	-	341,000	341,491/0
DE	37,405	37,000		37,202/0
MD	235,864/80,000	200,000/150,000	174,000/80,000	209,288/103,333
VA	427,474/280,000	350,000/300,000	300,000/300,000	359,158/293,333
NC	181,655/60,000	181,000		181,328/60,000
SC	93,643/80,000	93,000		93,322/80,000
GA	27,060/20,000	27,000		27,030/20,000
TOTAL	2.44 M/520,000	1.64 M/488,220	2.25 M/380,000	2.34 M/462,740

Traditionally, wealth never contributed to determination of representation in democratic governments. In fact, the basic principles of democracy deny wealth a place in government. Butler and the delegates from South Carolina demanded that wealth be part of the representative equation. The reason for this was obvious. Wealth would allow for the large slave population to be counted, thus leading to an increase of influence for the southern states in the general government. As it stood the estimated white population of South Carolina ranked tenth and Georgia had the lowest white population of the thirteen states. It was clear that if representation was based on the number of free inhabitants, the interest of the southern states would be subjected to those of the northern

⁴⁸ Farrand. These numbers were the estimates presented at the Convention according to the notes of Charles Cotesworth Pinckney(SC), William Paterson, and David Brearley.

states. On July 13, 1787, Congress had passed the Northwest Ordinance that called for the creation of five new states when their population exceeded that of the least populated Atlantic State. The Northwest Ordinance expressly prohibited slavery in lands north of the Ohio River. Article Six read:

there shall be neither Slavery nor involuntary Servitude in the said territory otherwise then in the punishment of crimes, whereof the party shall have been duly convicted; provided always that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.⁴⁹

Slavery was not unimportant to the southerners who agreed to the Northwest Ordinance. They recognized in 1787 that development and extension of union was necessary. The prohibition of slavery was only for a time. When territories declared statehood a constitution would have to be provided, which allowed under the Constitution, the right of states to admit slaves. This was confirmed by the Supreme Court case of *Strader v. Graham*(1850) that ruled the Ordinance was of no Constitutional importance.⁵⁰ When territories became states they were entitled to the same representation as the Atlantic States. John Rutledge put emphasis on this point, “If numbers be made the rule of representation, the Atlantic States will be subjected to the Western.”⁵¹

Many historians have chastised the southern delegation for maintaining slavery when it is clear that the Declaration of Independence states the equality of all men. The evident problem that existed involved the idea of republicanism. There was a distinct

⁴⁹ Peter S. Onuf, *Statehood and Union* (Bloomington, 1987), p. 64

⁵⁰ *Ibid.* p. 139

⁵¹ Farrand, *Records of the Federal Convention*, p. 534

difference in opinion that seemed to follow regional lines. The southern delegation viewed republicanism and liberty in terms of the individual states. They argued for the right of states to determine their fate which they tied to liberty. The major problem that historians have faced where slavery is concerned is the Declaration of Independence. Why would intelligent persons like the founders try to rationalize slavery? I contend that one needs to reexamine Thomas Jefferson's work and its original intent. The delegates at the First Continental Congress asked Jefferson to draft a document that declared independence, no more no less. However it is difficult to ask someone to express the sentiment of the whole without the scribe's own thoughts becoming part of the statement. The most famous clause in Jefferson's document was the expression of the man himself and not a view shared by the delegates. Therefore those delegates of the southern league did in fact sign the Declaration of Independence but they did so for the purpose of independence from England. They never expressed the thought of all men created equal, because they knew that not to be the case. In fact they might well have misunderstood Jefferson's own intentions. Here was a man who also owned slaves yet stated that all men are created equal. Surely he did not mean it literally or he himself would not have owned slaves.

Either way it was clear that the citizens of the southern colonies did not agree on all parts of Jefferson's declaration but did agree on independence from the mother country as states. Therefore southern statesmen thought the republican idea included protection of property. Slavery was thought in South Carolina, Georgia, and North Carolina to be a social value. As such, it must be protected by the state. There was an

economic side to it as well. From their own history it was clear that the colonies were set up to make monetary profits. While the society was pre-capitalist, the thought of maximized profits and minimized costs were understood. The practice of chattel slavery was introduced to the colonies. It was viewed as a great source of cheap labor that helped the colonists achieve the original goal of profit. The only difference after independence was the states were now entitled to all their profits instead of paying tax to England. Their view of personal liberty did not extend beyond white citizens and slavery had become an institution of the society.⁵² Charles Pinckney thought that “if slavery be wrong, it is justified by the example of all the world.”⁵³ The democracies of ancient Greece and the republic of Rome from which all future democratic systems were based proved his point. He argued that it was the natural order of things, “in all ages one half of mankind have been slaves.”⁵⁴

When there was still talk of an introduction of a bill of rights in the Constitution, Pinckney thought it a bad gesture because those measures often declare equality in rights. “Now we should make that declaration with very bad grace, when a large part of our property consists in men who are actually born slaves.”⁵⁵ Based on such a statement, it is obvious in its clarity that Jefferson and his southern brethren did not agree. The northern delegation catered to the notion that liberty was more personal. Individual liberty must be

⁵² Robert William Fogel and Stanley L. Engerman, *Time on the Cross* (Boston, 1974), p. 59-78

⁵³ Farrand, *Records of the Federal Convention*, Volume II, p. 371

⁵⁴ *Ibid.*, Volume II, p. 371

⁵⁵ *Ibid.*, Volume II, p. 256

protected from the state. Slavery would be an infringement on the liberty of the people. Luther Martin(MD) expressed, “slavery is inconsistent with the genius of republicanism, and has a tendency to destroy those principles on which it is supported, as it lessens the sense of the equal rights for mankind, and habituates to tyranny and oppression.”⁵⁶

The abolition of slavery had been highly debated since the beginning of the Revolution of 1776. In the opinion of many people, the meaning of the revolution was tied to individual liberty from the government. In the New England states where slaves made up a very small percentage of the population, the abolition movement progressed more rapidly, especially gradual emancipation. In essence gradual emancipation held the slaves in servitude until they were perceived to be of age to survive on their own, usually around twenty-five years of old. At that time they would become freemen entitled to citizenship. In southern states any talk of emancipation had a heretical sound to it. The agricultural community relied on slave labor to cultivate cash crops such as tobacco, rice, and cotton. They maintained that they could not survive without their slaves. Jefferson argued and most white southerners agreed that the climate was much more suitable to the African who they perceived had built an immunity to malaria which was rampant in the swamp lands of the South and a skin color which allowed more toleration of heat.⁵⁷

In the northern states emancipation policies began with Vermont(1777), followed by New Hampshire(1779), Pennsylvania(1780), Massachusetts(1783), Connecticut and

⁵⁶ Bernard Bailyn, ed. *Debate on the Constitution* (New York, 1993), p. 646

⁵⁷ Merrill D. Peterson, ed., *Jefferson Writings*, (New York, 1984), p. 265; Joseph Ellis, *Founding Brothers* (New York, 2001), pp. 89-102

Rhode Island(1784). Slavery was prohibited in the territories north of the Ohio and east of the Mississippi River(1787). In 1782, Virginia enacted a law that allowed for private manumissions of slaves and New York finally passed a gradual emancipation law in 1799. There were even many from Virginia who voiced their opinions against slavery, yet they were themselves attached to the institution. George Mason, Thomas Jefferson, James Madison, and Edmund Randolph all owned large numbers of slaves. Joseph Ellis explains it best, “Virginia, in short, talked northern but thought southern.”⁵⁸ A small group of delegates believed slavery in the states was on its last leg. Roger Sherman from Connecticut, “observed that the abolition of slavery seemed to be going on in the U.S. & that the good sense of the several States would probably by degrees compleat it.”⁵⁹ Oliver Ellsworth also from Connecticut continued, “Slavery in time will not be a speck in our Country. As population increases, poor laborers will be so plenty as to render it useless.”⁶⁰ It is hard to find their reasoning behind this. If they had conceded power to the states to determine the issue how could they imagine those states would relinquish that power in the form of emancipation? While slave population dropped in northern states they continued to grow in the southern states and eventually spread into new states formed in the Southwest region of the country. A closer look at the 1790 census proves their mistake. Free black persons made up less than eight percent of the total black population in Maryland, in Virginia it was four percent, North Carolina five percent,

⁵⁸ Ellis, p. 96

⁵⁹ Farrand, *Records of the Federal Convention*, Volume II., P. 369-70

⁶⁰ Ibid. p. 371

South Carolina two percent, and in Georgia free blacks made up just over one percentage. Obviously, the framers did not have these numbers to look at, but they did have correspondents in these states to inform them of the situation. I am confident these numbers did not drastically change in those three years between the convention and the census.⁶¹

The second main issue that concerned slavery at the Constitutional Convention was the slave trade. Article 1, Section 9 reads, “The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.”⁶² The vote for this measure was [Ayes-7; noes-4]. All deep southern states except Virginia voted Aye on this clause. Virginia was already over populated with slaves. The deep southern delegations contended it would be unfair to force them to stop importation of slaves, meanwhile, Virginia’s slaves would rise in value.

Luther Martin opened the debate by insisting there were three important points to be noted. The first was that the three-fifths clause left an encouragement for the slave trade as Gouverneur Morris had contended earlier. He was proved correct by the increased importation of slaves over the next twenty years. Secondly, slaves weakened the southern states due to threats of slave insurrections, and the rest of the states had to share in the financial burden of possible slave revolts. Finally, slavery was inconsistent with the

⁶¹ Ellis, p. 102

⁶² Farrand., Volume II, p.656.

principles of the revolution and tarnished the reputation of the country. The deep southern delegation was emphatic that the trade remain open. John Rutledge did not see encouragement of the slave trade in the three-fifths clause. He was prepared to accept responsibility, on behalf of the southern states, for the cost of protecting against slave insurrections. The South Carolinian confessed “if the Convention thinks that N.C.; S.C., & Georgia will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those States will never be such fools as to give up so important an interest.”⁶³ Hugh Williamson further commented that “the Southern States could not be members of the Union if the clause should be rejected, and that it was wrong to force any thing down, not absolutely necessary, and which any State must disagree to.”⁶⁴ Abraham Baldwin along with Williamson and General Pinckney projected that if the issue was left to the states to decide, the states would probably bring the trade to an end themselves. Most delegates were not persuaded by this rhetoric and passion of their southern brethren.

A few northern delegates sided with the southern statesmen. Roger Sherman and Oliver Ellsworth were for continuance of the slave trade. Ellsworth viewed slavery as a states’ rights issue, “the morality or wisdom of slavery are considerations belonging to the States themselves. What enriches the part enriches the whole, and the States are the best judges of their particular interest.” Sherman truly believed abolition would defeat slavery in all states. Therefore he did not see the harm in an allowance of the trade. Others like

⁶³ *Ibid.*, Volume II, p. 373

⁶⁴ *Ibid.*, Volume II, p. 373

John Langdon could not “in good conscience” leave the decision of slave importation to the states. He was not fooled by the southern argument that those states would cease to import slaves if the decision fell to the states.⁶⁵

A limit of twenty years would be established for continuation of the slave trade. For the northern states, the right was given to Congress to pass legislation on commercial interests with a simple majority instead of two-thirds. Yet this compromise had little appeal to many. Northerners believed they were not dependent on the South. Nathaniel Gorham of Massachusetts explained, “The Eastern States had no motive to Union but a commercial one. They were able to protect themselves. They were not afraid of external danger and did not need the Southn. States.”⁶⁶ The southern states were willing to trade the commercial concession for the protection of slavery. One reason was the presence of the Spanish and Indian inhabitants to the south and western borders of Georgia and South Carolina. Added to the large slave population, citizens of the two states were virtually surrounded by foreign peoples and these relations were often hostile. The northern delegations thought it necessary to place a tax on importation of slaves to help pay for the “common defence and general welfare.”

The last clause that was discussed was the Fugitive Slave clause. Located in Article 4, Section 2, Paragraph 3, it states,

No Person held to Service or Labor in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labor, but shall be delivered

⁶⁵ Ibid., Volume II, p. 372

⁶⁶ Ibid., Volume II, p. 371

up on Claim of The Party to whom such Service or Labor may be Due.⁶⁷

This clause received a unanimous vote of 11-0 in the affirmative. The reason for the uncontested vote was due to the allowance the fugitive slave clause in the Northwest Ordinance Law that was passed a month earlier.⁶⁸

According to Don Fehrenbacher,

The framers of the Constitution had not intended to make slavery a national institution supported by the Union's fundamental law. Yet, over time, the antebellum federal government adopted the position that slavery was a national institution fully protected by the Constitution. Not all Americans acquiesced in this new understanding, leading to a sectionalization of politics that produced a bloody conflagration that in turn destroyed the slaveholding republic.⁶⁹

Fehrenbacher is wrong. I agree it was not the intention of all framers to create a national institution, but it happened nevertheless. More important the framers knew when they signed this document that what transpired over the next seventy years would be inevitable. Why? Because the Constitution provided the security of slavery nationwide. Just look at the provisions; extra representation, continuance of the slave trade for at least twenty years, and the fugitive slave clause. This last provision truly made slavery a national institution. Otherwise, a sectional institution as Fehrenbacher states, the fugitive slave clause forced northern states to acknowledge the institution. They were legally bound to protect the institution they despised. Therefore, the antebellum federal government did not adopt a position which declared slavery a national

⁶⁷ Ibid., Volume II, p. 662

⁶⁸ Theodore C. Pease, "The Ordinance of 1787," *Mississippi Valley Historical Review* 25, (September, 1938), p. 167-180

⁶⁹ Don Fehrenbacher, *The Slaveholding Republic* (Oxford, 2001)

institution, it simply followed the authority it was granted by the Constitution. Finally, government policy did not lead to sectionalized politics. This was already the case in 1787. No northern delegates owned slaves, while seventy-five percent of the southern delegates owned slaves. While the North would win the physical war of 1865, the South won the political war of 1787.

The continuance of chattel slavery under provisions stated in the Constitution was due to socioeconomic issues. From the foundation at Jamestown to the Revolution of 1776 people migrated to the colonies to make a better life for themselves and hoped for monetary gain. The whole purpose of colonies was to increase the treasury of the crown. The introduction of slavery whether it be primarily race or economic based showed the profit mentality of the people. It was in their best interest to possess slaves to maximize profits and minimize costs. We see the interest of the people of the southern colonies at each critical point always reflected the interest of monetary gain. They agreed to join the northern states in the revolution because it would mean more money for them. Under the system of mercantilism southern planters pledged future crops in exchange for credit from British businessmen. Planters were charged high interest rates and also stuck with high prices on outdated manufactured goods bought from British merchants. After the crop was harvested it was sent back to England where British merchants set prices and took a large part of the profits. Many southern farmers became debtors. Also, they paid heavy duties on their exports, especially on tobacco. Independence from England would give southern planters more control over business and cut down on unnecessary taxes. All the taxes that were paid to England would now stay with them. At the Constitutional

Convention, they threatened not to join the union unless the states were given power to control slavery. It all draws inward to the monetary security of the people. If the trend is followed down to counties and towns the laws would appear more refined to provide financial security to those who held power.⁷⁰

The social part of the problem occurred because of the racial prejudice and imbalance that race had created in the population of the southern states. By 1787, ninety percent of the slaves were located in the southern states. Yet there were ways to rid the states of this problem. Colonization was a plan that was promoted where slaves could be transported back to Africa or to the West Indies. Some even argued that they could be shipped to the western lands. Also compensation plans were in the making. There could have been some sort of gradual emancipation that called for slaves to work for a fixed number of years during which part of their labors would provide for the money needed to transport them to whatever destination was decided. With exception of deportation, this was the general plan of gradual emancipation in the Northern states. All of these reasonable plans were negated by the southern people due to the amount of wealth attributed to slavery. It was obvious that they did not agree on all men created equal as Jefferson described, and that they were only interested in money.⁷¹

There have been studies that argue slavery in many instances was not profitable, so why did southern people hold on to it? This is not true. Those who owned slaves might indeed lose money on them but they were a commodity, an investment. People do

⁷⁰ John Miller, *Origins of the American Revolution* (Boston, 1943), p. 14-15

⁷¹ Paul Boyer, ed., *Oxford Companion to U.S. History* (Oxford, 2001), p. 146; Ellis, p. 106-07

lose money on investments, but most of these studies are targeted at times when the southern agriculture was still being tested. For example tobacco was the first cash crop grown by colonists. After a period of time tobacco was in such great abundance that its price dropped. So for a period of time it could be said that slavery was unprofitable. But there were other areas where slavery was exploited, other crops that would be found profitable. Sugar, rice, and cotton became the tobacco of tomorrow, and it did not take long before the profits of slavery were very apparent. In other words, a good year of business in a slave economy would pay for many years of a stagnant economy and the truth is that there were more good years than bad.⁷²

The Constitutional Convention established a slave power in the southern states that gave it not only legitimacy but also security that it would utilize to control the political arena at the state and national levels. Georgia, North Carolina, and South Carolina gained representation for ownership of slaves, escaped taxation on the slave trade, continuation of the slave trade for at least twenty years, and retained control over slavery. Charles Beard believed that the Constitution was an economic document framed by property owners to protect property owners. While his theory may contain some flaws, current historians have been too harsh on his analysis. Economics were the major force behind decisions at the Constitution Convention. Even those who argue that the revolutionary ideas were important must confess that thoughts of the republic relied heavily on economic factors. Taxation, representation, and the rule of the elite all have a common component and interest, money!

⁷² Fogel and Engerman, *Time on the Cross* (Boston, 1974), p. 59-78

On Monday, September 17, 1787, thirty-eight of the fifty-five delegates met to sign the Constitution. Benjamin Franklin delivered a final speech to the Convention in which he praised the document “with all its faults, if they are such.”⁷³ The members were called by geographic location of their states, which began with New Hampshire and moved southward, Georgia being the last. Abraham Baldwin produced the final signature to the document, but the final test would be the citizens of the several states.

⁷³ Catherine Drinker Bowen, *Miracle at Philadelphia* (Boston, 1966), p. 255

CHAPTER 3

On Monday, September 17, 1787, the Constitution was presented to the delegates of the twelve states attending the convention. It was resolved:

That the preceding Constitution be laid before the United States in Congress assembled, and that it is the Opinion of this Convention, that it should after ward be submitted to a Convention of Delegates, chosen in each State by the People thereof, under the Recommendation of this legislature, for their Assent and Ratification; and that each Convention assenting to, and ratifying the Same, should give Notice thereof to the United States in Congress assembled.¹

It was the opinion of James Madison that the best means of interpreting the Constitution is by studying the ratifying conventions of the several states. Debates took place both in and out of the conventions as well as through the newspapers and private correspondence. In other words, sources are abundant and accessible for historians. In my examination of the ratifying conventions, it becomes clear that the general opinion of how the framers presented slavery in the Constitution was objectionable but not so much as to reject the entire document. The subject of slavery was a true test as to whether or not the thirteen states could form one national government that could protect the interests of each state without affecting the people's sectional liberty. While delegates of northern states spoke out against slavery, protection of personal property was more important; it was considered the main principle of the government. I have provided a brief overview of each southern state's legislation regarding slavery during the colonial years followed by the debates and opinions expressed by the delegates of the state conventions.

Among the southern states, North Carolina was the most liberal on the slave issue.

¹ Max Farrand, *Records of the Federal Convention*, (New Haven, 1913), Volume II,

North Carolina culture consisted of a very sparse population that contained mostly small farmers. There were much fewer slave insurrections due to a more lenient slave policy. Without the large number of plantations, such as those in Georgia and South Carolina, slaves did not have the amount of interaction with each other which prevented revolts. In 1682, a law permitted slaves to choose their own church or profession unless their master decided otherwise. Also, free manumission was awarded in 1715 as a reward for loyal and honest service. Freed slaves, however, were expected to leave the colony within six months. The state became a haven for runaway slaves who could pass for freed men. While North Carolina accepted slavery, it never established a plantation aristocracy like Virginia and South Carolina did. The state was dominated by small farmers who were content with their current situation. The battle for ratification raged for two years in North Carolina. In that time there were numerous attempts made by Federalists to call a state ratifying convention but each time they failed to gain a majority. Finally, due to key absences among the Antifederalists, they won the right to call a convention and ratified the Constitution by a vote of 184 to 84. Slavery did not seem to be the problem, but rather loyalty to a sovereign state.²

In contrast to its neighbor to the north, the colony of South Carolina was built on slavery. Slaves were brought from Barbados to help clear and cultivate the land. The colony was very important for the future of slave legislation. Logically, many of its laws were borrowed from Barbados. The first major slave legislation was established in 1669 by Lord Ashley who help draft the Fundamental Constitutions. In this legislation it was

² Michael Allen Gillespie and Michael Lienesch, *Ratifying the Constitution* (Lawrence, 1989), p. 343-67

expressed that, “Every Freeman of Carolina shall have absolute power and authority over his Negro Slaves, of what opinion or Religion soever”³ Large numbers of slaves were not imported until after the introduction of rice in the 1690's. The most important law was made in 1690 when slaves were defined as real estate. Six years later racial slavery became complete when legislation declared slaves to be either “Negroes, Mollatoes, & Indians.” As the slave population increased rapidly more and more laws were put into place calling for stricter disciplinary measures. Also, import duties were placed on slaves to regulate the slave population.⁴

South Carolina's ratifying convention assembled on May 12, 1788 in Charleston. As expected slavery was the major issue discussed at the convention. Much of the controversy centered around the slave trade. There seemed to be confusion amongst the delegates as to what exactly was meant by the clause. Antifederalists claimed that the slave trade was in danger and therefore slavery itself was to become extinct. Rawling Lowndes, a representative of Charleston, wanted no limits on the slave trade. He boasted the trade could be justified “on the principles of religion, humanity, and justice; for certainly to translate a set of human beings from a bad country to a better, was fulfilling every part of these principles.”⁵ The Federalist camp understood the complaints of their opposition but knew that some compromise had to be made. General Pinckney explained to the convention that “considering all circumstances, we have made the best terms for

³ Jefferey Robert Young, *Domesticating Slavery*, (Chapel Hill) p. 14

⁴ Gillespie and Lienesch, p. 201-34

⁵ Elliot, p. 272

the security of this species of property it was in our power to make. We would have made better if we could; but, on the whole, I do not think them bad.”⁶ The endorsement of leaders like General Pinckney and Pierce Butler was enough to convince other delegates to put their signature to the Constitution. On May 24, 1788, ratification was completed with a final count of 149 to 73.⁷

The institution of slavery in Georgia is definitely the most interesting. Georgia received its Charter in 1732, and management of the land was given to twenty-one Trustees. James Edward Ogelthorpe as chairman stated in 1736 that there should be no black slaves in Georgia. He feared the influence of blacks on Georgia’s society. Pressure came from merchants in South Carolina who recognized the opportunity of prosperity that the rich rice lands of Georgia presented. Slowly, the pro slavery faction grew and in 1751 the first slave code was established. In 1766 Georgia became directly involved in the African slave trade. The number of slaves increased rapidly and cemented the institution in Georgian society. By the mid 1770's slaves represented a capital investment of about one million pounds. Any hope of gradual emancipation was overpowered by the prosperity that slave owners enjoyed. Georgia spent only one day considering the Constitution. The convention received a copy of the document on December 28, 1787 and voted unanimously for ratification the next day. The Constitution was very favorable to Georgia, perhaps more so than any other state. Where slavery was concerned, they received everything they demanded. In addition they received protection from the federal

⁶ Ibid. p. 286

⁷ Robert M. Weir, *Colonial South Carolina- A History* (Millwood, 1983)

government against slave insurrections, Indians, and the Spanish colony of Florida.⁸

The Southern states were very pleased with the Constitution on the issue of slavery. The only sanction suffered was a limit of twenty years on the slave trade. However, even many southerners thought the slave trade a nefarious act.⁹ The large majority of Antifederalists in the South were not ready to accept a federal government. For them slavery was not the major issue, which, in South Carolina and Georgia put them in the minority. Slave representation made the Constitution a major victory for Southern politics and the economy. The deal was sweetened with an addition of federal protection against slave and Indian insurrections. The slave interest of the Southern state was now secured by the Constitution.

Slaves were introduced into Delaware by the Dutch West India Company, the first shipment on record in 1664. The slave population continued to grow in the lower counties where plantations were more abundant. Slavery was challenged by various religious factions including Delaware Quakers. A couple of attempts to stop the slave trade failed in 1767 and 1775. When freedom was proclaimed by the lower counties in 1775 a constitution was drafted with a provision, declared not amendable, which called for a cease of slave importation. In 1787, further measures declared that all slaves who entered Delaware automatically became free. Also fines were imposed on slave holders who attempted to move slaves across state line. Election of delegates to Delaware's

⁸ Harold H. Martin, *Georgia* (New York, 1977); Betty Wood, *Slavery in Colonial Georgia* (Athens, 1984), Gillespie and Lienesch, p. 93-116

⁹ Farrand, Volume II, p. 370

ratification convention occurred on November 26 and the state convention met on December 3 in Dover. There is no record of the debates which creates a problem for those trying to find the delegates' views on the issues like slavery. The delegates worked fast as the Constitution was ratified unanimously by the thirty members on the seventh day of December. There were many reasons why the members took little time among them was the hope of receiving the federal capital, equal suffrage in the Senate, and payment of the debt by land sales and a national impost. These advantages provided by a federal government heavily outweighed any moral opposition to slavery.¹⁰

In 1663 a colonial Maryland law stated that all imported blacks were to be given the status of slaves. A year later slavery was officially introduced as a lawful institution. Finally in 1715 Maryland established a Constitution which enforced slavery. Delegates met in Annapolis on April 21, 1788. Surprisingly, Maryland, the only state not to sign the Articles of Confederation in 1783, was dominated by Federalists. However, the Connecticut Compromise changed any doubts the delegates had about the government. The security of the small state was the most important issue in Maryland. Luther Martin made a valiant effort to persuade his fellow statesmen to refuse the new government. But the guarantee of states' rights and the protection of the national government was too much to turn down. Representation for slaves did not hurt ratification either. With an estimated 40,000 slaves it was figured that by the first Congress Maryland would gain an extra representative in the House for their slaves. The Constitution provided a

¹⁰ Carol E. Hoffecker, *Delaware* (New York, 1977); John A. Munroe, *Colonial Delaware- A History* (Millwood, 1978); Gillespie and Lienesch, p. 29-51

government with which Maryland's interests agreed. On April 28 the Constitution was ratified by an overwhelming majority of 63 to 11.¹¹

The background of slavery in Virginia is well known. The first slaves reached the Old Dominion in 1619 and their treatment in Virginia set a precedent for all the other colonies. The slave code of Virginia started in 1642 with a law enacted which fined those who protected or assisted runaway slaves. In 1661 slavery became a legal institution. As slaves become part of society, a strong effort was made to control them. In 1691 any freed slave was banished from Virginia. From 1723 to 1782 slaves could only be freed by a special act of the Governor or Council. In other words, the only blacks wanted in Virginia were slaves. As ideas became more liberal toward slavery, stipulations on emancipation increased, such as payment of duties for manumission of slaves. Finally in 1778, the importation of slaves was halted. On June 2, 1788, Virginia delegates assembled in Richmond with the knowledge that the required number of states had ratified the Constitution to initiate the new government. The Virginians were split on the main issue. The Antifederalists feared that they would be subjected to the interests of the North. It was clear that the small states of the North had the advantage in the Senate. Antifederalists also distrusted northern politicians and the opportunity to abuse powers to attain local interest, especially those economic in nature. The Federalists, led by Madison, argued that the interest of the nation should supercede local interest and when that occurs the interests of the commercial North and the agricultural South would

¹¹ Carl Bode, *Maryland* (New York, 1978), and William Hand Browne, *American Commonwealths-Maryland* (Cambridge, 1884), Gillespie and Lienesch, p. 171-99

become a common goal set on the development of the young nation.¹²

Slavery was debated thoroughly by the delegates. Many Antifederalists like George Mason argued against the slave trade but for slavery:

The augmentation of slaves weakens the states and such a trade is diabolical in itself and disgraceful to mankind. As much as I value the union of all the States, I would not admit the Southern States into the Union until they agreed to the discontinuance of this disgraceful trade.¹³

As for the slaves who were already owned he explained that the signers of the Constitution, “have not secured us the property... we have already, so that they have done what they ought not to have done, and left undone what they ought to have done.”¹⁴ Mason’s view was questioned by other delegates. George Nicholas did not understand how a person could condemn the Constitution for allowing the slave trade to continue and at the same time seek protection for “the very interest which it allowed to increase for twenty years.”¹⁵ This rhetoric was typical of the Virginians, and it shows how they were torn between the North and South. Economically they sympathized with the southern states with their tobacco plantations and dependence on the slave system. Ideologically they leaned toward the northern states. The two most important documents were drawn from Virginians, the Declaration of Independence and the Bill of Rights. However, the fact that slaves were defined by law as property combined with the main principles of government and its emphasis on the protection of property allowed Virginians to continue

¹² Gillespie and Lienesch, p. 261-98

¹³ Hugh Blair Grigsby, *Virginia Convention of 1788* (New York), Volume I, p. 260-61

¹⁴ *Ibid.* p. 261

¹⁵ *Ibid.* p. 262

to straddle the fence on the issue. On June 27, 1788, Virginia ratified the Constitution by a vote of 89 to 79.¹⁶

In less than two years the United States of America had changed its form of government. The people favored a national government over a federal government. Slavery was a key issue at Philadelphia in 1787 and revealed sectional tensions between North and South. Joseph Ellis writes,

Neither side got what it wanted at Philadelphia in 1787. The Constitution contained no provision that committed the newly created federal government to a policy of gradual emancipation, or in any clear sense placed slavery on the road to ultimate extinction. On the other hand, the Constitution contained no provisions that specifically sanctioned slavery as a permanent and protected institution south of the Potomac or anywhere else. The distinguishing feature of the document when it came to slavery was its evasiveness.¹⁷

Once again, I must disagree with this assessment. The Southern statesmen did get what they wanted. Maybe they lost a small part of the argument when it came to the slave trade, but they still had twenty years to import as many slaves as they wanted. Even then it was not a given that the traffic of slaves would stop in 1808. Moreover, the limit placed on the traffic only multiplied the rate at which slaves were imported. All persons interested in slaves unloaded their capital into slaves. Would this significant, increased rate of slave importation have occurred if there were no limit? Probably not. Eli Whitney's invention of the cotton gin did not help matters either. Yet Ellis ignores that slavery was already in existence. All the Southern statesmen asked for was that the issue be left to the states because slavery was already protected by those states. Finally, Ellis

¹⁶ Gillespie and Liniesch, p. 261-98

¹⁷ Ellis, p. 93

acknowledges the framers never used the term “slavery” and due to the ambiguity of the wording, the Constitution did not sanction slavery. My first problem with historians who raise this point is they attack the wisdom of Americans who lived in late eighteenth century. Ten out of ten Americans would understand the reference to “other inhabitants” as a reference to slaves. Sadly, the same might not be true today. Secondly, as I mentioned before the term slave is not found in any of the southern state constitutions. Rather, they distinguish the rights of freemen from other inhabitants. There is however a common reference in each of the states’ constitutions that allow freemen the right to life, liberty, or property. Since slaves were property by law the constitutions of the southern states protected the right of freemen to own slaves. The citizens of the South were not displeased with their new government.

CONCLUSION

Slavery did not go undetected by the several states in their ratifying conventions, but it was not an issue that held so much weight as to cause disunion or defeat ratification. Therefore the institution survived its greatest test and the necessary evil became a cancer that would grow in the Union. The truth was the Constitution made slavery stronger, not weaker, as the Federalists suggested. It is true that the Articles of Confederation did not have any provisions that attacked slavery directly. But the one negative principle the Constitution allowed was the assurance of direct political power granted to slave owners. For example, the three-fifths clause empowers those who owned slaves through the permission of representation. In reality this clause actually sanctioned paid representation, a principle not shared in democratic government. Furthermore, Madison expressed the continuation of the slave trade for twenty years “will produce all the mischief that can be apprehended from the liberty to import slaves.”¹⁸

Two key events in those twenty years created a powerful slaveocracy in the southern states. First in 1793, the introduction of Eli Whitney’s cotton gin caused a tremendous increase in the demand for slaves. Ten years later the Louisiana purchase was made extending slave territory in the southwest. Slavery was no longer dying out as northern delegates had once thought. Instead it spread like wild fire across the deep South. Together these two events allowed for the southern states to match the rapidly increasing population of the north. As Europeans immigrated to the north, slaves were trafficked to the South which created an equilibrium in Congress and set up many years

¹⁸ Farrand, Volume II p. 415

of compromise over the issue. In the North the three-fifths clause presented the opposite effect. The clause gave northern states possible incentive to emancipate slaves. As it was never a prominent institution in the region, the change in status from slaves to freemen allowed for the states to claim the whole representation of such persons instead of three-fifths. Due to the small number of slaves, taxation would not cause the people to bear a great weight.

Slavery was just one issue discussed at the ratification debates, but its importance cannot be underestimated. Concessions were made to the institution which placed great emphasis on its existence within the government. Representation and taxation, the two most important issues for which the revolution was fought, now involved slavery. The protection of property, the government's main purpose, also involved slavery. The institution was therefore embedded in the government. Its growth reflected that of the government. As the nation expanded so did the slave power. The precedent set in the Constitution and attested by the ratification conventions of the several states promoted its growth in those states where it was protected by law and promoted contempt in those states where it was not. In short, the Constitution made slavery a legitimate national institution. The new Union had been formed by the most intellectual men in the new world, but they had done so on a weak foundation.

The issue of slavery damaged the cohesive matter that made up the United States. It was that little crack in the foundation which steadily grew over time and is the cause of the inevitable crumbling of the house. As a result the Civil War took place in 1861 and with it the Union dissolved, a true testament to the power of slavery and evidence that the

Constitution was a Pro-slavery document. Yet what were the founders to do? How much blame can we place on their shoulders? Could there have been a union without slavery? It is true that history has been somewhat unfair to the heroes of the Revolution. They have been built up to legendary status as to assume they could do no wrong, even to the point where their stance on slavery was overlooked. We sometimes forget the human element of the men. However, knowing what we know of these men and their character, it is safe to say they were men filled with ambition and sought to be leaders of the new nation. Therefore, they must accept some responsibility for the wrongs of their doing.

I have tried to explain the nature of the debates over slavery at the Constitutional Convention and the state ratifying conventions. Clearly the framers were “between a rock and a hard place.” The great majority of them did not favor slavery, but they needed a union. Any state, which did not join the union, would be a haven for a British base of an invasion. Obviously a sacrifice had to be made for the survival of the union. Or did it? During the ratification process, Rhode Island remained adamantly opposed to ratification. Interestingly, in a process, which called for the people to determine their own form of government, the First Congress of the United States forced Rhode Island into the Union by imposing an economic boycott on the state. Did Rhode Island pose enough threat to the union to exact such harsh political measures? Maybe it did, but surely slavery presented no less threat. The effort to abandon slavery was simply not there.¹⁹

The Founders must also accept responsibility for the way they let slavery grow. It was an issue they wished to go away with no effort on their own part. In a letter dated

¹⁹ Gillespie and Lienesch, p. 368-85

June 7, 1785, Thomas Jefferson expressed, “It is to them I look, to the rising generation, and not to the one now in power, for these great reformations.”²⁰ In 1783 George Washington in response to a letter he received from Marquis de Lafayette wrote:

The scheme, my dear Marqs. Which you propose as a precedent, to encourage the emancipation of the black people of the Country from the state of Bondage in wch. They are held, is a striking evidence of the benevolence of your Heart. I shall be happy to join you in so laudable a work; but will defer going into a detail of the business, ‘till I have the pleasure of seeing you.²¹

Again in 1788, after the Convention Washington had this comment about slavery:

The unfortunate condition of the persons, whose labor in part I employed, has been the only unavoidable subject of regret. To make the Adults among them as easy & as comfortable in their circumstances as their actual state of ignorance & improvidence would admit; & to lay a foundation to prepare the rising generation for a destiny different from that in which they were born; afforded some satisfaction to my mind, & could not I hoped be displeasing to the justice of the Creator.²²

The “rising generation” to which these men referred never got the opportunity to attempt the reformations Jefferson alluded to in his writing. This is because the Revolutionary generation failed to sustain pressure against slavery. Ultimately the Revolutionary generation failed in its effort to create the freedom it sought. While it is unfair to hold them to the expectations of the modern day, it was their lack of effort which remains a mystery. How could men who gave their lives for the hope of freedom in the form of a new nation remain silent, as Washington did at the Constitutional Convention, when the same issue was in question? Moreover, how could Washington actually believe that they had laid a foundation which would improve the lives of slaves

²⁰ Merrill D. Peterson, ed. *Thomas Jefferson Writings* (New York, 1984), p. 800

²¹ John Rhodehamel, ed. *George Washington Writings* (New York, 1997), p. 510

²² *Ibid.* p. 701-02

when the Constitution clearly acknowledged the legitimacy of slavery? As future presidents neither Washington nor Jefferson made an effort to use their power to stop the spread nor impede encouragement of the practice. While fault cannot completely be placed on these two men, they are significant because they easily carried to most influence of the time. It is very hard to find an issue in which Washington was seriously challenged by his contemporaries. Is it hard to believe slavery would have been different?

My final point is there are two questions we can ask to determine whether the Constitution was a proslavery document. The first is what did the Constitution do to support slavery? This information I have already provided. The second question is how was slavery stopped. The Thirteenth Amendment states:

Section 1- Neither slavery nor involuntary servitude, except as for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2- Congress shall have power to enforce this article by legislation

In the final effort to legally prohibit slavery, the term had to be used. Did the framers' refusal to acknowledge "slavery" actually create an antislavery Constitution. No! The concessions they gave to slavery made it stronger. At no time, from 1787 to 1861, was slavery in danger. It took a war to get to an amendment that finally destroyed a proslavery Constitution.

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