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**SLAVERY AND THE CONSTITUTION:
A STUDY AS TO HOW CONSTITUTIONAL PRINCIPLES
WERE USED AS THE PRIMARY INSTRUMENT
IN THE LEGAL PROTECTION
AND PROPAGATION
OF SLAVERY**

A Thesis

by

JOSÉ JUAN “J.J.” GUAJARDO

**Submitted to the Graduate School of the
University of Texas-Pan American
In partial fulfillment of the requirements for the degree of**

MASTER OF ARTS

May, 2009

Major Subject: American History

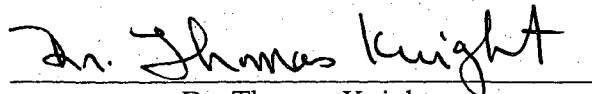
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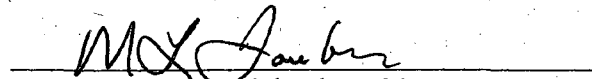
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ABSTRACT

Guajardo, José Juan., Slavery and the Constitution: An Investigation as to how Constitutional Principles were used as the Primary Instrument in the Legal Protection and Propagation of Slavery. Master of Arts (MA), May 2008, 151 pp., references, 148 titles.

It has been the argument of many scholars and historians that the institution of slavery was, when it existed, unconstitutional. Other historians have acknowledged that the Constitution did empower the institution itself, and a few have even suggested that it was generic or benign since it failed to mention the word “slavery” at all. This thesis argues that slavery would not have survived as long as it did had the Articles of Confederation remained in force beyond 1787. The movement to create a new governmental document in 1787 was also a movement to imbed slavery at the core of the nation that government created and to protect it legally through every constitutional means possible. Because of this, the United States Constitution not only enhanced and empowered the institution of slavery, but, was the principal tool used to protect and expand slavery through the implementation of constitution principles. This study will argue that at every step as the country expanded in the 1800s, the Constitution was indeed the tool used by the pro-slavery forces to expand and protect that particular institution for close to eighty years after it was authored.

DEDICATION

The Completion of this thesis would not have been possible without the love and support of my family. My wife, Carmen and all of my children, thank you for your support and love. This dedication would not be complete without mention of my parents, Porfirio and Maria N. Guajardo. Almost forty years ago, when no one was expected to go to college, they believed in, and always encouraged me. Your undying love will live within me forever and beyond.

To all of the students who have ever passed through the doors of my classrooms for the past thirty years, your energy has kept me young, your challenges have kept me sharp, and my experiences with you have been a great inspiration.

ACKNOWLEDGMENTS

I will always be grateful to my thesis committee, Dr. Thomas Knight, Dr. Michael Faubion and Dr. Charles Waite, thank you for your support, constructive criticisms, and faith in me. To Dr. Knight, thank you for having the confidence in me to take on this project. Your wisdom and insight illuminated my path in piloting the murky and perilous waters of a history thesis; I shall forever be in your debt.

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CHAPTER 1

“THE CRITICAL PERIOD AND THE ARTICLES OF CONFEDERATION”

INTRODUCTION

In the one mention of the Articles of Confederation in Gordon Wood's *The Radicalism of the American Revolution*, the author states that there was a movement during the 1780s which was inspired by the vision of a great Nation with such vast resources that it might be possible to trade amongst itself effectively and prosperously, and in doing so maintain its wealth at home.¹ More importantly, the country could finally break away from that mercantilist system, whose yoke had brought so much wealth to both sides of the Atlantic during the colonial period, albeit much more towards the European side of the ocean.²

The Articles of Confederation therefore became the target of a group of men whose vision inclined towards a more unified and prosperous nation. Men with such names as Alexander Hamilton, John Jay, and James Madison -- with their eloquent pen name Plubius -- took aim at the Articles of Confederation and made it their life's work to make the new republic one which was united with a strong central or national government. Perhaps more intriguing, in their eyes, this young nation was one which had the potential to profit immensely and bring more wealth to the fledgling republic.

The period covered in this chapter was a crucial and pivotal moment in the development and history of the United States. Although the Articles of Confederation did provide a stable platform for the fledgling republic from which to launch the new nation, there were certain events that occurred during the 1780s that precipitated the movement to convert the loose confederation into a strong national government. This thesis argues that slavery would not have survived as long as it did had the Articles of Confederation remained in force beyond 1787. The Articles, it suggests, lacked the imbedded legal protections for the “peculiar institution” that the Constitution of 1787 deliberately included. On one level, the movement to create a new governmental document in 1787 was also a movement to imbed slavery at the core of the nation that government created and to protect it legally through every constitutional means possible. In order to make that argument, this chapter will analyze the period and the major events which brought forth the demise of the Articles of Confederation and eventually led to the creation of the United States Constitution.

The Articles of Confederation have been largely ignored by historians during the past two centuries. Usually, they are briefly mentioned in contexts such as Wood’s. Although there are some historians who have elected to study this period extensively, others have chosen to analyze it as an extension, or a “part of,” the founding of the United States. Even today, if one inspects an educational textbook, the “Articles” receive scant attention, being mentioned only to explain just how weak they were or how they needed to be replaced. There was indeed strife during that period in the nation’s young history; in fact, the era when the “Articles” were the law of the land is commonly known

as the “Critical Period.”³ This era will provide a foundation as we develop the next chapters and proceed through the argument of this work.

The setting is significant because we are now analyzing a still infant republic which has matured, accumulated some wealth, and even developed an economic, landowning aristocracy. The subject of the revolutionary period, the critical period and the period after the creation and ratification of the United States Constitution is so significant and so extensively written about that the collection of historical literature is immense. Amongst this vast literature, interpretations have focused on almost every aspect of the period. So why continue to beat the proverbial dead horse?

That is a question this author has asked again and again. Historians are constantly looking to discover something new. Many historians, even of recent times, have covered the period extensively in hopes of a rediscovery. After all, that was what our Constitution became, a rediscovery, or, better put, the re-creation of a nation.⁴ Ask most high school students, even those who are enrolled in an Advanced Placement program, and most will acknowledge that the Constitution provided the “birth” of a nation. In fact, some reading this essay would probably agree that the Constitution did in fact provide for the birth of this nation. Others might argue that the true birth of the nation was the Declaration of Independence on July 4, 1776, and many others would agree with that assessment as well. And so we examine this period as a time, as Gordon S. Wood so eloquently phrases it, *The Creation of the American Republic*.

Interestingly enough, the Articles of Confederation began with the words, “Articles of Confederation and perpetual union. . .” The Confederation then established by the Articles was “perpetual and had virtually unlimited power within its sphere.”⁵ This

statement attests to the frame of mind that existed when the Articles were created; their intent was a creation that would not only survive but continue forever. The Articles were authored almost hand in hand with the Declaration of Independence; in fact, the Declaration of Independence and the Articles of Confederation together formed the first national compact.⁶ And indeed, it was more of a league of friendship than the Revolutionaries intended to create in 1776.⁷ Their hopes were for a creation which would not only outlive them but also, through strength and unity, become eternal and everlasting.

These feelings were strongly influenced by the radical element of the Revolutionaries who believed that the young republic should be guided by the common feeling of radical republicanism or radical country thought. These men believed that such ideas would influence attitudes and institutions which would, in turn, impact the new republic.⁸ The movement began to thrive as revolutionary “fever” began to burn within the hearts and souls of the colonists. This philosophy had come to America from across the Atlantic, for the English strongly believed in republicanism. They had this concept from Renaissance Italy, but the principles of republicanism can be traced back to Greece and Rome.⁹ This colonial radicalism did not become truly effective until after the French and Indian War, as the British bungled in their relationship with the colonists time and again; merchants, among others, were very vocal as the British attempted to enforce the acts passed by Parliament.¹⁰ That fire of “Country” ideology was fueled by a fear of centralized power. Writers such as John Trenchard and Thomas Gordon had described such power in the “shrillest” terms.¹¹ It was the radicals, with their *democratic republican* ideals, that ascended to power during the Revolution and through their leadership and

union, they became more than the voice of opposition against the status quo.¹² It was this very real fear of a centralized power that influenced the framers of the Articles of Confederation to create a small government -- in essence, a small republic in which no one person or group of persons could consolidate power and turn the states of the confederation into a creature of it.¹³

The conservatives, on the other hand, had been a continued presence in all of the states. Although they had been weakened by the Revolution, their impact proved to be extremely important and influential in the constitutional history of the United States. They had appeared in numbers in the first Continental Congress and although their power diminished during the second Continental Congress, by the time the revolutionary movement ascended to another level, they were strong enough to stop the radical agenda in 1775 and eventually to delay a declaration of independence until 1776.¹⁴ Their opposition was so fierce during that particular congress that they opposed every measure that even hinted at independence.¹⁵ Once independence became unavoidable, the conservatives had to choose between England and the United States and, in essence, between loyalism and patriotism. And yet, when independence became an unstoppable force, those conservatives that did become revolutionaries did not discard their ideals of government and were not "led astray by the floods of radical propaganda."¹⁶ In the end, the creation of the Declaration of Independence and the Articles of Confederation provided what both groups yearned for; the radicals received their independence, and the conservatives an organized and confederated government.

Something transpired between 1776 and 1787 that made the Articles of Confederation the target for these men. It could have been a variety of things, such as the

transformation of ideology across the young nation or a change in atmosphere within the young republic. To explain the failure of the Articles of Confederation during the ten short years when the infant republic was guided by this document, historians have put forth multitudinous theses ranging from the possibility of a conspiracy among certain governmental figures to consolidate a power base to the economic difficulties the struggling nation faced to the weaknesses of republicanism that made the document unworkable. Slavery was another issue which was constantly at the forefront of the concerns for the players of this era, and it did not matter if they were from the northern states or the southern states: at every turn, the subject of the institution of slavery was constantly under discussion. There was no doubt: an almost obsessive concern with slavery (which was itself the end product of a tyrannical ruler) was an important component of commonwealth thought throughout British America.

Let us begin with the Articles themselves. They were born, almost hand in hand, with the Declaration of Independence in July of 1776. On July 2, 1776, Richard Henry Lee of Virginia made a motion for a declaration of independence along with a plan to confederate the colonies, and they were drafted on July 12, 1776 by the Second Continental Congress.

This first constitution was quite simple. It was composed of thirteen articles and listed the powers which the confederation would have or not have. The powers of Congress included the following: complete control over foreign affairs and some control over interstate relations; the power to make peace or war; the power to send and receive ambassadors; the power to make treaties and alliances (although individual states could negotiate conflicting treaties); the power to govern trade relations with the Native

Americans; the power to determine standards of coinage although the states might sell coin money; the power to set weights and measures; and the power to organize a postal service.¹⁷ Under these parameters, there was absolutely no mistake as to who held true sovereignty under this constitution. Under the Articles of Confederation, the states retained their sovereignty, their freedom and, most importantly, their independence.¹⁸

One would think that, with such a simple and conservative constitution, not to mention that the fledgling republic was at war, ratification would be just a formality. Nevertheless, it took four years to ratify the Articles after the final draft was presented in 1777.¹⁹ The most contentious issue was that of the unsettled western lands. Six states, Massachusetts, Connecticut, Virginia, North Carolina, South Carolina, and Georgia possessed claims to western lands based upon early claims stemming from grants from the English Crown. Virginia, in particular, refused to give up its claims to these western lands and cede them to the Confederation.²⁰ Other states, Maryland for example, objected because, if the war was won, states like Virginia would be able to gain territory through the efforts of all the states in the war.²¹ And so, when Virginia ceded all claims to western lands in February of 1781, Maryland followed suit, adopting the Articles of Confederation on March 1, 1781.²²

These western lands had been a source of contention since the Proclamation of 1763, when the British government halted all land speculation, making the Virginia land rush nothing but “a pile of rejected petitions and worthless surveys.”²³ Washington and Jefferson, in particular, were hard hit by the Proclamation and joined every other member of Virginia’s House of Burgesses in petitioning Parliament to rescind the act.²⁴ Although their attempt was unsuccessful, how Parliament responded to their request not only

affected the financial standings of men like Washington and Jefferson; it also affected their allegiance towards Britain.²⁵

Nonetheless, Cornwallis's invasion of the south in 1781 heavily influenced the decision to cede all western claims by Virginia. Resistance to the new constitution finally came to an end when Maryland became the last state to ratify the Articles of Confederation on March 1st of that same year.²⁶

To be sure, the Articles of Confederation, which were finally signed by all states, were not the same ones Dickinson had drafted.²⁷ Their fear of a centralized power was so great that the Articles essentially became a "*creature*" of the states.²⁸ What the Articles provided was a Congress which was lacking the power to levy taxes and regulate commerce, having only those powers conferred upon it by Congress. Compared to Franklin's plan, they were "anemic," and they were only a weakened version compared to Dickinson's original draft.²⁹ So fearful of a power grab were the Americans that they eliminated the power of the purse, or the right of Congress to tax.³⁰ The Confederation would have no independent source of income. For the Revolutionaries, this meant that the new con-federal government would never pose a danger to their liberty.³¹ And so, what better way for the Congress to raise funds than by selling lands, some of which had been ceded by states like Virginia, in the Northwest Territory.

While the Articles of Confederation created a weak form of government, where state sovereignty ruled over confederation, it was the Articles that held the country together towards the end of the war for independence, negotiated with other countries, borrowed funds, and negotiated treaties.³² The successes that did occur during the "Critical Period" were a result, not necessarily of the Articles of Confederation, but rather

the members of Congress who doggedly pursued a remedy for dispensing of the northwestern lands in order to raise revenue.³³ For this reason, historians have marked their final product, The Northwest Ordinance, as the major achievement of the Congress which functioned under the Articles of Confederation.³⁴

The Northwest Ordinance, as drafted in 1787, contained more than a guide for admission of territories into states. It also offered a plan of government, allowed for religious freedom, guaranteed right by trial with jury, provided for schools and education and, of course, in the “crowning provision of the ordinance,” eliminated slavery in the northwest territory.³⁵

A total of three ordinances were drafted, discussed, and modified from 1783 to 1787.³⁶ The resulting Northwest Ordinance was being negotiated at the same time as the Constitutional Convention was taking place in Philadelphia in 1787. As the negotiations played out, slavery became one of the central issues at both conventions, and at almost the exact same time.³⁷ At almost every attempt to create a policy for dispensing the northwestern territory, one of the main issues that maintained a presence and was thrown into the discourse was the issue of slavery.³⁸

Thomas Jefferson was actually the second to draft an ordinance in 1784.³⁹ It is best known for its proclamation banning all slavery in the new territories.⁴⁰ In fact, in its original draft, the Ordinance of 1784 did more than just ban slavery. Jefferson’s plan even went so far as to name the new states or territories.⁴¹ The antislavery provision, which in reality was inserted at the urging of Thomas Dickering, showed the incredible force of the antislavery movement. Once again, the issue of slavery was debated at the national level by national leaders, most of who were considered by the majority of

Americans as the Founding Fathers of the nation.⁴² In the end, when the final Northwest Ordinance was ratified, slavery had indeed been banned in the new territories north of the Ohio River.⁴³

Jefferson left for France as foreign minister and was not in audience when the debates came up for discussion in 1784. Because of his absence, he was unable to defend his first Ordinance.⁴⁴ The members of Congress made quick work of his draft, and the version passed was not wholly what Jefferson had intended. Still, it had its merits, such as establishing a clear cut method for the settling of the lands west and northwest of the Appalachians as well as the elimination of slavery, but land speculators would not let things lie.⁴⁵

In 1785, the ordinance, with substantial changes, was passed and in it were the provisions for distributing lands that would have grave consequences for the fledgling nation. At a minimum price per lot of \$640, "payable in specie or its equivalent," the influence of the speculators was clear.⁴⁶ While the congress did not sell many lots to individuals because the \$640 price was beyond their means, a group of speculators from New England – better known as The Ohio Company -- purchased 1.5 million acres at less than ten cents per acre, and the revenue-starved Confederation welcomed the deal.⁴⁷

The Ohio Company once again made its presence felt, as it was influential in the drafting of the final Northwest Ordinance which was passed by the Confederation Congress in 1787.⁴⁸ The principle of banning slavery from the Northwest Territory found itself within the debate once again, but surprisingly, the delegates from the South agreed to the antislavery measure in the ordinance.⁴⁹ There are several possible reasons for the sudden change of heart, including a possible compromise.⁵⁰

In 1787, after Daniel Shays's rebellion in Massachusetts and as the delegates began to gather for the Constitutional Convention, the Confederation Congress was also meeting and putting the final touches to The Northwest Ordinance.⁵¹ In fact, so important were both gatherings that some of the members were representing their states at both locales.⁵² It is because of these gatherings, with some of the same players, that many historians have speculated that a bargain may have occurred. Namely, the argument holds that there may have been a compromise banning slavery north of the Ohio River in return for including the Three Fifths Compromise or the Fugitive Slave Clause in the Constitution.⁵³ Others have argued that the southern delegates voted in favor of the Ordinance even though it banned slavery in the Northwest Territories because southerners thought of the west as an extension of the south and believed that those settlers would, in turn, support southern interests.⁵⁴ Regardless, the Northwest Ordinance, in its final form, virtually assured a political balance between the slave states and the free states, as it not only prohibited slavery in the northwest, but, more importantly, allowed it in the southwest as well.⁵⁵

It should be noted that, although slavery was outlawed in the Northwest Territory, the "fugitive slave clause," which found its origins in the Articles of Confederation, continued to be enforced.⁵⁶ And so, even if slavery were outlawed in those territories, a slave would find it difficult to find refuge with a policy that guaranteed the slave owners of the South that their property would be dutifully returned.

In the end, what the delegates so brilliantly created were two separate documents which proved to be historically profound and which worked hand in hand as the country expanded. Together, this gave life to the United States Constitution as the national

republic vested itself in a new form of government and attempted to become constitutionally solvent.

America's Critical Period in history cannot be analyzed without mentioning Shays's Rebellion. It is not necessary to chronicle all of the events, for the tale is well known. The man responsible for the insurrection was Captain Daniel Shays of Massachusetts, a Revolutionary War veteran. A farmer before the war, he returned to his life as a farmer after the revolution.⁵⁷ Shays hailed from the western part of Massachusetts, where he and many more farmers like him were severely in debt.⁵⁸ Like many of his compatriots and neighbors, he wound up in debtor's court, where many a man who failed to make restitution eventually wound up.⁵⁹ The economic condition in the western portion of the state was making things worse, for an economic depression was hitting the farmers hard.⁶⁰ It was those Americans who were of the debtor *class* who were the hardest hit during this period and were perilously close to losing their farms to creditors.⁶¹

In protest, Shays, a veteran of Bunker Hill and Saratoga, led a band of men whose numbers grew to alarmingly high numbers.⁶² They closed down some of the courts by force and even threatened Boston.⁶³ As the numbers of his volunteers swelled after months of insurrection, he attempted to take the armory in Springfield, Massachusetts.⁶⁴ A militia under General Benjamin Lincoln, himself a veteran of Saratoga, was raised and sent to quell the insurrection.⁶⁵ At Springfield, Shays's men, as an organized fighting group, never attained the military level commensurate with their enthusiasm for their cause. As a result, they were easily subdued by Lincoln.⁶⁶ Shays's Rebellion was over, but its impact would be felt for decades to come.

As the rebellion had been brewing and mobs of armed men were closing courts in Massachusetts, the country followed the exploits of Shays' men. Concern about civil unrest began to overpower the psyche of the young republic.⁶⁷ Men like Madison and Jay, who already felt that the Articles of Confederation were a weak substitute for a true government, seized the moment and fed the fears of those who were now concerned about a government which, no matter how much it wanted to, would not be able to protect them.⁶⁸ So alarmed were they of another potential insurrection that they feared hanging Daniel Shays (surely a treasonous man who plotted the downfall of the government). In fact, Shays was pardoned so that he could return to his property and settle his debts.⁶⁹ The governor of Massachusetts feared making Shays a martyr and therefore giving rise to another insurrection.⁷⁰

It was during the insurrection, while the Annapolis Convention was being held, that the call to revise the Articles of Confederation came out. In no time, as Shays continued to maraud the Massachusetts countryside, all the states agreed to send delegates to a convention in Philadelphia to amend the Articles of Confederation.⁷¹ The fear of anarchy was present, but after Shays's Rebellion, it fed the nationalist movement.⁷² As Madison and other nationalists saw it, with the fear of insurrection and anarchy gripping the countryside, this was the perfect opportunity to make the government of the United States a true national government.⁷³ "Shaysism," as it came to be known, bolstered the concern about a standing army, and Madison warned that a congress which had no ability to suppress such insurrections would leave the country vulnerable from domestic threats.⁷⁴

The planters also awoke from their slumber after Shays's Rebellion. If debtors could rebel and cause insurrection, slaves might also decide to take matters into their own hands.⁷⁵ And as the stench of anarchy began to threaten their level of comfort, they too fell on the side of the strong national government movement.⁷⁶ The nationalists still had their battles before them, but their cause, that of constitutional reform, was gaining momentum.⁷⁷

Republicanism, that principle which fed the revolution, was now also being questioned.⁷⁸ During Shays's Rebellion, "liberty had been carried into anarchy and the throwing off of all government."⁷⁹ The Articles of Confederation, which were basically a treaty of friendship written in the atmosphere of radical revolution, functioned during the revolution, but one could no longer expect that thirteen independent states would obey the will of Congress when their own interests were always at the forefront.⁸⁰

The different takes that men of influence held on Shays's Rebellion indicate that there were different views on the insurrection. Benjamin Franklin looked on the Shays episode "as of minor importance and in no way affecting the steady growth of America."⁸¹ Jefferson wrote of the rebellion: "What country can preserve the spirit of resistance? . . . The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants."⁸² Washington was so alarmed that it "frightened him out of retirement and into politics."⁸³ Noah Webster, lecturing in Massachusetts, denounced the legislatures and their paper money schemes, demanded law and order and called for the creation of a stronger national government.⁸⁴ Abigail Adams was so offended by the Shaysites that she referred to them as "Ignorant, restless desperados, without conscience or principles . . . mobbish insurgents who are for the sapping of the foundation of the

struggling young government.” Although opinions among leading Americans differed, these comments suggest that Shays’ actions had a profound impact on American thinking in 1787.⁸⁵

There can be little doubt that Shays’ Rebellion undermined the Articles of Confederation. No doubt exists that the weaknesses of the Articles provided the Confederation no course to deal with domestic threats. There is little doubt that rebellion also greatly impacted the debates which were about to come and the eventual recreation of the republic.⁸⁶ There were even rumors of British involvement in the insurrection which continued to fester after the Constitution was written and during the ensuing battle for its ratification.⁸⁷ However one wishes to look at Shays’ actions -- whether as a rebellion, an insurrection, or a protest -- the popular revolt heightened the fears of property owners, in particular conservatives, motivating them to work even harder for a powerful national government.⁸⁸

Constitutional historian Lawrence Goldstone argues that “Few countries have emerged with less enthusiasm for unity than the United States.”⁸⁹ The seeds for sectionalism had been sewn decades, even centuries, earlier, when three distinct and regional societies emerged based on slave labor.⁹⁰ This sectionalism permeated the Stamp Act Congress, the Articles of Confederation, and the Constitutional Convention. When issues concerning their colonies, then states, emerged, delegates usually demonstrated their allegiance towards their sovereign homeland.⁹¹

The sectional issue of slavery first became part of the Revolution when patriots in the North guaranteed that slavery would not be disturbed in the South.⁹² John Adams of Massachusetts, himself an “antislavery stalwart,” and other northerners may have

disdained slavery, but they knew that a Revolution would or could not take place unless they guaranteed that slavery would not be molested.⁹³ Yet, as the Revolution played out, several northern states allowed slavery to die out; however, in the Chesapeake, the institution tightened its grip on its slave population.⁹⁴ As Alfred Blumrosen puts it, "The price of freedom from England was bondage for African slaves in America. America would be a slave nation."⁹⁵

To be fair, there were dissenters who were outraged. The most vocal was Thomas Hutchinson, who openly condemned the "apparent hypocrisy" of the declaration's inalienable rights of man in a nation which at the same time deprived hundreds of thousands of Africans of their liberty because of chattel slavery.⁹⁶ While some of the northern colonies, such as Massachusetts, Connecticut, Delaware and Rhode Island, had already attempted to abolish the slave trade, slavery was firmly implanted in the South.⁹⁷ In Pennsylvania, the Quakers staunchly opposed slavery and taxed the institution out of existence, and by 1775 the first antislavery society had been created there.⁹⁸

During the creation of the Articles of Confederation, there were two separate issues concerning the institution of slavery.⁹⁹ The first issue was the basis for which taxes would be paid to the Confederation. Dickinson's draft of the Articles stated that the states were to supply funds in proportion to their total of number of inhabitants of every age, sex and status, with the exception of Native Americans.¹⁰⁰ This provision, of course, did not exclude slaves, and delegates from the South quickly responded.¹⁰¹ Samuel Chase moved that, although in theory every state should be taxed on wealth (which was impossible to measure), taxes on each state should be based upon the number of white inhabitants only.

In a very interesting exchange that took place concerning the tax value of wealth after Samuel Chase moved for his amendment (on July 30, 1776), John Adams observed that “slaves must be included in the enumeration because all workers, whether freemen or slaves, were equally producers.”¹⁰² To that, Benjamin Harrison of Virginia suggested that “two slaves should be counted as one freeman,” and, although the measure did not pass, it would emerge again in Philadelphia in 1787 as the famous “Three Fifths Compromise.”¹⁰³

Just as work on the Articles was to be completed, a group of last minute propositions was referred to the committee which was working on the document’s final draft.¹⁰⁴ This new amendment focused on the rights of slave owners to take their slaves with them when they traveled to other states.¹⁰⁵ This addition “made clear that the privileges and immunities of a person in state A, who was a resident of state B applied only to the ‘citizens,’ not the ‘inhabitants’ of state B.”¹⁰⁶ This amendment was introduced as a guarantee that a slave-owner’s rights were valid in spite of Great Britain’s Somerset precedent and lawful even in states where slavery was not recognized.¹⁰⁷ This amendment saw itself once again in the final draft of the Northwest Ordinance and, eventually, the Constitutional Convention of 1787.¹⁰⁸

In the end, the Articles did indeed fail the country during this period. Or, did they? Most of the historical literature written for the past two hundred years has led us to believe that they had already failed or were about to fail. They paint a picture for us of “stagnation, ineptitude, bankruptcy, corruption, and disintegration.”¹⁰⁹

Merrill Jensen has been one historian who has given the Articles of Confederation a more significant role in the development of the country. In doing so, he argued that the

critical years may have not been as critical as Fiske and later historians once led us to believe.¹¹⁰ Trade barriers, the fear of anarchy, the inability to defend against insurrections: these, it has been widely written, were the motivating factors in creating the new national government.¹¹¹ Richard B. Morris has interpreted Jensen's point of view that the Confederation failed because the radicals failed to follow through with the organization they had agreed upon in order to make the Revolution a reality.¹¹² Andrew C. McLaughlin has alluded that possibly the most influential motivating factor for the creation of a stronger national government was the inability of the states and their leaders to fulfill their obligations to the Confederation.¹¹³ Similarly, Gordon Wood has stated that it was not the pressure from the Confederation that provided the Federalist movement but, rather the problems that influenced the frame of mind "... from below, from the problems of politics within the separate states themselves. . ."¹¹⁴

There is no doubt that almost from the moment the Articles of Confederation were adopted, a movement to replace them began.¹¹⁵ James Madison as early as 1783 had begun writing letters to newspapers regarding the need for a strong central government.¹¹⁶ As a result, there was an ongoing public debate that ensued well before the debt problems and Shays's Rebellion began to bring fear to the general populace.¹¹⁷

The issue of slavery was present before, during and after the Revolution, and although the word slave or slavery was not mentioned in the document itself, the Articles of Confederation did indeed acknowledge the institution. In particular, the inability for slaves to find refuge in the young republic, even where slavery was not perpetuated, protected slave owners and their rights to their property, which was possibly the most

influential of the provisions.¹¹⁸ The second concerned, for taxing purposes, the issue of wealth and how slaves should be counted insofar as that issue was concerned.¹¹⁹

Possibly the most intriguing of all the issues surrounding the issue of slavery was that of state sovereignty. The great contradiction that occurred here was curious, to say the least. The basic premise of the Articles of Confederation surrounded the power of the states and the sovereignty retained by all of them.¹²⁰ There would be no central power to tell them what to do, and, indeed, given the way the new Confederation was organized, it was at the mercy of the states.¹²¹ However, when it came to the institution of slavery, all of the states in the infant republic had to abide by the clause in the Articles which protected the rights of slave owners. In effect what this clause did was to prevent northern whites from excluding slavery in their own states because every state had to recognize the ownership rights of slave owners.¹²² So, all states had sovereignty over their own affairs, except when it came to slavery. This issue would once again come to the forefront in the Northwest Ordinance and the Constitution as the fugitive slave clause.¹²³

For those who wished to protect slavery, as they saw it, the Articles were the perfect solution. The principle of state sovereignty virtually guaranteed that those institutions which they held dear to them would be protected at the local and state level, including slavery. But, was that single constitutional principal enough to protect the institution of slavery? As secure as slavery seemed to be under the Articles of Confederation, it was, nevertheless, vulnerable against the abolitionist movement which was sure to come.

The Critical Period in United States history was a crucial era which transformed the fledgling republic into a nation guided by the wills of strong individuals as well as by

the Articles themselves. Perhaps one of the most compelling and influential developments during this period, as a result of the events that occurred, was the evolution and transformation of constitutional principles. Republicanism, federalism, separation of powers, checks and balances, limited government, popular sovereignty, and, of course individual rights were all influenced greatly during this period. These principles were thrust into the national debate, during the Critical Period, as the states were creating their own constitutions using these very same principles, which had migrated across the Atlantic Ocean with the colonists. Together, they set the stage for the ideology which would, along with slavery, become the driving force in the creation of the new United States Constitution. In doing so, with the adoption of the Constitution, they would provide a formidable mechanism of protection which would not only defend but also expand the institution of slavery.

END NOTES

¹ Gordon S. Wood, *The Radicalism of the American Revolution* (New York: Random House Inc., 1991), 313.

² Lars Magnusson, *The Making of an Economic Language* (New York: Routledge, 1994), 52.

³ Richard B. Morris, "The Confederation Period and the American Historian," *The William And Mary Quarterly*, 3rd Ser., Vol. 13, No. 2. (Apr., 1956), 144.

⁴ Donald S. Lutz, "The Articles of Confederation as the Background to the Federal Republic." *Publius*, Vol. 20, No. 1 (Winter 1990), 70.

⁵ Daniel J. Elazar, "Confederation and Federal Liberty." *Publius*, Vol. 12, No. 4 (Autumn 1982), 2.

⁶ Lutz, 69-70.

⁷ Gordon S. Wood, *The Creation of the American Republic 1776-1787* (Chapel Hill: The University of North Carolina Press, 1969), 355.

⁸ Lance Banning, *The Jeffersonian Persuasion; Evolution of a Party Ideology* (Ithaca: Cornell University Press, 1978), 83-84. Above all, revolutionary republicanism rejected hereditary privilege which could make it possible for new governments to stand and act on behalf of the will of the people.

⁹ T.H. Breen, *Tobacco Culture: The Mentality of the Great Tidewater Planters on the Eve of Revolution* (Princeton: Princeton University Press, 1991), 8.

¹⁰ Merrill Jensen, *The Articles of Confederation: An Interpretation of the Social-Constitutional History of the American Revolution 1774-1781* (Madison: University of Wisconsin Press, 1940, 1970), 11

¹¹ Breen, 10. They describe centralized power in terms of "aggressive, rapacious, grasping, tenacious and encroaching."

¹² Jensen, 12.

¹³ Herbert J. Storing, *What the ANTI-FEDERALISTS were FOR: The political thought of the opponents of the Constitution* (Chicago: The University of Chicago Press, 1929-77), 71-72

¹⁴ Jensen, 13-14.

¹⁵ Ibid., 128.

¹⁶ Ibid., 130.

¹⁷ John D. Hicks, *The Federal Union: A History of the United States to 1877* (Berkeley: The Riverside Press Cambridge, 1957), 157.

¹⁸ Carol Berkin, *A Brilliant Solution: Inventing the American Constitution* (New York: Harcourt Inc., 2002), 16-17. Congress made short work of Dickinson's first draft, replacing the phrase "Colonies unite themselves so as never to be divided by any Act whatever," to the amended version which began with, "each state retains its sovereignty, freedom, and independence."

¹⁹ Charles and Mary Beard, *A Basic History of the United States* (Philadelphia: The Blakiston Company, 1944), 118. Maryland was the last to approve the Articles on March 1, 1781.

²⁰ Hicks, 159.

²¹ Carol Sue Humphrey, *The Revolutionary Era: Primary Documents on Events from 1776 to 1800* (Westport: Greenwood Press, 2003), 95-97. This is an interesting newspaper article which appeared in the *Maryland Journal* on March 30, 1779, entitled "The State of Maryland: 'A Declaration'". In it, the editor writes how the state of Maryland supported the Articles of Confederation, but could support fighting a war where other states, such as Virginia, would benefit with land increases should the war for independence be victorious.

²² Ibid., 94.

²³ Woody Holton, *Forced Founders; Indians, Debtors, Slaves & the Making of the American Revolution in Virginia* (Chapel Hill: University of North Carolina Press, 1999), 28-30

²⁴ Ibid., 3-4.

²⁵ Ibid., 4-5.

- ²⁶ Hicks, 159.
- ²⁷ Richard B. Morris, *The Forging of the Union, 1781-1789* (New York: Harper & Row, 1987), 90.
- ²⁸ *Ibid.*, 90-91.
- ²⁹ *Ibid.*, 90-91.
- ³⁰ Chester W. Wright, *Economic History of the United States* (New York: McGraw Hill, 1941), 241-242.
- ³¹ Berkin, 18-19.
- ³² *Ibid.*, 20.
- ³³ *Ibid.*, 22-23; John Fiske, *The Critical Period of American History 1783-1789* (Cambridge: Riverside Press, 1897), 92-93. Fiske writes: "A most remarkable body was this Continental Congress. For the vicissitudes through which it passed, there is perhaps no other revolutionary body, save the Long Parliament, which can be compared with it."
- ³⁴ George Tindall, George Brown and David E. Shi, *America: A Narrative History* (New York: W. W. Norton, 1984, 2004), 270-271; Max Farrand, *The Fathers of the Constitution: A Chronicle of the Establishment of the Union* (New Haven: Yale University Press, 1921), 76-77.
- ³⁵ Beard, 180-181.
- ³⁶ Edward L. Ayers, Lewis L. Gould, David M. Oshinsky, and Jean R. Soderlund, *American Passages: A History of the United States* (Belmont, California: Thomson Wadsworth, 2007), 181.
- ³⁷ Alfred and Ruth G. Blumrosen, *Slave Nation: How Slavery United the Colonies & Sparked the American Revolution* (Naperville: Sourcebooks, Inc., 2005), 212-213; John Murrin, *Liberty, Equality, Power: A History of the American People* (Belmont, California, Thomas Wadsworth, 2007), 220.
- ³⁸ Mark A. Graber, *Dred Scott and the Problem of Constitutional Evil* (New York: Cambridge University Press, 2006), 117; Andrew McLaughlin, *The Confederation and the Constitution; 1783-1789* (New York: Collier Books, 1962), 87.
- ³⁹ McLaughlin, *The Confederation and the Constitution; 1783-1789*, 85. "The first plan of any importance for the organization and settlement of the northwest was drawn up by Timothy Pickering and other army officers at Newburg as early as April, 1783. The idea was to form a community on the frontier capable of defending itself against the Indians, and to give Congress the opportunity of fulfilling its promises of bounties to the officers and soldiers of the army."
- ⁴⁰ *Ibid.*, 86-87.
- ⁴¹ *Ibid.*, 85-86. Some of the names Jefferson selected for the new states included "Metropotamia, Assenisipia, Polypotamia, [and] Pelispia." Donald G. Matthews, *Religion in the Old South* (Chicago: University of Chicago Press, 1977), 146. At the same time Jefferson was working on his western ordinances, America's evangelical denominations were also discussing requiring their members to manumit their slaves in order to remain part of their fellowships.
- ⁴² Blumrosen, 212-213.
- ⁴³ Roger G. Kennedy, *Mr. Jefferson's Lost Cause: Land, Farmers, Slavery, and the Louisiana Purchase* (New York: Oxford University Press, 2003), 250.
- ⁴⁴ Roger G. Kennedy, *Burr, Hamilton, and Jefferson: A Study in Character* (Oxford: Oxford University Press), 2000, 57-58.
- ⁴⁵ Ayers, 182.
- ⁴⁶ *Ibid.*, 181.
- ⁴⁷ *Ibid.*, 181.
- ⁴⁸ *Ibid.*, 182.
- ⁴⁹ Don E. Fehrenbacher and Ward M. McAfee, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery* (New York: Oxford University Press, 2000), 255.
- ⁵⁰ Blumrosen, 212-213.
- ⁵¹ John M. Murrin, Paul E. Johnson, James M. McPherson, Gary Gerstle, Emily S. Rosenberg, and Norman L. Rosenberg, *Liberty, Equality, Power: A History of the American People* (Belmont, California: Thomson Wadsworth, 2005), 220.
- ⁵² *Ibid.*, 220.
- ⁵³ *Ibid.*, 220; Fehrenbacher, 255. Although there is no proof, several historians have speculated that delegates from both conventions may have struck a deal because of the timing, the dual roles of several of the delegates and the sudden disposition to agree on these matters. "No doubt they were strongly influenced by the knowledge that the Northwest Ordinance, which Congress had enacted on July 13, contained a

similar provision. There is, however, only meager evidence to support the thesis that the fugitive-slave clause was part of a grand compromise on slavery, secretly arranged between members of Congress and members of the Convention. . . . Whatever the mixture of reasons may have been, it is a striking fact that the fugitive-slave clause became a part of the Constitution with virtually no discussion of its exact meaning or potential application."

⁵⁴ Mark A. Graber, *Dred Scott and the Problem of Constitutional Evil* (New York: Cambridge University Press, 2006), 117; McLaughlin, 86-87.

⁵⁵ Blumrosen, 213.

⁵⁶ Graber, 117.

⁵⁷ Morris, *The Forging of the Union, 1781-1789*, 262.

⁵⁸ Beard, 122.

⁵⁹ Merrill Jensen, *The New Nation: A History of the United States During the Confederation 1781-1789* (New York: Random House, 1950), 310-311.

⁶⁰ Berkin, 27.

⁶¹ *Ibid.*, 27. The courts usually worked as collection agents for the merchants and owners of the debt.

⁶² Beard, 122.

⁶³ Tindall, 277.

⁶⁴ David P. Szatmary, *Shays' Rebellion: The Making of an Agrarian Insurrection* (Amherst: University of Massachusetts Press, 1980), 100.

⁶⁵ Morris, *The Forging of the Union, 1781-1789*, 264.

⁶⁶ *Ibid.*, 264.

⁶⁷ Tindall, 277.

⁶⁸ Morris, *The Forging of the Union, 1781-1789*, 140.

⁶⁹ Berkin, 27.

⁷⁰ *Ibid.*, 28.

⁷¹ Humphrey, xx.

⁷² Paul Leicester Ford, ed., *Essays on the Constitution of the United States; Published During Its Discussion By The People 1787-1788* (New York: Burt Franklin, 1892, 1970), 15. An interesting essay, which appeared in the *Massachusetts Gazette* (Friday, November 23, 1787) from one Cassius warned: "Anarchy, with her haggard checks and extended jaws, stands ready, and all allow that unless some efficient form of government is adopted she will soon swallow us."

⁷³ Lawrence Goldstone, *Dark Bargain: Slavery, Profits, and the Struggle for the Constitution* (New York: Walker & Company, 2005), 42.

⁷⁴ Morris, *The Forging of the Union, 1781-1789*, 265-266.

⁷⁵ Berkin, 28-29.

⁷⁶ *Ibid.*, 28-29.

⁷⁷ Wood, *The Creation of the American Republic, 1776-1787*, 412-413.

⁷⁸ Robert Middlekauff, *The Glorious Cause: The American Revolution, 1763-1789* (New York: Oxford University Press, 1985), 592-593. Middlekauff argues that while there is no way to gauge just how distressed Americans felt about the economy and public policy, but the newspapers of the time published letters and essays which attest to the mood "virtually every week about grim conditions and the dangers they brought to virtue and republicanism."

⁷⁹ Gordon S. Wood, *The Creation of the American Republic*, 412.

⁸⁰ Robert J. Morgan, *James Madison on the Constitution and the Bill of Rights* (New York: Greenwood Press, 1988), 11.

⁸¹ Jensen, *The New Nation: A History of the United States During the Confederation 1781-1789*, 240.

⁸² Noble E. Cunningham Jr., *In Pursuit of Reason: The Life of Thomas Jefferson* (New York, Ballantine Books, 1987), 116.

⁸³ Jensen, *The New Nation: A History of the United States During the Confederation 1781-1789*, 250.

⁸⁴ *Ibid.*, 107-108.

⁸⁵ Tindall, 277-278.

⁸⁶ Richard Beeman, Stephen Botein, and Edward C. Carter II, ed., *Beyond Confederation: Origins of the Constitution and American National Identity* (Chapel Hill: North Carolina Press, 1987), 113-114; David P. Szatmary, *Shays' Rebellion: The Making of an Agrarian Insurrection* (Amherst: University of Massachusetts Press, 1980), 120.

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- ⁸⁷ Morris, *The Forging of the Union, 1781-1789*, 263.
- ⁸⁸ Beard, 122.
- ⁸⁹ Goldstone, 22.
- ⁹⁰ Ibid., 22.
- ⁹¹ Ibid., 22.
- ⁹² Blumrosen, xiv-xv.
- ⁹³ Ibid., xiv-xv.
- ⁹⁴ Norman K. Risjord, *Chesapeake Politics, 1781-1800* (New York: Columbia University Press, 1978), 217.
- ⁹⁵ Blumrosen, xiv-xv.
- ⁹⁶ Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Harvard University Press, 1967), 246.
- ⁹⁷ Ibid., 245; Jensen, *The New Nation; A History of the United States During the Confederation 1781-1789*, 129.
- ⁹⁸ Bailyn, 245.
- ⁹⁹ Blumrosen, 151.
- ¹⁰⁰ Fehrenbacher, 21-22.
- ¹⁰¹ Goldstone, 23-24.
- ¹⁰² Fehrenbacher, 21.
- ¹⁰³ Ibid., 22, 104.
- ¹⁰⁴ Blumrosen, 151.
- ¹⁰⁵ Ibid., 153.
- ¹⁰⁶ Ibid., 151.
- ¹⁰⁷ Patricia Bradley, *Slavery, Propaganda and the American Revolution* (Jackson, MS: University Press of Mississippi, 1998), 67-68. James Somerset was an African born Slave who traveled to England with his master in 1769. He escaped and his master ordered that he be recaptured and returned to him. The court ruled "that Great Britain had no precedent allowing for the forced recapture of an escaped slave outside the country of his or her enslavement." As the court ruled in Somerset's favor, many viewed this decision as the beginning of the British movement to ban slavery in Great Britain. Needless to say, as the Founding Fathers were writing the Articles, the threat of, "Somerset" needed to be addressed.
- ¹⁰⁸ Goldstone, 24. "Thus, even if slaves were lucky enough to successfully escape bondage, they could no longer find sanctuary anywhere in the new nation. And so, the fugitive slave clause was born."
- ¹⁰⁹ Jensen, *The New Nation: A History of the United States During the Confederation 1781-1789*, xiii.
- ¹¹⁰ Ibid., xiii.
- ¹¹¹ Ibid., 337.
- ¹¹² Richard B. Morris, "The Confederation Period and the American Historian," *The William and Mary Quarterly*, 3rd Ser., Vol. 13, No. 2 (Apr., 1956), 151.
- ¹¹³ Andrew C. McLaughlin, *The Foundations of American Constitutionalism* (New York: The New York University Press, 1932), 151.
- ¹¹⁴ Wood, *The Creation of the American Republic*, 465.
- ¹¹⁵ Chester W. Wright, *Economic History of the United States* (New York: McGraw Hill, 1941), 237-238; Humphrey, 105.
- ¹¹⁶ Humphrey, 105.
- ¹¹⁷ Ibid., 105.
- ¹¹⁸ Blumrosen, 153.
- ¹¹⁹ Fehrenbacher, 22.
- ¹²⁰ Morris, 87.
- ¹²¹ Hicks, 157.
- ¹²² Blumrosen, 153.
- ¹²³ Fehrenbacher, 44.

CHAPTER 2

THE CRITICAL PERIOD & THE EVOLUTION OF CONSTITUTIONAL PRINCIPLES

The principles of the United States Constitution: republicanism, popular sovereignty, separation of powers, checks and balances, limited government, federalism, and individual rights are what breathe life into this distinguished and illustrious document. Archie Jones, in *America's First Covenant*, eloquently writes that "A principle is a general truth; or a law comprehending many subordinate truths."¹ In this chapter, these principles will be examined and analyzed in the context of the revolutionary and critical periods and how they evolved to be the primal force which created the Constitution.

In order better to understand these principles, let us examine an analogy. The opening principles to a chess game include such famous axioms as "develop your knights before your bishops," or "leave your Queen at home in the opening."² These "opening principles" provide a road map which helps the chess player develop his strategy, furnishes him with an understanding of how to act and react, and ultimately develops and elevates the contest to another level, eventually transforming the confrontation into to a work of art. The principles lay the foundation for the creation of something special and elevate the encounter to a higher level of understanding. In doing so, they enable the

player to transform his sheer will into a reality where the participant's preferred outcome can be achieved. If the combatant's opponent does not follow these same principles, he will be overtaken by his adversary, whose prowess over the chessboard will be a manifestation of his ability to follow a few fundamental principles.

The principles of the United States Constitution are to that document what those famous axioms are to chess. These principles have been investigated with many different lenses throughout the decades and even centuries, and they have taken on other meanings, with new discoveries occurring almost every time they have been examined. These examinations have taken historians to the threshold of a higher level of understanding, not only of the principles themselves, but also of our system of government and transcending, beyond that, to the "Hamiltonian" world in which we live today. But before we get to those principles and their impact on the Constitution, we should briefly examine how those ideologies evolved across the Atlantic.

English history has contributed greatly to the development of republican ideological theory. The story begins with the Magna Carta in 1215, when unrestrained royal authority was challenged for the first time. At its core, the Great Charter limited the power of the monarch, especially when it concerned arbitrary matters of "justice and finance."³ This powerful and profound document eventually became the foundation for the English Constitution.⁴

The rise of Parliament was another great contribution made by the English to the principles which guided the creation of the constitution. That body evolved from an advisory board in the early thirteenth century to the Parliament which haggled with the kings over how to raise funds to pay the Hundred Years' War in the fourteenth century.⁵

It became more of a force for representative government when in 1399 the assembly secured freedom of speech for its members and in 1430 when it ruled that any freeholder with an annual income of forty shillings had a right to vote for and elect the knights of the shire.⁶

Parliament continued its influence over the realm when in 1628 the Petition of Right once again limited the power of the king. This time parliament was endowed with the power to approve, and more importantly to deny, royal actions.⁷ The real motivation behind the Petition of Right was not necessarily republican in nature, although it did impact republican theory. The Stuarts, specifically Charles, were interested in inviting Roman Catholicism back to England, despite the Petition, whose sole purpose was to limit the king's authority in order to avoid exactly this. A bloody civil war erupted in 1642 which led to the eventual beheading of Charles in 1649.⁸ It was then, when England experimented with a "kingless parliament," that the leader of the royal opposition, Oliver Cromwell, proved to be an unpopular leader. Eventually the monarchy was reinstated eleven years later.⁹ It was during this tumultuous period that Thomas Hobbes wrote his famous *Leviathan*, where the words "social contract" appeared for the first time. Although it was Hobbes' intent to defend authoritarian government, ironically, most of the people who read his treatise continued their republican way of thinking.¹⁰ But republican ideology had other sources as well, in particular the Florentine republicanism that began to flourish in the late thirteenth and early fourteenth centuries, which in turn was greatly impacted by Aristotelian republicanism.¹¹

It was also during this tumultuous era that the great migrations began to occur to the new and unpopulated English frontier, colonial America. The new land was fertile

and the distance from England, combined with political upheaval in the motherland, helped to make the ideological soil of the new colonies also a fertile and uncultivated ground. These republican ideals were transplanted with the first Englishmen to colonize the new and distant lands. It is no surprise then that many of the Founding Fathers had origins from one of two colonies. Virginia and Massachusetts became the first successful colonies for the English in the America, and they would impact greatly the future of a new republic.

Historian David Hackett Fisher argues that America's cultural and social origins are based on the early migration patterns of four distinct groups of people. These groups lived in distinct locations on the Isle of Britain and relocated to the new world within their homogenous group, settling in distinct places on the American continent.¹² These patterns produced different outcomes as a result of the interaction between the newcomers and their new environment.

The first two groups who settled in the New World came to be the most influential in the formation of the new republic. The Puritans of New England comprised one group; indentured servants and the British Royalist elite which settled in Virginia comprised the other. The English Civil War played a crucial role in determining these migration patterns so that revolutionary thought came to influence not only the physical migration but also the political thought during this time.¹³ Both groups came with their own traditions and ideologies, and their foundations played a crucial role in the development of their societies. This phenomenon also set the stage for the sectionalism that would later manifest itself through the Revolutionary and Continental periods and eventually lead to the American Civil War.

Therefore, it is not surprising that the first of the Founding Fathers were men from New England or the Chesapeake. With the exception of Alexander Hamilton and John Adams, the main authors of the Articles of Confederation, the Declaration of Independence, and the Constitution were all from Virginia and Maryland. The first six presidents were either from Virginia or Massachusetts. Their influence on the development of constitutional principles was crucial as well.

These men were not shy about speaking in public, but their most important contributions to historians have been the legacy of their penmanship. They wrote, they wrote prolifically, and they wrote in many forms, from diary entries and letters to congressional minutes and notes to newspaper articles and pamphlets. Consequently, a detailed, documented history exists which outlines the development of American constitutional principles.

In Gordon Wood's epic book, *The Creation of the American Republic 1776-1787*, he covers almost all aspects of the early national period. Originally published in 1969, this work is written with constitutional principles at the core of most of his arguments. This is not surprising, since it is those very principles which provide the oxygen that transforms the constitution into a living document. Regardless of historians' biases, most of their arguments derive from constitutional principles which form the core of the ideology of the time.

Wood methodically narrates a detailed history of political thought. That "Revolutionary Generation" created "an entirely new conception of politics, a conception that took them out of an essentially classical and medieval world of political discussion into one that was recognizably modern."¹⁴ Wood asserts that the discussions that took

place during this period, as the states were attempting to construct their constitutions, naturally generated republican ideas.¹⁵ These republican ideas were eventually thrust into the constitutional debates of the late 1780s and created a distinctly American system of politics.¹⁶

From their inception, through different terms such as “radical country thought” to the evolution of give and take ideologies such as federalism, Wood gives us a lesson on how republican ideals became the main force behind the creation of the Constitution. It is in this state of mind, in which Americans found themselves in the 1780s, that the debates for the ratification of the new constitution occurred.

The first of the principles which will be examined and analyzed is republicanism. By definition, the republican ideology espoused during the revolutionary period stemmed from the belief that republics were preferable to monarchies.¹⁷ Perhaps one of the most influential voices for these republican ideals was John Locke, who laid the foundations for what several historians have termed “New Republicanism.”¹⁸ While Locke himself did not create the theory of republicanism, the theories which were exalted during this period did come from his writings.¹⁹ Perhaps the most influential of these was the idea of the social contract. Locke argues that people are governed only because they allow themselves to be governed and that people themselves are the true source of the government.²⁰ This countered the prevailing thought at the time, whereby absolute rulers, the monarchs, claimed their sovereignty through divine right. For the colonists, Locke’s views made complete sense, since rule by divine right was a truth which had not been a part of their reality because their sovereignty had been left up to them as the monarchs had left them for the most part to themselves.²¹ As long as the king and the companies,

who were the original sponsors of most colonies, were making a profit, there was no need to intervene.

When republican ideology first appeared in the colonies as a separate organized concept, those who advocated and promoted it were considered the first radicals. Their hope was that their opposition to hereditary privilege would adjust the attitudes of established practices and institutions which had, in their eyes, ruined the British state.²² These ideas had flowed from the ancient European republics at the turn of the first millennium and were a driving force in the English Civil Wars in the seventeenth century.²³

Republican thought was deeply rooted in the concept of civic virtue and the public good.²⁴ Madison himself believed that if republicanism were to succeed, it was completely dependent on the virtue of men, for individuals had always to put the common good above their own "individual interests."²⁵ In doing so, they would always make the right decisions and select the appropriate leaders to guide them through the storms which were sure to appear on the horizon. Virtue was extremely important because in a monarchy the king could restrict individual desire, whereas a republic depended on the virtue of individual men for its integrity and survival.²⁶

Republican ideology also offered the hope of true egalitarianism. The new republicanism offered the optimism of true equality where human qualities and individual personhood were celebrated. "None could be too rich" and, more importantly, none could ever be "too poor".²⁷ Under this new republican theory, which honored hard work, honest labor, and success in the private sphere, every single person would be recognized.²⁸

No one espoused the new republicanism more eloquently than Thomas Paine. For Paine, republicanism was, above all, a government which provided for the “public good.”²⁹ Paine’s work excited not only city dwellers, but also small landowning farmers, in particular those of Virginia. For them, a revolution against the king also meant a revolution against the aristocratic, plantation-based, slaveholding, gentry-dominated political systems which they saw as unfair.³⁰ While they would not be raising arms against the southern gentry, if the promise of the new republicanism would indeed manifest itself through a revolutionary victory, then surely they could expect a better lot in life than had been afforded to them until then.

To be sure, there were opponents of republican ideology and the veil of commonism that came with it. While all revolutionaries espoused and believed in republican ideals, only a few called for the restructuring of the established “social hierarchy” and, more importantly, the feared redistribution of wealth.³¹ Conservative loyalists dreaded the possibility of a new class and a new “social and economic perspective.”³²

Republicanism was also alarming to the civilized members of colonial society because, like the Puritan ideals of the seventeenth century, republicanism was “anti-capitalistic” and threatened the benevolent gentility of the civilized man.³³ John Adams, who was a great admirer of the English Constitution, believed that Paine had gone too far in his radical interpretations of Locke’s writings by espousing those beliefs.³⁴ Fear of tyranny – not just the individual tyrant, but also the tyranny of the majority, with the potential for mob rule – was also a concern.³⁵ That fear of how republicanism could

degenerate to a mobocracy had been alarmingly sent to the infant republic with Shays's Rebellion in Massachusetts.³⁶

For most Americans, the revolution had been precisely and without any question about republicanism.³⁷ Those leaders, whom the young republic depended on for their guidance, were well aware of how former republics had degenerated and ultimately failed.³⁸ The young confederation had just as much potential to fail as it had to succeed, and the greatest weaknesses which threatened it lay in its inherent strengths.³⁹ And so, as the debates for the constitution began to emerge, it was republicanism that drove the vision for the dialogue that was about to manifest itself in relation to the survival of the young republic.

The revolution had to be saved, and, although the Articles of Confederation seemed like the answer at the time of their authorship, they were clearly falling short of their expectations in the 1780s. The Articles had been good enough for the republic at a time of war, but now, with each state volleying for its own individual interest, this form of confederated government created gridlock. It was within that atmosphere that other issues came to be discussed, and it was those issues that impacted constitutional principles and the creation of the constitution.

As the nationalist movement began to unfold and the players began to position themselves, one of the major early issues was that of state sovereignty. As Madison and Hamilton viewed it, the republic was a loose confederation of separate states, each with its own identity, its own authority, its own constitution, and its own power to veto any legislation regarding the confederation's interest with its one dissenting vote. Each state had its own separate character and interest, and so the first challenge for those who

advocated a stronger national government was very clear: How to wrest the power away from the states? The states had clearly become so vested in their own special interests that the vision of the common good for the confederation had become an apparition. In this question lay the fundamental problems for the republic, but within this question also lay the ideology which would become the core of all the constitutional principles.

When Patrick Henry declared that he was “no longer a Virginian, but an American,” the rhetoric that he championed so passionately was intended to unify the thirteen colonies in their revolution against England.⁴⁰ In a brilliant political and philosophical move, James Madison used this very same rhetoric to wrest power from the sovereign states. This rhetoric had been used before by the English House of Commons in the seventeenth century during their civil war. Just as they had “invented a sovereign people to overcome a sovereign king,” Madison would use a sovereign American populace to wrest the power from the sovereign states.⁴¹ The constitution begins with the words, “We the People,” indicating that all powers rests with the people. The next sentence, however, grants or vests all powers to Congress.⁴² In doing so, the constitution took the power and political authority away from the sovereign states, gave it to the sovereign people, and then redirected that authority to the few, who would be elected by the people. Those privileged few would become the power base of the new national government.

Ironically, fourteen years after Patrick Henry’s passionate proclamation that he was “an American,” he just as passionately asked what right the convention had to speak for “We the people,” instead of “We the states.”⁴³ And just as Madison had intended, in attempting to wrest power from the states, the convention spoke in terms of “We the

people” because the constitution recognized their political authority as being above that of the states. Incredibly, this principle fell into place with the theories of republicanism, and constitutional principles began to quiver with a life of their own.

The Articles of Confederation had unintentionally created what the revolution had intended to destroy. Without an executive, no judiciary, and only one legislative body in the Confederation Congress, the government which had dominated during the Critical Period had functioned unchecked.⁴⁴ The only entity that had the authority to check it was the individual states themselves, thirteen separate bodies, each with thirteen separate interests. When the Confederation Congress passed legislation that conflicted with the individual states, the state courts decided the fate of the legislation.⁴⁵ The courts almost always sided with states, and, just as had been intended, the confederation government quickly transformed into a creature of the states.⁴⁶ As a result, by the time the Constitutional Convention first convened, the government was in such a sad state that at times it was even impossible to create a quorum.⁴⁷

If republicanism were to remain the ideal that the revolutionaries had intended, then it had to be protected. Beginning in 1776, as the states began creating their own constitutions, the ideology of separation of powers became a common denominator amongst them.⁴⁸ This principle, like republicanism itself, also came to America from across the Atlantic, and it, too, was heavily grounded within the ideology of republicanism.

John Locke had vaguely used this principle and described it as a means of isolating Parliament from the King.⁴⁹ The main influence for this principle however, came from the French political thinker Charles de Secondat, Baron de Montesquieu. In

his 1748 work, *Spirit of the Laws*, Montesquieu observed that when executive and legislative powers were entrusted within one individual or one group, there could be no liberty. But his reflections did not end there, for he added that when the judiciary was also involved in this power nexus “there would be no liberty.”⁵⁰ Montesquieu’s vision was an incorporation of three branches of political authority: the legislature, which would have the authority to enact laws; the executive, which would have the power to execute and enforce the laws; and the judicial branch, which would punish any who would dare to violate the law. His reasoning for the separation of powers was founded by the simple premise that the best way to safeguard against tyranny was to separate or divide political power and authority.⁵¹ His rationale was based in the belief that only in this way would the selfish interest of individuals or groups of individuals be checked.⁵²

The colonists, with their excellent memories, did not want their state governments to resemble in any way their former assemblies, where the governors had held almost all the authority.⁵³ It was not until after 1776, when political problems began to arise during the creation of the state constitutions, that the maxim of separation of powers became a popular ideology.⁵⁴

While the separation of powers seemed like an ideology based on distrust and paranoia, it was not a wholesale rejection of the concept of the public good. Instead, it was designed to guarantee that those who held political authority would operate with clearly defined boundaries and in doing so would prevent any attempt to “diabolically” abuse the system.⁵⁵ And so the separation of powers became the approval of government with built in structured boundaries which were deliberately designed to prevent the possible abuse of this trust.

Originally devised to check the power of the executive who held the bulk of political authority in a state, the creators of the state constitutions began to appreciate how this system worked in checking all three separate bodies.⁵⁶ By 1787, this system, which had been dutifully tried in most of the state constitutions, became the favored protector of liberty.⁵⁷

Following Montesquieu's lead, it was this system which Madison selected for the new constitution.⁵⁸ Madison felt this system provided the best method of checks and that within the system the ambitions of individuals or individual groups would be effectively balanced, thus avoiding tyranny.⁵⁹ This system would guarantee that the people's sovereignty would not be abused by the few individuals who were to be entrusted with it.

Thus, the principles of separation of powers and checks and balances became the protectors of republicanism, which drew its authority from the sovereign people. During the discourse that occurred towards the end of the Critical Period as the constitutional debates were occurring, these ideologies were evolving into the principles which would define the constitution. These principles were now more than a mere quiver. They were beginning to breathe life into the document which would eventually become the law of the land. And yet, the powers of republican government still had yet to be defined.

As the Federalists were fighting for the ratification of the new constitution, they especially praised their supreme accomplishment, this new form of government. It was meeting their needs as it was republican in nature, and it was a government of the people. By its very nature, the system of a separated government would automatically implement a system of checks and balances. For them, because of the very nature of the revolution,

the supreme achievement of this document was that it limited the powers of the government.⁶⁰

As the concept of limited government related to the states, the principle manifested itself in two distinct ways. The constitution could not regulate in ways that obstructed matters of national concern. Nor could it violate any of the explicit limitations in the constitution itself which were clearly spelled out in the enumerated powers of the national government.⁶¹ If the constitution were implemented correctly and followed rigidly, the states would retain their sovereignty as independent portions of the supreme whole.

Madison's vision of this "compound government" was a federal government whose powers were relatively few and clearly defined.⁶² He understood that in order to protect those rights from political authority and possible government abuse, it would be "wise not to give government the power in the first place that can then be used to abuse rights."⁶³ His argument became that the sole purpose of limited government was not to "create" rights but simply to recognize and protect them.⁶⁴ We find the manifestation of this principle of limited government in Article I, section 8, and in the Tenth Amendment, which indicates that the "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."⁶⁵

That last amendment made it abundantly clear that the powers of the constitution and, in essence, the government were clearly divided between the federal government and the states. And so the goal of the constitutional convention, to create a strong national state that at the same time would not "threaten individuals, liberties or the well being of

citizens,” was ingeniously extolled as federalism.⁶⁶ The devoted boosters of this principle assured its critics that federalism would create a focused and strong national government, and, yet, it would be limited in its scope.⁶⁷ The principle of limited government within federalism was undoubtedly one of Madison’s most brash and daring innovations.⁶⁸

Like Mary Shelly’s *The Modern Prometheus*, the constitution was ready to rise to life with the principles now all in place. It lacked only one more apparatus in order to bring it to life, and the anti-Federalists saw to it that individual rights would become a part of the document. Like Mary Shelley’s creature, this document would have those who admired it, and those who despised it. Those who saw the intrinsic beauty of these principles were certain that the principles, and in essence the document itself, would outlive them all. Those who saw only its inherent wickedness feared that a central power would spin out of control and ruin all that the revolution had accomplished.

If the Constitution were indeed to save the Revolution, then the document which represented it surely had to be taken into account. The Declaration clearly stated that the purpose of government was to secure life, liberty and the pursuit of happiness. Yet, it was easier to count those which government included rather than those who were excluded.⁶⁹ Black men and women, white women, and men without property could not participate in government. It was no wonder that Daniel Shays became so enraged at the thought of losing his property. It was not merely the degradation of being propertyless that he feared but also the humiliation of not having a political voice if he lost his property. This was something he had risked life and limb during the Revolution to secure.

Ironically, the state constitutions, while purposely establishing strong systems of governance under the Articles of Confederation, were great contributors (albeit

unwillingly) to the principles that formed the core of the constitution. Most of them embodied all of the principles analyzed in this chapter. With the exception of federalism, the principles of limited government, separation of powers, checks and balances, and a bill of rights were found in most state constitutions.⁷⁰ Compared to their former colonial systems, these new constitutions formed a remarkable contrast and were the perfect nursery for the all of these ideas which included sovereignty of the people and personal liberties.⁷¹

Some of the state constitutions even attacked the notion that a man had to be a property owner in order to secure the liberties that had been posited by the Declaration of Independence. In Pennsylvania, Georgia, North Carolina, and New Hampshire, the requirement that disqualified those who did not own land was eliminated for voting purposes.⁷²

Pennsylvania's constitution merits attention, for that particular constitution was drafted not by the state assembly but, rather, by individual men of "moderate economic status."⁷³ These men espoused the egalitarian ideals of the revolution and put forth those ideas into action when they wrote their constitution. In Pennsylvania, all taxpaying males had the privilege not only of voting but also of running for and holding office.⁷⁴ It was no surprise, then, that gentlemen of a more conservative sort, John Adams in particular, criticized the Pennsylvania Constitution as an extremely radical document. Adams denounced it as the "wretched Ideas of Government."⁷⁵

Some revolutionary constitutions, emboldened by revolutionary idealism, even dared to attack an institution which had become critical to certain portions of the republic. While the issue of slavery became one of the most discussed, debated, and

negotiated topics in the formation of the federal constitution, in some states where slavery was not crucial to the local economy, their constitutions even went as far as to abolish it and the slave trade.⁷⁶

The federal constitution did indeed come to life, and it functioned just as the framers had intended. It mattered not that any individual revolutionary state constitution abolished slavery, for, if one was a slave owner, or even worse, a slave, the federal constitution would make certain that the institution, as a whole, would be protected from the reign of freedom with its constitutional umbrella. As long as any state chose to continue the institution of slavery *and stayed within its constitutional protection*, the institution itself would remain alive and well. Slavery did not have the luxury of a national government to vigorously protect it under the Articles of Confederation, and an individual state by itself was in a more precarious situation to defend the institution. However, the federal constitution changed that because it was those principles which guaranteed that all that was encompassed within it (by virtue of its enumerated powers) would be acknowledged, defended, and perpetuated. As we will see in the following chapters, the very same republican principles that created the nation, meant that for slaves, freedom and liberty were held in check on the chessboard of their existence.

END NOTES

¹ Archie P. Jones, *America's First Covenant: Christian Principles in the Articles of Confederation* (Marlborough: The Plymouth Rock Foundation, 1991), 1.

² Reuben Fine, *Winning the Chess Openings* (New York: Random House, 1943), 2. Depending on which Grandmaster you wish to consult, there are ten to twelve opening principles which guide the tournament player through the pitfalls of the opening (the first twelve moves of a chess game). Fine, a former U.S. Champion, International Grandmaster, and prolific chess writer, clearly spells out ten of them, including the two mentioned here.

³ Anne Marie Camissa and Paul Christopher Manuel, *Checks and Balances? How a Parliamentary System Could Change American Politics* (Boulder: Westview Press, 1999), 46.

⁴ Frank W. Thackery, *Events That Changed Great Britain, from 1066 to 1714* (Westport: Greenwood Press, 2004), 24. Thackery writes: "Whatever its importance at the time, over the centuries Magna Carta evolved to have a monumental impact on the world's English-speaking nations."

⁵ *Ibid.*, 39, 201.

⁶ *Ibid.*, 43.

⁷ Edmond S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York: W.W. Norton & Company, 1988), 24.

⁸ Clive Holmes, *Why Was Charles I Executed?* (New York: Hambledon Continuum, 2006), 93. The king was beheaded for "his refusal to acknowledge the legitimacy of the court, or to answer the charges against him until its authority was justified." As a consequence he never had the chance to plead or defend and the court would not relent to such a "fundamental challenge." Charles hoped to delay long enough in order for hostilities to break out again and possibly revive his cause, but he never got the chance.

⁹ John Samples, ed., *James Madison and the Future of Limited Government* (Washington: Cato Institute, 2002), 48.

¹⁰ Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press 1997), 38.

¹¹ J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, Princeton University Press, 1975), 103-104, 273.

¹² David Hackett Fischer, *Albion's Seed* (New York: Oxford University Press, 1989), 6.

¹³ *Ibid.*, 17, 207.

¹⁴ Gordon S. Wood, *The Creation of the American Republic 1776-1787* (Chapel Hill: The University of North Carolina Press, 1969), viii.

¹⁵ *Ibid.*, 467

¹⁶ *Ibid.*, ix

¹⁷ Peter Thompson, *Dictionary of American History: From 1763 to the Present* (New York: Checkmark Books, 2000) 351.

¹⁸ Michael P. Zuckert, *Natural Rights and the New Republicanism* (Princeton: Princeton University Press, 1994), xviii.

¹⁹ *Ibid.*, xviii. Joyce Appleby, *Liberalism and Republicanism in the Historical Imagination* (Cambridge: Harvard University Press, 1992). Appleby argues that Locke was a powerful force upon the ideology that existed for revolution, in her words, "No Locke, and the shot heard around the world went backwards." While a revolution may have occurred, it without the ideas of Locke, it would have taken place later in history.

²⁰ Camissa, 64.

²¹ Morgan, 144.

²² Lance Banning, *The Jeffersonian Persuasion: Evolution of a Party Ideology* (Ithaca: Cornell University Press, 1978), 83-84.

²³ T. H. Breen, *Tobacco Culture: The Mentality of the Great Tidewater Planters on the Eve of Revolution* (Princeton: Princeton University Press, 1991), 8.

²⁴ Wood, 53-54.

²⁵ Samples, 197.

²⁶ Wood, 68.

²⁷ Ibid., 73.

²⁸ Michael Gibbons and Wilson Carey McWilliams, *The Federalist, the Anti-Federalists and the American Political Tradition* (New York: Greenwood Press, 1992), 318-319.

²⁹ Harvey J. Kaye, *Thomas Paine and the Promise of America* (New York: Hill and Wang, 2005), 47.

³⁰ Ibid., 55.

³¹ John Ferling, *A Leap in the Dark: The Struggle to Create the American Republic*, (New York: Oxford University Press, 2003), 159-160.

³² Ibid., 168. Certain historians argue, however, that the Puritans were essentially proto-capitalistic. See Christine Heyrman, *Commerce and Culture: The Maritime Communities of Colonial Massachusetts, 1690-1750* (New York: W. W. Norton & Co., 1984) and Stephen Innes, *Labor in a New Land: Economy and Society in Seventeenth-Century Springfield* (Princeton: Princeton University Press, 1983).

³³ Wood, 418-419.

³⁴ Kaye, 52.

³⁵ Camissa, 63.

³⁶ Wood, 412.

³⁷ Ibid., 92-93.

³⁸ Ibid., 611.

³⁹ Ibid., 65-66. Gordon Wood argues that if a republic is to succeed, then those who are to be governed must allow themselves to be governed rather than "compelled" by the government into obedience. Without a central authority, the young confederation had as much chance to succeed as to fail and the future of the republic was in the hands of those who made the revolution a reality.

⁴⁰ Carol Berkin, *A Brilliant Solution: Inventing the American Constitution* (New York: Harcourt Inc., 2002), 17-18.

⁴¹ Morgan, 268.

⁴² Samples, 29-30.

⁴³ Morgan, 281.

⁴⁴ Wood, 549.

⁴⁵ Robert J. Morgan, *James Madison on the Constitution and the Bill of Rights* (New York: Greenwood Press, 1988), 11.

⁴⁶ John D. Hicks, *The Federal Union: A History of the United States to 1877* (Berkeley: The Riverside Press Cambridge, 1957), 157.

⁴⁷ Berkin, 22.

⁴⁸ Wood, 449.

⁴⁹ Ibid., 152.

⁵⁰ Ibid., 152.

⁵¹ Camissa, 65.

⁵² Ibid., 65.

⁵³ Merrill Jensen, *The New Nation: A History of the United States During the Confederation 1781-1789* (New York: Random House, 1950), 127.

⁵⁴ Wood, 449.

⁵⁵ Gibbons, 93.

⁵⁶ Wood, 449.

⁵⁷ Ibid., 549.

⁵⁸ Samples, 50.

⁵⁹ Camissa, 65.

⁶⁰ Herbert J. Storing, *What the ANTI-FEDERALISTS were For: The Political Thought of the Opponents of the Constitution* (Chicago: The University of Chicago Press, 1981), 54.

⁶¹ Samples, 15.

⁶² Ibid., 16.

⁶³ Ibid., 31.

⁶⁴ Ibid., 27.

⁶⁵ Ibid., 29-30.

⁶⁶ Max M. Edling, *A Revolution in Favor of Government: Origins of the U.S. Constitution and the Making of the American State* (New York: Oxford University Press, 2003), 222.

⁶⁷ Ibid., 223.

⁶⁸ Samples, p. 46.

⁶⁹ Jensen, 127.

⁷⁰ Andrew Cunningham McLaughlin, *The Foundations of American Constitutionalism* (New York: The New York University Press, 1932), 164.

⁷¹ Ferling, 194.

⁷² Jensen, 128.

⁷³ Ferling, 195.

⁷⁴ Ibid., 196.

⁷⁵ Ibid., 196.

⁷⁶ Jensen, 129.

CHAPTER 3

A SHORT HISTORY OF THE CONSTITUTIONAL

PROTECTION OF SLAVERY

The recreation of the nation under the new constitution presented myriad opportunities as well as problems, and the growth of the new nation would be both exciting and painful. Along with the fear that the young republic would not survive, the apprehension of the new central government, and the constant fear of British recapitulation lay the ever present sectional tension which was fueled by the passion towards the institution of chattel slavery. This chapter will examine how that passion and fervor manifested itself through the use of the constitution which had recreated the republic. While we cannot analyze every event which demonstrates how the constitution was distorted in order to protect the “sacred” institution of race-based bondage, several events merit investigation and promise to illuminate the nature of the fanatical sectionalism which eventually tore the nation apart.

Slavery was perhaps the most divisive issue the nation faced from its inception until 1865. The force of this discord was felt as far back as the negotiations towards the Northwest Ordinance, the debates for the Articles of Confederation, and the Constitutional Convention. No other issue was as contentious or provided the force which separated the nation.¹

The debates themselves, the correspondence regarding those debates, and the analysis of that discourse have been well documented, and there is no question that a deal was struck in order to save the republic.² Perhaps no person or individual stated the case more convincingly than Charles Cotesworth Pinckney, when he addressed the South Carolina ratification convention: "...considering all circumstances, we have made the best terms for the security of this species of property it was in our power to make. We would have made them better if we could; but, on the whole, I do not think them bad."³ This statement is perhaps the most telling, and many historians use it to support their argument that slavery was indeed was one of the major interests of the slaveholding south as the constitution was being debated, negotiated, and finalized during the Constitutional Convention.

There is little doubt that sectional interests played a crucial role in the "Dark Bargain," as Lawrence Goldstone argues in his recent history. Goldstone asserts that, while the motives of the delegates may have been noble at first, as time wore on, personal and sectional issues came to the forefront of the debate. The record clearly shows that slavery was at the top of this sectional wrangling and had much to do with the compromises which produced the "Dark Bargain."⁴

Perhaps even more haunting was the way republican constitutional principles, which had been devised as a way of ensuring republicanism, were perverted to protect the institution of race-based, chattel slavery. At almost every turn, from 1788 until 1860, the constitution was used time and again to protect and propagate the peculiar institution.

The constitution itself did not mention the words slave or slavery, yet it was clear that slavery was more than just imbedded within the document.⁵ This clever linguistic

ploy allowed northerners to return home and honestly proclaim that the document did not acknowledge slavery. Yet, as the plantation owners rode south to defend the very same constitution, men like Pinckney were extolling its merits and how their property and the peculiar institution had been protected.⁶

Beginning with two issues during its creation, the slave power attempted legally to secure the institution and incorporate it within the constitution. The three-fifths compromise, as it eventually came to be known, counted each slave as three-fifths of a full citizen for the purposes of taxation, representation in the House of Representatives, and representation in the Electoral College.⁷ This compromise also included a guarantee to slaveholders regarding the return of their property, specifically runaway slaves.⁸

The three-fifths compromise ensured a strong political voice for the slaveholding South within the new national government. Beyond that, this compromise established more power and influence for the slaveholding states.⁹ It also awarded the southern slaveholding aristocracy a heftier say in the Electoral College, thus ensuring strong political influence on the executive branch in the government.¹⁰

As historian David Brion Davis argues, the entire system of government and politics was created in such a way as to ensure that no threat would ever come upon the institution of slavery or to the slaveholders themselves.¹¹ A "Slave power" emerged to manipulate the nation's governmental and political systems.¹² This slave power emerged again and again in the early nineteenth century to assert its influence over many of the issues which came with the expansion of the nation. As the nation expanded towards the west and manifest destiny became the crusading cry for the expansionists, the answer to the question of whether slavery should expand alongside the nation was practically

guaranteed. The slave power remained vigilant, and, as the nation grew, so did the slaveocracy. The three-fifths accommodation expanded more than just territory through manifest destiny. The slave power's influence, constitutionally built into the political system, grew accordingly.

The fate of fugitive slaves was another issue which illustrates the influence and sway that the slaveholding south held during the creation of the constitution. The constitution, subtly yet unambiguously, guaranteed slave owners the right to recoup their property. Specifically, Article IV, Section 2, compelled northerners to assist in fugitive slave retrievals. This clause threatened any northerner with fine and imprisonment and basically compelled the entire northern population to become "one large slave patrol."¹³ This was a concern which became even greater after 1850.

Although few historians have examined the Articles of Confederation's impact on slavery, several historians have argued that the constitution was blatantly pro-slavery and that, while the three-fifths compromise and the fugitive slave accommodation obviously referred to slavery, there were other pro-slavery protections which were built into the constitution which were not so obvious. In the nineteenth century, abolitionist Wendell Phillips was one of the first individuals to document his belief that the constitution was indeed a pro-slavery document. But in the twentieth century there have been several historians, including Paul Finkelman, David Brion Davis, Robert William Fogel, and Lawrence Goldstone, who have documented how the Constitution was in effect a pro-slavery document.

Finkelman's arguments come strikingly close to those of abolitionist Phillips and emphasize that, beyond the three-fifths and fugitive slave accommodations, several

additional Articles in the constitution were also pro-slavery.¹⁴ They included the following: Article 1, Section 8, which provides for the suppression of insurrections; Article 1, Section 9, which provides the abolition of the slave trade in 1808; and Article 4, Section 4, which guaranteed every state federal protection against invasion or domestic violence, including slave rebellions.¹⁵ Together, these articles suggest that the legitimacy of the institution of slavery was written into the nation's foundational document in 1787 in a way that was not part of the Articles of Confederation a decade earlier.

Finkelman expanded on Phillips' claims, adding Article I, Section 9, paragraph 4, which covered the three-fifths accommodation and declared "that if a head tax were ever to be levied, slaves would be taxed at three-fifths the rate of whites."¹⁶ He also added Article V, which prohibited any change in the slave importation clause agreed to in Article I. It is Finkelman who also argues for the "South's extra political muscle," which was afforded to it through the three-fifths compromise.¹⁷ Finkelman also adds those subtle, yet "indirect" protections. They include the following:

- Article I, Section 9, Paragraph 5;¹⁸
- Article I, Section 10, Paragraph 2;¹⁹
- Article II, Section 1, Paragraph 2;²⁰
- Article IV, Section 3, Paragraph 1;²¹
- and Article V.²²

These indirect protections afforded the slave power such advantages as exclusion from certain taxes, extra power in the Electoral College, and the necessity of a three-fourths majority vote in order to amend the constitution. As long as they maintained at least an

even number of senators and were well represented in the House of Representatives, they were assured a strong political voice in the formulation of policy for the republic.

Without the strength of the entire constitution and the forceful principles which brought this document to life, these articles would mean nothing. Hence, the fight for the ratification of the constitution became just as passionate as the fight to create the document itself. And yet the new nation emerged from ratification struggle in tact. It is significant to note that the struggle for the ratification of the constitution also indirectly gave birth to political parties as the Federalists of 1789 gradually became the Federalist Party while the anti-Federalists ultimately morphed into the Jeffersonian Republicans.

The issue of fugitive slaves was a concern that appeared not only during the debates over the drafting of the constitution but also soon afterwards, when legislation was passed for the first time concerning fugitive slaves in 1793.²³ The initial incident occurred between Virginia and Pennsylvania, and it involved the extradition of three Virginians who had been accused of kidnapping a black man named of John Davis. The governor of Virginia refused to extradite the three men, and Pennsylvania's governor approached President Washington and asked that Congress pass legislation on two matters: interstate extradition and fugitive slave rendition.²⁴

The legislation which Washington eventually signed in 1793 contained four sections regarding fugitive slaves. The first two sections dealt explicitly with extradition of fugitives from justice. The third and fourth sections dealt with the recapture and return of fugitive slaves, which was in reality a reinforcement of what had previously been agreed to in the constitution.²⁵

Ironically, the initial intent of this legislation was to protect free blacks from kidnapping. Instead, the result endowed slave owners with a strengthened means for recapturing runaway slaves.²⁶ As we shall see, this would not be the last of the fugitive slave issue, as its tension would continue to frustrate legislators well into the 1850s. With this legislation, the distortion of the constitution had begun, and, as the decades passed, the slave power would continue to flex its political muscle in order to secure the institution of slavery.

In the election of 1800, the electoral vote tally was seventy-three for Republican Thomas Jefferson to sixty-five for Federalist John Adams.²⁷ The three-fifths accommodation added thirteen electoral votes for the Southerner, slaveholding Jefferson, and had it not been in force, Adams would have squeaked into the executive mansion by a tally of sixty-three to sixty-one.²⁸ Through this enhanced political power, with the exception of Adams's one term as executive, slaveholding Virginians dominated that branch of the government for thirty-two of the first thirty-six years of the young nation's existence under the new constitution.²⁹ It was those first Virginians who led the country during the nation's infant period and mediated as well as exerted their influence on the sectional issues which would soon appear. So began the Age of Jefferson, and with it the expansion of the United States, which took its first gargantuan stride with the purchase of the Louisiana territory.

As the nation continued to grow, the issue of slavery once again came to the forefront. As a result of the political conflicts arising from sectional differences, a balance was constantly being sought as new states continued to enter the Union. By 1818, the hearty nation had grown from thirteen states to twenty-two and had therefore been

able to maintain a sectional balance in power. This balance was crucial to both houses, but, in particular, to the Senate, where the slave states, or the free states, could effectively kill legislation not to its liking that had passed in the House. In the House, the population-rich free states held the advantage with one hundred and five votes to eighty-one. Still, southerners could always find allies in the free states when negotiating legislation, and if not, they were at least in a position to have a final say on all legislation through their influence and political balance in the Senate. With the prevailing sectionalism at hand, the political balance constantly in check, and the inevitable expansion of the nation towards west, a crisis arose which shook the very foundations of the republic.

In 1819, Representative Tallmadge proposed an amendment to ban slavery in Missouri after it had applied for statehood. There were a total of ten thousand slaves in Missouri, and the volatile issue of the expansion of the institution of slavery into new territories and states began with a furor.³⁰ The slave power cried foul and even threatened disunion should Missouri not be allowed to enter the republic as a slave state.³¹

The fear for the free states was that if Missouri did indeed enter as a slave state, the slave power would accumulate a two vote advantage, and even possibly a four vote advantage in the Senate.³² Eventually, Henry Clay brokered a great compromise allowing Missouri to enter the Union as a slave state and allowing Maine to come into the fold as a free state. Furthermore, the compromise stipulated that the territory north of the southern boundary of Missouri itself, with the exception of Missouri, would be free. More importantly, all territory south of that line would be slave.³³ In this compromise, sectional interests were protected and political balance was held in check.

Although the compromise averted a crisis, it illuminated only the surface of the sectional issues. Slaveholding southerners believed that the compromise itself was a conspiracy by the northerners to curb the slave power, and, beyond that, to dominate and hold dominion over the republic, in essence endangering the institution of slavery to the point that it would encourage another Santo Domingo.³⁴ For the northerners, it was quite simple. They believed that an understood policy had been “enshrined” with the Northwest Ordinance which forced the federal government to restrict the spread of slavery. Missouri, though, occupied similar latitudes as the old northwest, and to allow slavery in Missouri was to encourage the spread of slavery further west.³⁵ To northerners, it seemed that they had to make a stand at this time, for, if they did not, they would be “greatly harming both free labor and industry.”³⁶

Slaveholders such as Jefferson, Madison, and the young John Tyler, also a Virginian, believed and espoused the philosophy that, should the slaves be dispersed across the country, it “would reduce racial anxieties and the threat of slave revolts, dilute the institution of slavery, and afford the slaves better food, clothing, and shelter than if they remained confined to the existing slave states.”³⁷ They were therefore committed to the defeat of Tallmadge’s proposal to eliminate slavery in Missouri. In fact, both Jefferson and Madison accused the Federalists of a legislative ploy in order to create a sectional debate, organize a sectional party, and destroy the union.³⁸

At the other end of the spectrum, John Quincy Adams contended that the agreement was “a dishonorable compromise with slavery.”³⁹ While he openly supported the compromise, later he would write that restriction would have been the better course,

for, if disunion had occurred, a new, stronger union would have emerged without the institution of slavery and based on "universal freedom."⁴⁰

Historian Alice Dana Adams has argued that there had been few sectional battles and that there had appeared to be little sectional jealousy until the Missouri Compromise. Her contention is that the Missouri Compromise was not a political battle over slavery but, rather, a sectional battle for political power.⁴¹

In essence, the Missouri Compromise became a battle to maintain and secure the principle of checks and balances. The slave power could not allow the free states to gain any type of majority in the senate, for despite the three-fifths accommodation, they were slowly losing ground in the House of Representatives to the heavily populated free state northerners. They feared that, once the balance of power shifted, free-state boosters would do all in their power to eliminate slavery, and they would have none of that. For the Yankees, another slave state simply meant more continued dominance of the presidency by the slave power and a corresponding decline in power for the free north. They felt they would continue to be cast away into insignificant and, in their eyes, undeserved political positions.⁴²

The Missouri Compromise excluded slavery in much of the Louisiana Purchase, most of which lay north of the thirty-six thirty line.⁴³ It is a curious coincidence that in 1820 southern settlers began to petition Spain to colonize the northwestern frontier of New Spain, most of which was located south of the thirty-six thirty line, in what was better known to all as Texas. These southerners would, of course, be taking their slaves with them. This issue will be studied in greater detail in the following chapter.

These events would not be the end of the Missouri Compromise. In 1850 and 1854 another crisis, and then later a Supreme Court decision, would thrust this incident to the forefront once again. This time the challenge would be for the diffusion or containment of the institution of slavery through the use of another constitutional principle, popular sovereignty.

The year 1800 was a pivotal year in American history. That year a new president was elected, but, more importantly, a new political party took control of the executive mansion. The Federalists had lost the executive branch, and the Age of Jefferson and the Jeffersonian Republicans had begun. Also in 1800, two men were born who would change the history in the United States. John Brown and Nathaniel Turner were individuals that would lead rebellions involving slaves that thrust the issue of slavery onto the national scene later in the century.

For this study, Nat Turner's Revolt, which occurred in Southampton, Virginia, in 1832, will be analyzed. Turner's revolt is an excellent example for this study because it illustrates just how quickly militias and the military organized in order to suppress the rebellion. These actions, which were guaranteed in the constitution, afforded not only suppression of the rebellion for the slaveholders but, in essence, protected them and their institution. The facts of this incident are well known, but a short summary is in order.

Nat Turner was a Virginia-born slave who also became a gifted preacher. In 1828, Nat began to hear voices, first as a loud thunder from the sky, and then later envisioned images which also spoke to him.⁴⁴ These visions came to him in several different forms.⁴⁵ He became convinced that God was attempting to communicate to him, telling him to lead a rebellion to end slavery in Virginia.

On August 21, Nat and four other slaves went into the forest with a bottle of brandy and a stolen pig. They roasted the pig, finished the bottle, and planned the revolt. He shared with the others that God had willed him to kill all whites, beginning with his master, Joseph Travis.⁴⁶

The first to be killed was Turner's master and his family, and, as the early dawn wore on, Turner's band grew in size and effectiveness. By early on Monday morning, August 22, Turner had more than forty followers with him, and they were rampaging through the countryside in groups of six or eight. By eight in the morning whites who lived in the area began to realize that there was something terribly wrong in Southampton, Virginia.⁴⁷

By Monday evening, there were militia groups leaving from Richmond, Petersburg, Smithfield, Norfolk, Suffolk, and from towns as far away as North Carolina, all marching towards Southampton. The Norfolk Navy Yard sent one company (over a thousand armed men), and other forts, such as Fortress Monroe, sent three companies of Army regulars with a full compliment of artillery.⁴⁸ Even detachments from the warships *Warren* and *Natchez*, which were anchored in Norfolk, were dispatched and, incredibly, traversed sixty miles in one day.⁴⁹

By Wednesday morning, all the violence towards whites had ceased, and all of the rebels had been subdued, captured, or killed, with the exception of Nat Turner himself. Tragically, however, fifty-five whites had been killed, including thirteen men, eighteen women, and twenty-four children.⁵⁰ While the revolt had been subdued, the killing had not yet ended. Militia members from Virginia and North Carolina continued to kill any

Negroes they fell in contact with on the roads for fear of another rebellion.⁵¹ Along with the rebels, one hundred sixty innocent blacks had been killed as well.⁵²

Turner himself eluded capture until October 30, when he was detained by Benjamin Phipps. He had been living in the forest in crudely built shelters, including holes in the ground.⁵³ On Friday, November 11, 1831, after a speedy trial, Nathaniel Turner, "The Prophet," was hanged in a public execution.⁵⁴

The South reacted, or as many historians have noted, overreacted, to his rebellion by passing extremely restrictive laws towards slaves, free blacks, and whites themselves.⁵⁵ Some, like Governor Henry Floyd, even believed that all black preachers in the entire country east of the Blue Ridge were in league with Turner.⁵⁶

While the rebellion itself was not successful, it rekindled awareness in most southerners' minds that a rebellion was always lurking within the slave quarters.⁵⁷ More importantly, many southerners felt that the rebellion itself, while led by Turner, had been created and encouraged by the new movement of the northern abolitionists, more specifically, William Lloyd Garrison and his paper, the *North Star*.⁵⁸

As tragic as all the events that occurred were, what is striking is how quickly militias and federal troops were mobilized and dispatched to suppress the rebellion. In a time when one could not communicate even via telegraph, the incredible speed and mobility that occurred was phenomenal. To put things in perspective for this argument, it must also be noted that this mobilization and response was not only sanctioned by the constitution, but even guaranteed. Slaveholders would not be denied their property, the rebellion would be suppressed, and, most importantly, all manifestations of their republican ideals would continue to be assured.

Turner's rebellion never faded into the background, nor was it forgotten by the people of the South. It became a never-ending source of anxiety for the region.⁵⁹

Furthermore, the insurrection itself sparked a public debate concerning the feasibility of the emancipation of slaves. This was a debate that John Brown would rekindle in 1859.⁶⁰

The pivotal decade for slavery proved to be the 1850s. It was during this decade that the Compromise of 1850 and the Kansas Nebraska Act were passed. This was also the decade when the Supreme Court made its ruling on the monumental Dred Scott case. So powerful were these events that they ruined one political party, almost destroyed another, and gave birth to a third.

In 1848, after the Mexican War, the United States acquired a substantial amount of territory through the Mexican Cession and the annexation of Texas. The discovery of gold hastened the question of statehood for California, and Californians overwhelmingly voted to exclude slavery in their territory. Southerners in Congress threatened to block its admittance at all costs.⁶¹ The expansion of the United States, and in particular the admittance of California as a free state, resurrected for the first time since 1819 the issue of Congress' power over the institution of slavery.⁶² As in 1819, the sectional controversy threatened to tear the nation apart. Once again, throughout the south, talk of secession was widespread, and there was even extremist talk of "making the necessary preparations of men and money, arms and munitions, to meet the emergency."⁶³

As we shall see in chapters four and five, sectional tension had been mounting throughout the entire nation, particularly in Missouri. There, extreme northern abolitionist criticism had left enormous resentment, not only because of the abolitionist

movement towards slavery, but also because of fugitive slave issues which had come to the forefront once again.⁶⁴

As in 1819, an aging Henry Clay assumed his role as mediator and introduced legislation that would eventually become known as the Compromise of 1850.⁶⁵ Millard Fillmore took over the mantle after Henry Clay's health deteriorated and worked to negotiate and mediate a settlement; however, it was Stephen A. Douglas and the Democrats who received the lion's share of the credit for the success of the legislation.⁶⁶

The Compromise itself was pushed through Congress with the muscle of Douglas and the Democratic leadership. At the center of the compromise was California, which was allowed to enter the union as a free state. The Compromise also provided that the territories of New Mexico and Utah and the remainder of the Cession would decide, through the principle of popular sovereignty, for themselves and in their constitutions whether they would allow slavery.⁶⁷ In return, the slave power received a more stringent Fugitive Slave Law which would take precedence over the liberty laws then gaining momentum in the northern states.⁶⁸ This new law made the federal government responsible for capturing runaway slaves anywhere in the United States.

As for the District of Columbia, the bill only banned the importation of slaves within the District, and it did not prevent local residents from importing slaves for their own use. In addition, locals could still sell their own slaves within the District or, for that matter, anywhere else in the United States.⁶⁹ This portion of the compromise, when compared to the others, proved to be minor and of little consequence.

The Compromise of 1850, like the Missouri Compromise, was a series of cooperative measures. Of particular interest to the South was the Fugitive Slave Law,

which proved to be a substantial gain.⁷⁰ In fact, the Fugitive Slave Law was viewed as a major defeat for the struggle against slavery.⁷¹ In the 1850s, animosity towards the South, and in particular towards the institution of slavery, grew in size and ferocity, and the Fugitive Slave Law proved to be a compelling force in propagating that ill will.⁷²

Both political parties paid the price for this compromise, but, for the Whigs, it was the beginning of the end. While the Democrats had some defections, it was the Whigs who took a major blow.⁷³ Through the efforts of a dying Henry Clay, they did manage to survive, but they had seen their best day. In a few years, the Kansas-Nebraska Act would be the final nail in their party's coffin. Northerners from both parties opposed the compromise, in particular the fugitive slave portion of it, but it was the Whigs who suffered more because their party contained within it a larger anti-slavery wing than did the Democrats.⁷⁴

Although the Compromise of 1850 seemed to conclude the expansion crisis following 1848, it only delayed the worsening sectional tensions. At the very heart of the agreement was the principle of popular sovereignty.⁷⁵

Before 1850, the slave power had used the issue of states rights to champion their cause, and, through the compromise, they added the constitutional principle of popular sovereignty to their arsenal. Although the compromise did temporarily suppress the sectional conflict, the Democrats used this moment in time as an opportunity to press their preference for "localism and diversity" through popular sovereignty.⁷⁶ In fact, the Democrats were so confident in this compromise and the principle that held it together that in the 1852 national Democratic platform they listed the great Compromise of 1850

as the “final settlement” concerning the sectional issues and tensions which divided the north and south.⁷⁷

For Stephen A. Douglas, this too was a pivotal moment, for it helped to form the major theme of the arguments for the political battles which he was about to champion for the Democrats.⁷⁸ What better tool to protect and propagate slavery than that principle which was the very core of republicanism, popular sovereignty.

Douglas’s actions, speeches, and legislation clearly indicate that he lacked moral sensitivity towards slavery.⁷⁹ He simply could not understand why there should be so much disdain for the institution of slavery in the north. In doing so, he underestimated the fury of those who not only opposed slavery itself, but also its spread into the newly formed territories. And so, he opened a can of worms which turned out to be instead a keg of dynamite. In the Missouri Compromise, Douglas argued that the principle of popular sovereignty had been replaced by a geographical line limiting or admitting slave and free territory.⁸⁰ The first salvos of the Civil War were fired, not by cannons, mortars, or small arms, but by what became known as the Kansas-Nebraska Act four years after the Compromise of 1850.

In 1854, the sectional tension which existed between the slave power and the antislavery boosters was about to be elevated to another level. The catalyst for this discord was a bill which was introduced by Stephen A. Douglas and became known as the Kansas-Nebraska Act. Once again, the principle of popular sovereignty would take center stage in the debates which were about to take place.

At the core of the Kansas-Nebraska Act was the slaveholders attempt to gain previously free soil. Democratic Senator John Bell warned that the hostility brought by

this bill would destroy the National Democratic Party. While it did not destroy the party completely, the Kansas-Nebraska Act became possibly the most volatile and divisive event which pushed the nation towards the civil war, finished the Whig Party, and eventually gave birth to the new Republican Party.⁸¹

The Kansas-Nebraska Bill proposed to effectively repeal the Missouri Compromise of 1820.⁸² This included all territory which had been secured through the Louisiana Purchase and, in particular, Kansas and Nebraska. The slavery question would be settled through the doctrine of popular sovereignty by the settlers of the area.⁸³ But the act went further than just repealing the Missouri Compromise. The question of the Old Northwest Territory also arose, for several fugitive slave cases in this territory illuminated the issue of how far north slavery could, and possibly would, be extended.⁸⁴

Ironically, in 1820 the Missouri Compromise had been viewed a defeat for the North, one which had been enabled by the three-fifths compromise. During this battle though, the antislavery forces defended the thirty-six thirty line of division vigorously.⁸⁵ In their eyes, this territory, whose free soil had been established by the Northwest Ordinance and had been an "understood national policy," would remain free soil.⁸⁶

When the bill came up for legislative vote, most held the party line. In the Senate, most northern Democrats voted with Douglas and the South, and the bill was passed on March 4, 1854 with only four Northern Democrats and two Southern Whigs voting against the measure.⁸⁷ In the House, the bill passed with a total tally of 113 to 100. While the power of the Southern Democrats greatly influenced the outcome, the Northern Democrats, who voted 42 to 39 in favor of the measure, were also influential. Still, there

was a definite split in the party. Once again, the old three-fifths compromise hammered out in 1787 had come through for the slave power.

As a Jacksonian Democrat, Douglas used the rhetoric of westward expansion towards the frontier as a manifestation of individual freedom and republican government to defend and justify his perpetuation of the question of slavery through popular sovereignty.⁸⁸ Douglas advocated the idea that the Missouri line was a nuisance that kept the slavery question always in the forefront of all possible negotiations. He, along with the Democratic Party, felt that an answer was needed in order for the United States to continue the creation of a continental empire, and at the heart of that answer was popular sovereignty.⁸⁹

Douglas's motives were purely political. He needed southern support for his bill in order to speed up the construction of a trans-continental railroad, which would be passing through Chicago. In return, he included the repeal of the Missouri Compromise in his bill in order to secure that support. He used that principle, which had become so dear to him, in order to secure this "sacred agreement."⁹⁰ But it did not end there, for Douglas felt that the principle of popular sovereignty had been a gift which would solve the sectional conflicts and afford him the opportunity to get the southern electoral votes he would need if he were to become president some day. In his quest to gain the transcontinental railroad through Illinois and his desire to solidify politically electoral allies, he used the principle of popular sovereignty to try and appease both sides when he made his play to gain new territory for the slave power in Kansas and Nebraska.⁹¹

The slave power in the south accepted the bill smugly and rejoiced with the prospect of a strong political ally in Stephen Douglas. In the north, however, the general

consensus was that the slave power had purchased politicians in an evil conspiracy and that this was only the tip of the iceberg.⁹² There was also a general sentiment in the north that the repeal of the Missouri Compromise not only contaminated an already free territory, but that this necessary evil had now been forced upon the entire nation.⁹³

To be sure, the Kansas-Nebraska Act created a cataclysmic social and political explosion which produced collateral damage, and, although it did not become immediately evident, it ignited a chain of events which would change the course of American history. As with the Compromise of 1850, once again the Whig Party suffered with this legislation. This time, however, it was a fatal blow.

When it came to slavery, the Northern and Southern Whigs could never find a common ground. The one thing they wanted for the salvation of the party -- for the issue to go away -- never occurred. The rise of the Know Nothing Party, along with the emergence of the new Republican Party, offered many antislavery boosters a way out and also contributed to the demise of the Whigs.⁹⁴ And so a tired political party, which had wrangled over the issues of Texas, Wilmot, fugitive slaves, and Kansas, eventually drowned within its own discord as party members continued to jump ship.⁹⁵

President Franklin Pierce committed his administration to support the Kansas-Nebraska Act and in doing so created more than a ripple within the Democratic Party, for both he and Douglas provoked the wrath of the northern Democrats. Pierce pursued a proslavery, pro-southern policy and had to accept the responsibility for the northern political upheaval that erupted with his actions.⁹⁶

While the Kansas-Nebraska Act spelled the beginning of the last page in the history of the Whig party, it almost ruined the Democrats. Many Northern Democrats

became convinced that the old Democratic Party had now become the party of the slave power, and it was not long before even some of them began to defect to the newly formed Republican Party.⁹⁷ The Democrats would not die out as the Whigs eventually did, but for the party which had dominated national politics for the previous twenty-five years, the Kansas-Nebraska Act commenced a series of events which would leave it politically impotent for most of the second half of the nineteenth century.⁹⁸

The act itself did much to energize the abolitionist and antislavery boosters, and one newspaper even went as far as to say that the act had "created more abolitionists in two months than William Lloyd Garrison and Wendell Phillips did in twenty years."⁹⁹ The bill also inspired Abraham Lincoln to come out of retirement in 1854. He had retired from Congress in 1849, and no one in America then suspected that the man who was born in a log cabin would come back to change the course of history.¹⁰⁰

Lincoln had come to the realization that political creatures like Douglas were using the constitutional principle of popular sovereignty only for political gain. In his mind, he felt that Douglas did not care whether slavery would be voted in or out but that it was simply a tool to dangle as the bargaining leverage he needed to obtain what he was really in pursuit of. He began speaking against the measure everywhere and anywhere, and it was these debates and stump speeches where he began to hone those already self-assured and extraordinary skills into the homespun and humorous Lincoln the nation came to know in the late 1850s.¹⁰¹

The passage of the Kansas-Nebraska Act forced Lincoln to evolve his antislavery sentiments at a much quicker tempo. His speeches became firmer and his tone against

slavery became more forceful. He accepted the institution as a constitutional right, but he personally continued to chide the institution as a “moral wrong.”¹⁰²

An event of crucial significance occurred on February 28, 1854. A group of men met at Ripon, Wisconsin, where they formed a new party to resist the advancement of slavery in lieu of the Kansas-Nebraska Bill. These were men who were a part of the Whig, Democrat, and Free Soil Parties who had become disenchanted with their political affiliations as a result of the Kansas-Nebraska issue. On July 6th, they met again at Jackson, Michigan, and adopted the name “Republican” in honor of the Democratic Republicans of Thomas Jefferson. Soon after, meetings occurred throughout the north, and the new Republican Party began to gain momentum at an astonishing rate.¹⁰³ In 1856, Lincoln played a major role in the organization of the Republican Party in Illinois, which just two years later nominated him to run for the state’s senate seat against Stephen A. Douglas.¹⁰⁴

The Kansas-Nebraska Act was bullied through Congress with the intention of strengthening slavery’s stranglehold on the nation and the political landscape. The slave power had achieved its ultimate power play, and the constitution had been there to protect it again. Once more, the principle of popular sovereignty, which had been used as a way to wrest power away from seventeenth century English monarchs, then again in 1787 to wrest power away from the states, was used in 1854. This time, however, the voice of “We The People” had been perverted not only to secure the institution of slavery but also to expand it where once had been Free Soil in the continental United States. But even these victories were not enough.

There were several other issues which highlight the constitution's role in slavery's history during the 1850s, but one in particular merits attention. This one case stands out because the ruling proved to be a monumental decision, one which went against the court's earlier tendency to play a limited role concerning the issue of slavery in the first half of the nineteenth century. In 1857, the Supreme Court handed down its Dred Scott decision, and, with this opinion, the sectional crisis reached the crucial constitutional milestone of the 1850s.¹⁰⁵

Scott had been the slave of an army surgeon who had taken him to Illinois and Fort Snelling in the northernmost part of the Louisiana territory for two years.¹⁰⁶ After they returned to St. Louis, Scott's master died, and he became property of the surgeon's widow. White friends advised him to sue for freedom on the grounds that he had lived in a free territory. In 1846, he filed his lawsuit, and the case took an eleven year journey through the courts, eventually ending up in the Supreme Court in 1857.¹⁰⁷

The justices heard the first arguments in 1856 and reserved judgment in lieu of hearing the arguments once again in 1857.¹⁰⁸ There were three questions before the court: was Scott a citizen with the right to sue in federal courts; had his extended stay in free soil made him free; and did Congress have the right to ban slavery in the Louisiana Purchase north of the thirty-six thirty line? These questions drew the defining lines for the case which would eventually lead to even greater sectional division within the nation.

At first, it appeared that the court would avoid the first and third questions. If it did so, it would reaffirm previous decisions from the highest court in Missouri and the federal circuit court which acknowledged that Missouri law dictated Scott's status, and it seemed for a short time that the court would take this way out.¹⁰⁹

However, two non-Democrat judges on the Court, Justice McLean of Ohio and Justice Curtis of Massachusetts, stated that they would dissent and not only uphold Scott's freedom but recognize black citizenship, thereby endorsing Congress' right to prohibit slavery in the territory. The majority of the justices did not want this to be the only word written on the decision, so they decided *en mass* to issue a comprehensive ruling covering all aspects of the case.¹¹⁰ Chief Justice Taney became the author of the majority decision and issued the now infamous Dred Scott decision.¹¹¹ The sectional crisis perpetuated by the Dred Scott decision then became the result of two northern associate justices who successfully baited the majority or the other justices to "consider the subject of congressional power over slavery in the territories."¹¹²

In their dissent, Curtis and McLean reminded everyone that free blacks had been granted many rights in 1788 and thereafter. They also argued and that in five of the thirteen states that had ratified the Constitution black men had been given the right to vote and had in turn participated in the ratification process.¹¹³

Yet, in the majority decision, Chief Justice Roger B. Taney stated that, in accordance with the constitution, no black, slave or free, was a citizen of the United States. Furthermore, he argued, blacks were property and not human beings and so were not endowed with inalienable rights.¹¹⁴ Taney's decision made very clear that "the enslaved African race was not intended to be included and formed no part of the people who framed and adopted the Declaration of Independence."¹¹⁵

Taney agreed with six other justices that Scott was not a free man when he returned to Missouri, even if the territory he had resided in for two years was free. One page of the judgment was devoted to this issue, while twenty-one of the fifty-five pages

were devoted to the constitutionality of the Missouri Compromise. The section on constitutionality argued that Congress had never possessed the right to prohibit slavery in that territory. The ultimate blow came with the principles not only of popular sovereignty but also of individual rights as well. Taney's final words in the decision stated that if Congress could not deny any individual their property as guaranteed in the Fifth Amendment, then it could not authorize any territorial government to implement such power as to deny any citizen the right to own slaves.¹¹⁶

For slaves, it was an unusual paradox because they held dual status as human beings and property as a result of the constitution.¹¹⁷ Those very same republican principles that guaranteed the liberty offered in the Declaration of Independence were denied to an individual group because they were defined by the constitution as property.

The result of the decision was to open slavery to all the territories and to deny the principle of popular sovereignty. Furthermore, even if a black person was free, he could never achieve citizenship or ever expect any type of legal rights whatsoever.¹¹⁸ The South, their Democrats, and President James Buchanan not only accepted this decision but were delighted with the outcome.¹¹⁹ The Court's decision strengthened the Kansas-Nebraska Act of 1854, effectively claiming that any type of restriction upon slavery which had been implemented by the compromise in 1820 and even the Northwest Ordinance of 1787 had been unconstitutional.¹²⁰

Stephen Douglas, that champion of the Kansas-Nebraska Act and his "great principle," remained silent for weeks after the announcement of the decision. He agreed in principle with the issue of black citizenship, and the court had sanctioned his Kansas-Nebraska Act when it ruled that excluding slavery from once free soil had been

unconstitutional.¹²¹ However, the ruling contradicted his philosophy of the new territories and popular sovereignty. He also believed, and eventually argued, that blacks were unequivocally excluded from the rights in the Declaration of Independence. Further, he concluded that they were never part of the Constitution when it spoke in terms of “We The People.”¹²²

Finally, in May of 1857, in a speech at the Illinois statehouse, Douglas addressed the decision and argued that the right to take slaves into a territory was useless unless it was upheld by the local authorities. It therefore needed local public support to enforce that right. In making this argument, Douglas denied any contradiction whatsoever between Dred Scott and the principle he championed so passionately, popular sovereignty.¹²³

The Republicans wasted no time in mocking Douglas for his political hypocrisy in this ploy to fuse his “great principle” of popular sovereignty with the Dred Scott decision.¹²⁴ It was absurd and beyond comprehension to believe that popular sovereignty might outlaw slavery in a territory where individuals had sworn an oath of allegiance to the constitution.¹²⁵

Many Republicans felt that the new doctrine espoused through the Supreme Court’s Dred Scott decision was part of a plot of “filibustering, slavery-extending, sham Democracy” which would guarantee immortality to the institution of slavery.¹²⁶ The fear was that if the constitution could not bar it from a territory, then how could an already formed state with its own constitution, laws and regulations bar it as well?¹²⁷

The Republicans also feared that the Constitution protected slavery even in states where laws against it already existed. In doing so, they saw the slave power conspiracy as

going further than just protecting the institution; they saw it gaining momentum to transfer all free soil into slave soil.¹²⁸

The Republicans followed Lincoln's lead in characterizing the decision as part of a slave power conspiracy at every turn. They argued that the slave power had corrupted not only the political system and the government, but the Constitution itself. They were convinced, and told anyone who listened to them, that the Supreme Court's motives were eventually to nationalize slavery by legalizing it in the northern states.¹²⁹

Lincoln, on the other hand, fired back at Douglas, stating that the decision itself was a grave error that had been made by the court. He opposed the language in the decision, claiming that Taney's opinion misrepresented the Declaration of Independence when he stated that the signers never intended to include blacks within the philosophies of the document.¹³⁰ His interpretation did not go as far as to assert that all men were necessarily equal, but, unlike Douglas, he argued that they were still entitled to the natural rights enumerated in the Declaration.¹³¹ He opposed the granting of citizenship to blacks in Illinois, but he argued that any state had the authority, under the Constitution, to make any Negro a citizen should they choose to do so.¹³² He also reminded his listeners that the court had erred in the past and had reversed its own decisions, something he would work diligently to make happen again.¹³³

Lincoln directly attacked the Dred Scott decision as the definitive instrument which had turned the doctrine of popular sovereignty into the hopeless and dying last gasp of "We The People." In Lincoln's eyes, the Dred Scott decision, along with the Douglas's Kansas-Nebraska Act, had become part of a well planned scheme. He

compared this scheme to “a piece of machinery” which had been created to sanction, protect, and expand slavery throughout the United States.¹³⁴

Douglas believed that the Republicans were making more of the decision than what it really was.¹³⁵ However, by 1857, it was obvious that the Democratic Party had completely committed itself to the cause of slavery, and this created a political dilemma for Douglas.¹³⁶ Regardless, there was no doubt that this became a difficult cauldron of controversial issues that had become almost impossible for him to balance.

Even though Douglas had originally spoken warmly of the Dred Scott decision, from the beginning it presented an obstacle for the principle he espoused, that of popular sovereignty. His Freeport doctrine had fallen by the wayside when President Buchanan and the Democrats had attempted to bring Kansas into the Union with a proslavery constitution that had not been properly adopted by the people of the territory. He had no choice but to part ways with the President, for, if he backed Buchanan on this play, he had to surrender his great principle, which would bring forth his political ruin in Illinois.¹³⁷

Buchanan did not take Douglas's rebuke of the Lecompton constitution well. True to the Jacksonian methods of dealing with political enemies, Buchanan proceeded to dismiss Douglas supporters. As one newspaper so gruesomely put it, “Old Buck has got the guillotine well greased and in full swing.” And the heads of Douglas supporters would be “falling into the basket as fast as the old machine can be made to work.”¹³⁸

Both Republicans and Southerners agreed on one thing, though. They both disagreed with popular sovereignty as Douglas defined it. Southerners interpreted the constitution as the protector of their slave property, regardless of what the local

legislatures ruled through popular sovereignty. Republicans interpreted the constitution as the instrument which gave Congress the power to prevent the spread of slavery, should the will of the people in that area, or popular sovereignty, determine that course.¹³⁹ In Douglas's effort to please both sides in order to secure his political gains, in the end he disappointed all.

Eventually the Dred Scott decision became one of the main issues of the Lincoln-Douglas Debates. Once again, the tense issue of popular sovereignty was the main bone of contention. This is particularly true of Douglas's Freeport Doctrine, where he argued that any territorial legislature could exclude slavery by refusing to pass laws to protect the institution, thus evading the Supreme Court's decision.¹⁴⁰

Newspapers across the North cried foul as they accused the court of opening the floodgates of slavery into previously free soil. Papers such as Horace Greeley's *Tribune* labeled the Court's decision as "a collation of false statement and shallow sophistries." The Albany *Evening Journal* mockingly declared that "three hundred forty-seven thousand, five hundred and twenty-five Slaveholders in the Republic" were responsible for converting "the Supreme Court into a propagandist of human Slavery." Washington's *National Era* accused the slave power of finally owning all three branches of government.¹⁴¹ Some newspapers and journals went as far as to decree that the Dred Scott decision proved beyond a doubt that there indeed existed a slave power conspiracy which protected the institution of slavery in every corner of the republic.¹⁴²

Historian Kenneth Stampp has suggested that during the decade in question, and in particular 1857, the sectional crisis may have reached a point of no return. Adding fuel to the sectional fire would have been the crisis in Kansas, Douglas's political beak with

President Buchanan, the economic crisis which ensued, and, of course, the Dred Scott Supreme Court decision.¹⁴³ Of one thing there is no doubt: the Dred Scott decision deeply intensified the already deeply strained hostility between the slave power and the antislavery boosters.¹⁴⁴

Lincoln saw the Dred Scott decision as another pivotal moment in the evolution of the slave power conspiracy. It was crucial because, in his eyes, their quest to control had reached not only the highest political levels possible, but it also represents the crowning of that power's incredible influence and control of all three branches of government. With this supremacy, the slave power was now in position not only to protect the institution of slavery but also to propagate it indefinitely. Even worse, in Lincoln's view, it made a mockery of the Declaration of Independence.¹⁴⁵

In the final decade before the great Civil War, legislative actions combined with controversial court decisions brought on a frightening prospect for abolitionists and northern antislavery boosters. Their fear was not now only that slavery would expand to the new territories but that the slave power would eventually spread slavery throughout the entire nation.¹⁴⁶ Once again, the slave power's chief mechanisms used to achieve these successes were constitutional principles. Even more intriguing is just how constitutionally sophisticated the arguments became.

Yet, even Lincoln and his Republicans knew all too well that the constitution was the law of the land. What had occurred, whether they agreed with it or not, was sanctioned by the United States Constitution. They could cry foul all they wanted, but their hands were tied. If they wanted to affect change, they would have to wrest the constitutional advantage away from the slave power. It could take years, even decades, to

procure this change through constitutional means. Yet, little did they know that they were about to be handed a mechanism which would make this transformation a violent reality.

Let us now turn to the annexation of Texas as a case study for examining the expansionist movement of the 1840s and the ways that it slaveholders used constitutional rhetoric to their own political and economic advantage.

END NOTES

¹ Lawrence Goldstone, *Dark Bargain: Slavery, Profits, and the Struggle for the Constitution* (New York: Walker & Company, 2005), 13. In his book, Goldstone asserts that no other issue “evoked the most passion. . . left the least possibility of compromise” and “would pit morality against pragmatism” as the issue of slavery.

² Paul Finkelman, *Slavery and the Founders* (New York: M.E. Sharpe, 2001), 212-213.

³ Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* (New York, W.W. Norton and Company Ltd, 2005), 34.

⁴ Goldstone, 195.

⁵ Finkelman, 9-10.

⁶ Goldstone, 3-4. When Pinckney rose to speak to his fellow South Carolinians in favor of the constitution, he already felt that the new constitution not only protected slavery, but encouraged it.

⁷ Wilentz, 34.

⁸ Finkelman, 7.

⁹ William W. Freehling, *The Road to Disunion: Secessionists at Bay, 1776-1854* (New York: Oxford University Press, 1991), Vol. 1, 147. Freehling argues in his work that at the core of the Constitution was republicanism, but the three-fifths compromise became such an abomination that it became anti-republican.

¹⁰ Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (Oxford: Oxford University Press, 1995) 89.

¹¹ David Brion Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (New York: Oxford University Press, 2006), 273.

¹² Wilentz, 548.

¹³ Wilentz, 651.

¹⁴ Phillips, 6-7. The three-fifths compromise is in Article 1 Section 2 and the fugitive slave clause is Article 4 Section 2.

¹⁵ Ibid., 6.

¹⁶ Finkleman, 7.

¹⁷ Ibid., 7.

¹⁸ Ibid., 8. This section prevented federal taxes on exports, or products produced by slaves and slave states.

¹⁹ Ibid., 8. This section prohibited federal taxes on exports or imports, preventing the indirect tax on the products produced by slave labor by non slaveholding states.

²⁰ Ibid., 8. This clause created the Electoral College and provided for the indirect election of the executive, which incorporated the three-fifths accommodation, thus giving “whites in slave states a disproportionate influence in the election of the president.”

²¹ Ibid., 8. This clause allowed for the admission of new states into the union, thus expanding the institution of slavery as well.

²² Ibid., 8. This clause required a three-fourths majority of the states to ratify any changes in the constitution, thus ensuring the slave states a strong political voice in the event that an attempt was made to abolish slavery through constitutional amendment.

²³ Stanley W. Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860* (Chapel Hill: University of North Carolina Press, 1970), 7.

²⁴ Finkelman, 81.

²⁵ Ibid., 98-99.

²⁶ Don E. Fehrenbacher and Ward M. McAfee, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery* (New York: Oxford University Press, 2000) 211.

²⁷ John Ferling, *Adams vs. Jefferson: The Tumultuous Election of 1800* (New York: Oxford University Press, 2004), 208. Although the election eventually wound up in the House of Representatives, it was clear that it had been the electoral advantage which put Jefferson in true contention for the presidency. "Some Federalist newspapers immediately charged that he never would have been elected had it not been for the three-fifths rule that had unjustly inflated the number of electors allocated to the South. A New England journal said that Jefferson had ridden 'into the temple of Liberty on the shoulders of slaves,' and Pickering labeled him the 'Negro President.'"

²⁸ Freehling, 147. Even though the white population of the South at the time was around forty percent of the nation's total, because of the three-fifths accommodation they controlled forty-seven percent of the electoral votes.

²⁹ Ibid., 147.

³⁰ Wilentz, 233.

³¹ Charles Sellers, *The Market Revolution: Jacksonian America, 1815-1846* (New York: Oxford University Press, 1991), 139.

³² Wilentz, 223.

³³ Davis, 278.

³⁴ Herbert Aptheker, *American Negro Slave Revolts* (New York: International Publishers, 1993), 47-48. Aptheker is referring to the first and only successful slave rebellion which occurred on the island of Haiti against the French. It established Haiti as the first free black republic in the western hemisphere.

³⁵ Davis, 276.

³⁶ Ibid., 276.

³⁷ Wilentz, 229.

³⁸ Davis, 275.

³⁹ Alice Dana Adams, *The Neglected Period of Anti-Slavery in America, 1808-1831* (Gloucester: Peter Smith, 1964), 216.

⁴⁰ Ibid., 216.

⁴¹ Ibid., 111.

⁴² Freehling, 148.

⁴³ Sellers, 140.

⁴⁴ Aptheker, 296.

⁴⁵ Russel B. Nye, *A Baker's Dozen: Thirteen Unusual Americans* (East Lansing: Michigan State University Press, 1956), 236.

⁴⁶ Nye, 237.

⁴⁷ Ibid., 239-240.

⁴⁸ Ibid., 242.

⁴⁹ Aptheker, 300.

⁵⁰ Nye, 242.

⁵¹ Ibid., 242.

⁵² Stephen B. Oates, *Our Fiery Trial: Abraham Lincoln, John Brown and the Civil War Era* (Amherst: University of Massachusetts Press, 1979), 14.

⁵³ Aptheker, 302.

⁵⁴ Ibid., 302.

⁵⁵ Ibid., 314. Immediately following the revolt, new regulations were enacted which restricted both free and slave Negroes and mulattos as well. These included the absolute restriction of ordination of any black, restriction on preaching, restriction on holding any assemblies whatsoever, and restriction on possession of weapons of any kind. Any assault by a Negro towards a white with intent to kill was an automatic death sentence. No white was to sell liquor of any kind to any black, free, slave or mulatto. There were other restrictions as well, all with the consequence of whippings for blacks and fines for whites.

⁵⁶ Ibid., 305.

⁵⁷ Fehrenbacher and McAfee, 72.

⁵⁸ Oates, 15.

⁵⁹ Kenneth M. Stampp, *America in 1857: A Nation on the Brink* (New York: Oxford University Press, 1990), 35.

⁶⁰ Freehling, 178. It was a terrified populace that was raising these questions and concerns.

⁶¹ Tyler Anbinder, *Nativism and Slavery: The Northern Know Nothings and the Politics of the 1850's* (New York: Oxford University Press, 1992), 15.

⁶² Michael Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 1997), 137.

⁶³ Fehrenbacher and McAfee, 83. Alexander H. Stephens was the man responsible for this comment; he was a conservative Congressman from Georgia who bailed on the Whigs and turned to the Democratic Party while he served in Congress.

⁶⁴ Stamp, *America in 1857*, 84.

⁶⁵ Fehrenbacher and McAfee, 83. According to the authors, the "compromise package reported by Clay on May 8 consisted primarily of a five-part 'omnibus' bill dealing with the admission of California, territorial organization for Utah and New Mexico, the boundaries of Texas, and the public debt of Texas. In addition, the committee recommended meliorative amendments to a fugitive slave measure already under consideration by the Senate, and as the seventh and last compromise item, it reported a separate bill for suppression of the professional slave trade in the District of Columbia."

⁶⁶ Allen C. Guelzo, *Abraham Lincoln: Redeemer President* (Grand Rapids: Eerdmans, 1999), 145. Both Fillmore and Clay were Whigs, yet Douglas and the Democrats took credit for the brokered deal.

⁶⁷ James A. Colaiaco, *Frederick Douglass and the Fourth of July* (New York: Palgrave Macmillan, 2006), 65.

⁶⁸ Davis, 265.

⁶⁹ Fehrenbacher and McAfee, 84.

⁷⁰ Campbell, 5.

⁷¹ Colaiaco, 117.

⁷² Stamp, *America in 1857*, 237.

⁷³ Guelzo, 199. In fact, the Whig Conventions in New York, Ohio and Pennsylvania failed secure a vote of endorsement for the compromise by "embarrassing margins."

⁷⁴ Anbinder, 16.

⁷⁵ Morrison, 137.

⁷⁶ Guelzo, 145.

⁷⁷ Stamp, *America in 1857*, 4. This was the year that Franklin Pierce had been nominated for the presidency by the Democratic Party, only to be denied that very same nomination four years later when the Democratic Party nominated James Buchanan instead.

⁷⁸ Guelzo, 179.

⁷⁹ Benjamin P. Thomas, *Abraham Lincoln: A Biography* (New York: Alfred Knopf, 1952), 141.

⁸⁰ Ibid., 147.

⁸¹ James M. McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988), 121.

⁸² Davis, 128.

⁸³ Guelzo, 186.

⁸⁴ Campbell, 81. In Wisconsin a fugitive slave named John Glover had been arrested and jailed. A day later, he was rescued by a sympathetic crowd and ushered to Canada. In Boston, a fugitive slave named Anthony Burns was captured and tried, then remanded to slavery at the expense of the federal government. While the slave power applauded the jurisdiction of the federal government, the abolitionists and antislavery boosters used these very same cases to sway public opinion against slavery in the north.

⁸⁵ Davis, 278.

⁸⁶ Ibid., 276; Willentz, 223.

⁸⁷ Freehling, 559.

⁸⁸ Fehrenbacher and McAfee, 275.

⁸⁹ Oates, 57.

⁹⁰ Anbinder, 18.

⁹¹ David Grimsted, *American Mobbing, 1828-1861: Toward Civil War* (New York: Oxford University Press, 1998), 246.

⁹² Guelzo, 181.

⁹³ Ibid., 189.

⁹⁴ Anbinder, 43.

⁹⁵ Freehling, 562.

- ⁹⁶ Stampp, *America in 1857*, 4.
- ⁹⁷ Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (Oxford: Oxford University Press, 1995), 162.
- ⁹⁸ Anbinder, 19.
- ⁹⁹ Davis, 128.
- ¹⁰⁰ Colaiaco, 129.
- ¹⁰¹ Davis, 288.
- ¹⁰² Howard Jones, *Abraham Lincoln and a New Birth of Freedom: The Union and Slavery in the Diplomacy of the Civil War* (Lincoln: University of Nebraska Press, 1999), 30.
- ¹⁰³ Thomas, 144.
- ¹⁰⁴ Davis, 288.
- ¹⁰⁵ Stampp, *America in 1857*, 109.
- ¹⁰⁶ Guelzo, 210.
- ¹⁰⁷ McPherson, 171.
- ¹⁰⁸ *Ibid.*, 171. The issue of arguing the case in 1856 and then again in 1857 is interesting since the Presidential election was being held in 1856. McPherson speculates that the Supreme Court may have wanted to avoid a decision, therefore impacting the results of that election.
- ¹⁰⁹ *Ibid.*, 172.
- ¹¹⁰ *Ibid.*, 172.
- ¹¹¹ *Ibid.*, 174. Taney had been a Jacksonian Democrat, had served the president as secretary of the treasury, and helped him to destroy the Bank of the United States. His main theme as chief justice had been the defense of slavery. He had freed his own slaves but loved and was committed to southern values and way of life.
- ¹¹² Kenneth M. Stampp, *The Imperiled Union: Essays on the Background of the Civil War* (New York: Oxford University Press, 1981), 220.
- ¹¹³ McPherson, 175. Among the rights blacks held in 1788 were "to hold and bequeath property, make contracts, [and] seek redress in courts."
- ¹¹⁴ Colaiaco, 4.
- ¹¹⁵ Jones, 26.
- ¹¹⁶ McPherson, 176.
- ¹¹⁷ Jones, 26.
- ¹¹⁸ Grimsted, 258.
- ¹¹⁹ Davis, 287.
- ¹²⁰ Stampp, *America in 1857*, 96.
- ¹²¹ Davis, 287.
- ¹²² Colaiaco, 4.
- ¹²³ Davis, 288.
- ¹²⁴ Stampp, *America in 1857*, 108.
- ¹²⁵ *Ibid.*, 108.
- ¹²⁶ Stampp, *The Imperiled Union*, 150.
- ¹²⁷ Foner, 97. The Republicans feared that the next step in the slave power conspiracy would be to deny a state the power to exclude slavery.
- ¹²⁸ McPherson, 176. Lincoln addressed the Illinois Republicans in June 1858: "we shall *lie down* pleasantly dreaming that the people of *Missouri* are on the verge of making their State *free*; and we shall awake to the *reality*, instead, that the *Supreme Court* has made *Illinois* a *slave State*."
- ¹²⁹ Fehrenbacher and McAfee, 281.
- ¹³⁰ Colaiaco, 130.
- ¹³¹ Stampp, *The Imperiled Union*, 129.
- ¹³² *Ibid.*, 130.
- ¹³³ Davis, 288.
- ¹³⁴ *Ibid.*, 289.
- ¹³⁵ McPherson, 177. Douglas wrote: "A school boy knows" that the Court would never make "so ridiculous a decision," and "It is an insult to men's understanding, and a gross calumny on the Court."
- ¹³⁶ Alonzo Rothschild, *Lincoln, Master of Men: A Study in Character* (Boston: Houghton Mifflin, 1906), 92.

¹³⁷ Ibid., 92.

¹³⁸ Guelzo, 212.

¹³⁹ Davis, 292.

¹⁴⁰ Colaiaco, 151.

¹⁴¹ Guelzo, 210. The Washington paper actually used these words: "The Slaveholding Oligarchy have the Administration, the majority in the Senate and in the House, and the Supreme Court. What is left to the People?"

¹⁴² Foner, 97. Both the *Ohio State Journal* and the *Cincinnati Commercial* made these claims. There were, however, more.

¹⁴³ Stampp, *The Imperiled Union*, 245.

¹⁴⁴ Campbell, 94.

¹⁴⁵ Oates, 69.

¹⁴⁶ Colaiaco, 117.

CHAPTER 4

THE EXPANSION OF SLAVERY AND TEXAS

In the early 1800s the slave power of the United States began to gain ground through its political muscle, its unique constitutional advantage, and, in particular, through its passionate and devoted supporters. Proslavery advocates used every mechanism legally allowed them in order not only to protect, but also to expand, the institution of slavery throughout the republic.

This chapter will examine the constitutional expansion of slavery in the 1830s and 1840s. We have already set the stage in terms of the greater national events of the period and their impact on the “peculiar institution.” Now let us turn to specifically to the admission of Texas, the Mexican Cession and the binding ties that both those expansionist events held with the institution of slavery. The following narrative will allow the reader to better understand how the United States Constitution, and, in particular, constitutional principles, were used as the premiere mechanism not only to protect, but also to expand, slavery in the antebellum republic.

While the expansion of the United States had clearly been put in motion during the early years of the nineteenth century, two separate schools of thought came to dominate the early notions of how manifest destiny should unfold. The Federalists viewed the forthcoming expansion of the nation through the prism of free trade and

economic growth across the oceans through naval technology and manufacturing. The Republicans, on the other hand, envisioned expanding to the west and eliminating any non-whites who would stand in their way.¹ This vision included bringing their way of life with them, together with the institution of slavery.²

From its inception, Texas suffered what most new-found territories suffered from during that age, "New World disease: too much land, not enough laborers."³ Areas with a vast amount of land were especially susceptible to this plight, and Texas was certainly within this category. Texas needed to be cleared for the production of cotton, and the sooner the better.

During that same time, the Missouri crisis and the Transcontinental Treaty, which would cede Florida to the United States, became key political events. At seventy-seven, Thomas Jefferson, the Sage of Monticello, now retired and in a private conversation with President James Monroe, "privately assured the President that with military force the United States could soon acquire not only East Florida but also Cuba and Texas."⁴ In that very same conversation, Jefferson predicted that Texas would become the richest state because of its potential to grow more sugar and cotton with free labor than any other state in the union.

Jefferson had been instrumental in Virginia's claiming a stake in the "Old Northwest." As President, he had purchased the immense Louisiana Territory, then had it explored, mapped, and gridded to show the world that America was a geographic, as well as an ideological, world power. The purchase also showed just how close the country was to the Pacific Ocean, and Lewis and Clark helped to lay claim to that portion of the Continent, all but sealing the blessing that the nation would one day span from ocean to

ocean. But Britain and Russia were already laying claim to that territory, a territory which would come to play a role within the Mexican Cession in 1848, and which would come to be known as the "Oregon Territory."⁵

When one analyzes Jefferson's ability to be one of the "premiere" land speculators, combined with the incredible increase in cotton production as the cotton gin began to make a noticeable impact, one has to be in awe of his prediction. This puts into perspective his impact on national expansion, but it does much more. It also reflects the expansion of his conservative republicanism, which was warmly embraced with his election.⁶ This republicanism became the force which would ironically drive the expansion of the institution of slavery and the development of the political slave power which came to dominate antebellum American politics. The mechanism used for this expansion would, of course, be the Constitution.

Texas seemed like an ideal geographic jewel for slavery. North America was too far north to yield the treasures of South America. America's most tropical areas, eastern South Carolina and Georgia's coastal tidewater, were already growing rice. And sugar, which was the sacred cow of the South American slavocracies and was impossible to grow in current North America, was being successfully grown and cultivated in Louisiana and Texas.⁷

If Texas was the ideal geographic location, cotton was the ideal crop. Cotton had long been the savior of slavery. Along with wheat, it had saved the Chesapeake area when tobacco began to decline and South Carolina indigo when it was no longer guaranteed to sell because of the loss of the protected British market.⁸ In fact, at the close

of the eighteenth century, slavery was on the verge of becoming “an intolerable burden to the South,”⁹ but cotton changed all that.

Cotton was the one binding tie within the American South. The cash crop had ensured the growth and expansion of slavery in the American South and was now poised to make its entry in to Texas. The Spaniards who made the first arrangements for American colonists into the Texas Territory saw no qualms in allowing these individuals onto their land. These were, after all, Southern whites who had been experienced in the institution, knew how to carry it out, and whose racist views allowed them to use the practice effectively.¹⁰ Texas needed to be cleared for farming as well as ranching, and so the stage was set.

John Quincy Adams’s Transcontinental Treaty with Spain had done more than cede Florida to the United States, it had provided entrepreneurs with a vision that the possibility of a vast new territory was at hand. No sooner had the Adams-Onís Treaty been ratified by Congress in 1821 than did the new government of Mexico grant Stephen F. Austin permission to introduce a colony of Anglo-American immigrants into the frontier of Texas.¹¹ But the United States also had its eyes on the prize of the Caribbean, Cuba.

A wealthy slave-based plantation society, Cuba attracted British as well as American interest. Spain had been weakened by revolution throughout its empire, and Cuba laid as bare as an open oyster with its pearl glimmering for all to see. However, both countries tacitly agreed to leave the isle alone for the meantime, and, besides, Adams was one of several who had his eyes on Texas already.¹²

In the early 1820s, during the Missouri crisis, a theory arose in Virginia concerning the gradual emancipation of slavery, and it was known as the diffusion argument. At the heart of the argument was that if slaves could be slowly diffused out of Virginia, households would be safer and labor would be more productive.¹³ According to the theory, all that was needed was a frontier willing to accept the institution in order to let it die out. Even though Alabama and Mississippi both possessed huge tracts of undeveloped land, countless rivers, and a very favorable growing season, Texas became the frontier of choice.

Ironically, the president who began the actions to annex Texas in the 1840s was President John Tyler. Tyler himself had been a member of the House of Representatives in the 1820s, and it was his arguments surrounding the advantages of diffusion which helped to resolve the Missouri Crisis. Tyler's argument for diffusion was based around the notion that if you diffused the slaves throughout the republic, rather than contained them, the conditions would eventually become favorable for the end of slavery.¹⁴

Texas had always been a frontier. First it had been a frontier for the Spanish empire, then it became a frontier for France, and then eventually for Mexico. Inevitably, it became a frontier for slavery as well, but every step the institution took during its evolution in Texas was a perilous one, for slavery was continuously in jeopardy.

The original Texas colonization bill which was passed in 1822 spelled out provisions for American settlers. Among the many requirements were appropriation of land per family rather than per individual, mandatory conversion to Catholicism, and a stipulation that any children of slaves were to be freed at age fourteen. While the provisions on slavery were extremely vague, the fact that the Mexicans were asking the

new colonists to free their slaves meant that they were granting them permission to bring their slaves with them. At least, that's how the colonists interpreted that part of the bill.¹⁵

The first slaves introduced into Texas in the 1820s were slaves that came from Missouri, Virginia, and South Carolina, among other places in the American South. While it was not the first time that Texas had seen slaves, it was the first time that it experienced slavery of this magnitude.

Austin constantly worried about Mexican attitudes towards slavery. He felt strongly that without slavery Texas would neither grow nor attract the people the territory needed in order to see the area reach its potential.¹⁶ Overall, like Jefferson, his words said one thing, and his actions spoke another.¹⁷ For, while he spoke and wrote critically of the institution, his actions from 1822 to 1835 were a litany of proslavery efforts.¹⁸

In the end, Austin embraced slavery when he wrote in a letter from Matamoros:

I have been adverse to the principle of slavery in Texas. I have now, and for the last six months, changed my views of that matter; though my ideas are the same as to the abstract principle. Texas must be a slave country.¹⁹

Austin knew that Texas had to be a slave nation, and that, in the end, if it were to become a state in the United States, it would come into a slave republic as a slave republic itself.

There were several threats to slavery in Texas, but each time crafty slaveholders managed to dodge the bullet. For example, in 1827 a threat appeared in the form of Article 13 of the 1827 Mexican Constitution, which strictly forbade slavery. Moreover, the document stated that no one would be born a slave in the state and that within six months no form of slavery would be permitted in the state of Coahuila and Texas.²⁰

Another threat to Texas slavery appeared in 1828. On May 5, Mexico decreed a constitutional restriction on slavery, thus permanently banning the institution from

Mexico. Ironically, Mexico was heavily invested in a system of debt peonage, or indentured servitude. Cunning Texas slaveholding entrepreneurs used this system to indenture their slaves for ninety-nine years, thus dooming the bondsmen to a life of slavery anyway.²¹ This response is indicative of the crafty manner in which proslavery advocates everywhere responded to restrictions on the institution's expansion.

On September 15, 1829, President Guerrero issued a decree emancipating all slaves in the republic. The constitution of the newly created state of Coahuila and Texas declared that slavery was entirely abolished by "a decree of the Dictator, Guerrero."²² Later on December 2, after appeals had been made by the slaveholders, Guerrero issued another decree exempting Texas from the general emancipation.²³

Further threats came in 1830 when Mexico passed an anti-immigration law which, among other things, prohibited any further immigration, free or slave, from the United States.²⁴ Despite the law of 1830 prohibiting American immigration, new Texans and their property continued to arrive into Texas.²⁵

Finally, in 1832 the Mexican government began enforcing immigration restrictions and eventually called for a new colonization law. In an effort to counter those who would otherwise avoid restrictions, the decree also set limits on indenture contracts, which were now not to exceed ten years; on top of that, Mexico pledged to strictly monitor the introduction of new slaves into the area known as Texas.²⁶

In the 1830s, the price of cotton dropped, leading to a corresponding decline in the price of slaves and in the overall volume of cotton exports.²⁷ Regardless, Texan settlers continued to keep slaves, and more and more bondsmen continued to be brought in. Most of them were illegally bound to a ninety-nine year indenture with their masters,

and even though the laws of Mexico forbade slavery, the institution flourished.²⁸

Regardless of the indentured agreements and status, all blacks in Texas were seen as property, for they were "bought and sold, hired out, inventoried as assets of estates, and bequeathed in wills."²⁹

By 1830, Texas had an indelible southern flavor about it. There were ten thousand Anglo-American settlers and most of them were from Louisiana, Arkansas, Mississippi, Missouri, Georgia and Virginia. Slavery was strongly embedded within Texas. In addition, evangelical Protestantism, another Southern institution, thrived as most new immigrants failed to comply with the regulation that they become Catholic.³⁰

The constant assault on slavery had frayed the nerves of slave owners even as it made the slaves themselves restless. In the bondsmen's eyes, they felt the government of Mexico had freed them more than once, and slave owners had to be particularly strict and harsh in order to keep the yoke of bondage in place.³¹ While Texans battled to keep slavery in place under the Spanish and Mexicans, their chief foe had always been regulations and decrees attempting to undermine it. In 1836, with its declaration and new constitution, Texans finally had a document which regulated slavery and more importantly, protected it.

While the Texas Declaration of Independence did not mention slavery in any detail as the cause of the rebellion, the Texas Constitution covered it in great detail and guaranteed its protection and survival, something which had been lacking on the Texas frontier since its inception.³²

Here we will examine this insurrection within the context of the other two insurrections which both led to significant consequences for the United States, the American Revolution and the Civil War. Several key events surrounding the rebellion give this insurrection a particular “American Flavor” reminiscent of these other conflicts. Among them are the setting -- Washington on the Brazos, invoking the memory of that earlier revolution -- as well as the dual creation at its inception of both a declaration of independence and a form of government. Moreover, the heroic battles and, of course, the ending of the Texas Revolution with the Battle of San Jacinto and the capture of General Santa Anna bring to mind the events at Yorktown. All in all, it was a perfect little revolution.

We can also examine the Texas rebellion in the context of the Civil War. While there were several causes for that rebellion, the main foundation for the conflict in 1861 proved to be the trepidation that slaveholders had concerning the stability of the institution. Like those slaveholders, slaveholding Texans had done everything they could to keep the institution in tact. Unlike those slaveholders, Texans had no constitution in place to use as a mechanism to ensure not only the protection of the institution but its expansion as well. In rebelling and asking for eventual admission to the United States, the Texans legally insured the protection of their peculiar institution as they too eventually came under the protection of the Constitution.

But there are differences as well. For example, the new Texans thought themselves superior to the Mexicans. This belief, accompanied by their staunch support for slavery, certainly would have fed the fires of revolution in 1836 Texas.³³

It is only logical that, much like the slaveholders of Revolutionary America, and the slaveholders of the antebellum South, these slaveholders realized that, once the first shot was fired, they had to prevail. If they did not, slavery would be another victim of a Mexican victory. It was all or nothing.

Randolph B. Campbell argues that, while slavery was not the principal reason for the Texas Revolution, it was one of the major differences separating Mexicans and Texans.³⁴ He also makes a compelling case for the influence which slavery had on the Texas Revolution. In his work, *An Empire for Slavery*, he quotes Benjamin Lundy, a noted abolitionist who felt that the reason for the revolt in Texas was "obvious."³⁵ He also includes British abolitionist John Scoble, who supported Lundy's assertions. Mexicans, too, sounded on the rebel's motivation for revolution as José Maria Tornel made similar arguments from Mexico in 1837, but he went further when he accused the Texans of opening up Texas to the African slave trade, which was illegal in the United States.³⁶

Instead, Campbell argues that possibly the one single action which set in motion the chain of events leading to the revolution was without a doubt the Law of 1830. In its most basic form, the new requirement prohibited further immigration from the United States, called for the collection of custom duties and required the housing of troops in Texas.³⁷ It is Campbell's argument that this was the action which set in motion a rebellion in a sovereign state within Mexico.

As for Mexico, the rebellion also put Mexicans in a quandary. By the time problems began to become unacceptable in the early 1830s, Mexico realized it faced the possibility of a formidable confrontation with a much larger republic and military force.³⁸

For them, this rebellion had to be put down immediately if they were to save that portion of the country. So, like the slaveholding Southerners, for the slaveholding Texans it was also all or nothing as well. Of course, the timing of the revolution, in conjunction with the turmoil that existed in Mexico, played a crucial role in the success of the Revolution. Mexico was plagued with the same sort of internal problems ten years later during the Mexican-American War.³⁹

There was a moment in time where it was obvious that the wheels of the revolution could no longer be stopped, when Mexico attempted to do what Lincoln did in 1863 when he emancipated the slaves. In July of 1835, General Martin Perfecto de Cos, writing from Matamoros, issued a stern warning to the rebels, informing the colonists that to continue the rebellion of secession "would bear heavily upon them and their property."⁴⁰ It was obvious that, if Mexico won this civil war, it would be the end of slavery in Texas. And so, it was a pivotal moment in time, but, unlike the American Civil War, the outcome manifested itself in a different direction. In this civil war, the slaveholders prevailed in their right to protect their property and then set forth the goal of protecting that right constitutionally, for Texas staunchly stood as a republic for ten years before becoming the thirty-first state in the slaveholding union.

Campbell argues that while slavery may not have been the initial cause of the rebellion, it certainly was one of the major results.⁴¹ On the other hand, historian Herbert Aptheker argues that "The anti-slavery policy of the Mexican Government was a prime cause of dissension between that state and American slaveholders resident in Texas."⁴² The difference is largely one of semantics. The law enacted in 1830 may have been the prime catalyst for the rebellion, but at the heart of dissension was the debate over slavery.

Texas gained its independence during the Age of Jackson and, more importantly, during Jackson's final months as president of the United States. Jackson's stand on Texas and the succeeding debate was typical of the Jacksonian sectionalism that existed at the time. Heavy lopsided support came from the South while extreme opposition came from the North.⁴³

Jackson had always wanted Texas. His vision of America included the westward expansion of the republic all the way to the Pacific Ocean.⁴⁴ In fact, Jackson was thrilled when he learned of Texas Independence but became disappointed when learned of the new nation's claim for all land east of the Rio Grande River. He had been hoping that Texas would claim the land all the way to the Pacific.⁴⁵

Jackson, a southern slaveholder himself, valued the political muscle of the Electoral College and the advantage the three fifths compromise afforded him and his compatriots. He, therefore, welcomed the annexation of Texas as a slave state and defended it against the overzealous attacks on both the institution itself and the annexation of Texas by the abolitionists.⁴⁶

Historian William Freehling identifies the Age of Jackson as the moment when the political controversy over black slavery intensified to reach a critical level. "The Age of Sectional Controversy," as Freehling calls it, was constantly challenging the institution and how it affected, or infected, white republicanism.⁴⁷ So powerful and so passionate was the fight over this institution and so divided were the sections that the subject alone had the power within it to affect political parties. In fact, the demise of the Whig Party has its roots tied to annexation of Texas and the controversy surrounding the expansion of slavery.

In 1835, anti-slavery petitions became the focus of vigorous debates in Congress. Besides petitioning for the repeal of the fugitive slave law, the petitions demanded the abolition of slavery in the District of Columbia, that Arkansas not be admitted to the Union as a slave state, and that Texas not be given consideration to enter the Union.⁴⁸ The annexation crisis, along with the deeply seated and immovable sectional divisions that were present, all but doomed the possibility of Texas entering the Union.

The annexation crisis became a crisis within the Jacksonian Administration as important as the Bank War.⁴⁹ Like the many-headed hydra that Jackson faced in the Bank War, annexation was a formidable opponent, but not invincible. In this war, however, the opposition showed Jackson they would not back down and displayed more resolve during this disagreement. And Jackson had to capitulate, doing basically nothing while his political hands were tied to non-action. So tender were the discussions about even the recognition of Texas as a republic that Jackson waited until the last day of his administration to recognize Texas independence.⁵⁰

Houston, on the other hand, had his own reservations about slavery. In fact, he felt that the spread of slavery within the republic, along with the annexation of Texas, was unstoppable.⁵¹ So close were Houston and Jackson, both fellow Tennesseans, that they corresponded with one another during the 1830s. In one letter, Sam Houston wrote his "old friend" in 1833 to inform him that soon Texas would declare independence for the territory east of the Rio Grande River and that all Texans were ready to become Americans.⁵²

And so Texas found itself in a state of limbo for ten years. As a slaveholding republic, it was able to stand alone. Mexico, on the other hand, continued to struggle

within itself and could do little except threaten war if Texas were to be annexed by the United States.

During that period, slavery's existence also became threatened within the United States. The threats against the institution came not only from abolitionists, but from within. For example, when Taylor won the presidency, he planned to admit California and New Mexico directly as states, bypassing the territorial stage, breaking the slavery stalemate, and tipping the balance of power in the Senate; fate however, intervened.⁵³

Another fear came from the British, who, it was thought, were involved in some type of scheme to control the region's economic interest and carry enough influence to bring about the abolition of slavery in Texas.⁵⁴ Texas's declaration of independence from Mexico had come two years after Britain emancipated 800,000 slaves and just two years before "black apprenticeship" was abolished throughout the British empire.⁵⁵

The British concern was that the new Republic of Texas represented a new and expanding market for slaves captured and brought across the Atlantic Ocean from Africa. Already policing the African Coast, the British promised that any type of treaty or mediation with Mexico would result in a crackdown in the illegal African slave trade. In 1843, Britain's foreign secretary attempted to coerce Mexico into recognizing Texas independence if Texas emancipated her slaves.⁵⁶

Britain's motivations were always suspect. But their interests in abolition in Texas and their stubborn resolve to hold on to the Oregon territory deepened American suspicion concerning their intentions.⁵⁷ Moreover, many Americans itched for a war with Britain, eager to claim Oregon through conquest and to defeat Britain a third time.

Van Buren stalled on the Texas issue so much so that his actions frustrated Houston.⁵⁸ Mexico was still determined as ever on its stand on annexation, and Britain's continuous meddlesome abolitionist actions continued to imperil the institution of slavery in Texas. In the end, "the Slave power" could no longer just sit idly as the institution was threatened in Texas. On the one hand, Texas represented slavery's survival and its freedom to expand westward into new territories. On the other hand, a free Texas would also provide sanctuary for runaways, so there were other considerations to take into account.⁵⁹

As for Houston, he knew well what he was doing. The ambivalence the United States had shown his new slaveholding republic stung, and he was a shrewd enough politician to know what repercussions his actions would have. There even came a time when he considered returning Texas to Mexico, although he knew that it would be at the cost of several thousand slaves.⁶⁰ He also knew how the slaveocracy of the United States would respond when he entertained British overtures offering to send British colonists, to supply British capital, and to promote stability with Mexico in exchange for abolishing slavery.⁶¹ In 1843, Houston even went so far as to consider opening diplomatic relations with Santa Ana to entertain the possibility of a peaceful negotiation. Britain relished the thought of an independent Texas stabilized from forces not within the United States.⁶² Britain continued its focus on Texas, attempting even in the 1840s to set its designs not only on Texas but also on Cuba as well.⁶³

In 1844, both Van Buren and Clay promised that if elected they would not annex Texas because this action would threaten war with Mexico. While Clay won the Whig nomination with this stand, Van Buren, the Democratic front runner at the time, lost the

nomination to expansionist James K. Polk, who made annexation the heart of his platform.⁶⁴ In the 1840s, the South was “bursting with slaveholding entrepreneurs,” and in James Polk, and his expansionist philosophy, they found the perfect ally.⁶⁵

During the election, the abolitionists played a crucial role. To some, even Lincoln, it appeared that the abolitionists had done more harm than good. For example, it was the Whig abolitionists in New York who led the fight to defeat Henry Clay for the presidency. Had Clay carried New York, he would have won the Presidency. But they would not overlook the fact that he was a slaveholder and, in essence, guaranteed the annexation of Texas when they voted for James G. Birney, thus giving Polk the state and its electoral votes.⁶⁶ Lincoln himself was ambivalent towards slavery in Texas. What he saw was a republic which had an established institution of slavery well cemented within its culture and way of life. In Lincoln’s view, how could one deny the extension of slavery in Texas, when slavery already existed in that region?⁶⁷

While much of the Democratic and Whig population of the South did not own slaves, they aspired to eventually become slaveholders, and that was enough for them to support the institution.⁶⁸ In fact, for those Southerners, the annexation of Texas was crucial to their way of life.

The manifest destiny message became an overpowering force in the mid 1840s. However, it created a division within the Democratic Party. Southern Democrats saw expansion in a positive light; together new land and slave labor would reap hefty rewards for its owners. However, the northern Democrats were leery of the destiny message, in particular because of their fear that it would enhance the spread of slavery, which their

southern brethren already admitted they wanted to accomplish.⁶⁹ This division loomed seriously and threatened to damage party unity.

Tyler found the annexation of Texas very appealing in 1841, but his Secretary of State, Daniel Webster warned him that antislavery northern Whigs would pounce on him if he did, and so Tyler did what he did best: "he stalled."⁷⁰ It was not until 1843 that interest in Texas was renewed. By that time, Tyler needed allies. He had alienated himself and was practically without a party. A new issue to reinvigorate his legacy was just what he needed. When Tyler finally did act, however, he was already considered an anti-Whig isolationist whose behavior was curious, to say the least. The political tension was thickening as contenders made their move for the White House. Henry Clay would be making a nod for the Whig nomination, and Van Buren seemed to be a sure bet for the Democrats.⁷¹

The possibility that Britain was also involved because of its abolitionist views was part of Tyler's concerns, and it prompted the president to begin the acquisition and annexation of Texas.⁷² Fortunately for Polk, this took place towards the end of Tyler's term.

Polk used his slim election victory as a mandate for his message to expand, beginning with the annexation of Texas.⁷³ The Senate voted twenty-seven to twenty-five to admit Texas six days before Tyler left office.⁷⁴ The vote was almost predictable. All Democrats, plus three renegade Whigs, supported the bill, and annexation carried the day.⁷⁵ Thomas Hart Benton, the aging Missouri statesman, proposed that, if annexed, Texas should be split equally into slave and free areas. It was the only proposal that had generated some interest with the Northern Van Buren Democrats, but the Slave power

was so formidable that it was able to push annexation without needing to negotiate anything away.⁷⁶ And just as the issue threatened the solidarity of the Whig party, the issue just as dangerously continued tearing at the fabric of the Democratic Party.

Polk also saw the Oregon issue as something closely linked with Texas Annexation. Oregon was crucial to adding free soil to the union if Texas was to be annexed. Blocking the expansionist agenda were the British. It is no accident that the Oregon question was still in doubt, and Polk needed to settle that question before engaging Mexico on the battlefield.⁷⁷ Mexico, on the other hand, was hoping that Britain would intervene on its behalf and that difficulties would arise over the Oregon Territory.

When Polk secured the nomination and ran for the presidency in 1844, his aim was to annex Texas. With the possible addition of an expansive southwest territory which could stretch all the way to the Pacific, the new continentalism philosophy which peppered the nation was one with a strong, slaveholding "Southern flavor."⁷⁸ Polk agreed with this philosophy and believed in the abstract principle that slaveholders had the right to take their slaves anywhere in American territory, including any territory or state north of the thirty-six thirty line.⁷⁹

Polk saw himself as an unwilling partner to slavery during his tenure. He wanted to annex Texas, but, in order to do that, he had to protect southern slaveholding rights, since Texas was a slave republic. And so, when he launched into war with Mexico, the prevailing thought for his proslavery feelings scared not only the Northern Whigs but the northern Democrats as well.⁸⁰

Whigs, on the other hand, found it easy to blame the President and the Democratic Party for the Mexican War, yet they were still able to label themselves as patriots by

voting to supply troops so that the nation's sons would not perish.⁸¹ The Liberty Party also found problems with the war with Mexico. They felt it was a conspiracy to extend slavery and made no secret about it.⁸²

When Texas was annexed as a state, so too was her claim that the western border was the length of the Rio Grande River. This would be a claim that would cause a problem with her newest republican brothers, the New Mexicans, and this became one of the key issues after the Mexican war.⁸³ The argument was simple: if the boundary was to be extended, as Texans wanted, the boundary would consume a huge portion of New Mexico. If the boundary line was to be cut off at El Paso, as New Mexicans wanted, then Texas would not be as huge as previously thought. This boundary disagreement loomed large for both the slavery supporters and those against slavery. Texas was an established slaveholding republic, while New Mexico appeared to be headed the free soil route as an antislavery territory.⁸⁴

The issue of the extension of slavery became all too evident when in 1848 the western boundary of Texas was set with the Río Grande. New Mexicans insisted that the boundary be set only to El Paso, and the United States Army agreed with their request, claiming that anything north of El Paso was to be New Mexico territory. As Texas's claim was disregarded, this created strong anger, emotion, and resentment because, while Texans eagerly accepted slavery, New Mexico was just as staunchly free territory. Thus the western boundary of Texas also became a point of contention regarding the expansion of slavery.⁸⁵

After the Mexican War, another debate emerged within Congress as Northerners alleged that they had the power to include, or exclude, slavery within the new territories.

Southerners agreed, but where they differed greatly was in the belief that while Congress could make rules for statehood, they could not deny a citizen his property anywhere in the new territories. Besides, they claimed loudly that it was southerners who had contributed, and lost, more than northerners in the Mexican War, and hence they should reap the benefits of that conflict.⁸⁶

While the feeling of victory swept through Washington, there was dissension concerning the treaty signed with Mexico.⁸⁷ Even though Polk favored statehood for both California and New Mexico, he very clearly understood how polemic the issue of slavery had become since the Mexican Cession and even sought some type of compromise through a committee of eight.⁸⁸

As the debate for California and New Mexico began to consume all of Washington in 1849, Polk made no secret that he wished for both of those territories to enter the Union without the "embarrassment" of the Wilmot Proviso. He also favored extending the boundary claimed by Texas into New Mexico, thereby settling the question of whether that territory was indeed free or slave soil.⁸⁹

Democrats argued that California was suited to slavery; with the area's vast agricultural potential, they saw a new cotton empire, fueled of course, with slavery.⁹⁰ For Californians, the issue of whether slaves would enter with immigrants had been settled even before the Mexican War, as any immigrant who came into the Mexican territory was banned from bringing in their slaves since Mexican law forbade slavery in California.⁹¹

Henry Clay supported and urged Congress to admit California as a free state. His belief was that slavery should not be introduced into territories where the institution had

not yet existed or been introduced. This belief extended to New Mexico as well as Utah.⁹² Of course, he also knew that New Mexico was mostly desert and felt that no slaveholder would attempt to bring slavery there. Henry Clay, as a Whig, was openly against the annexation of Texas, but whatever political advantage he may have sought by this stance was undercut by his open admission to being not only proslavery, but an avowed slaveholder as well.⁹³

Polk believed that any territory which was annexed and was south of the thirty-six thirty line was open to slavery as per the Missouri Compromise.⁹⁴ It was cabinet member James Buchanan who proposed his willingness to extend the Missouri Compromise west to the Pacific -- a proposal all other cabinet members agreed with.⁹⁵

The formation of Texas with the Rio Grande now designated as its legal southern boundary was going to add a substantial amount of geographical territory to the republic. It was going to do so as an already established slave power, and the possibility existed that, south of the thirty-six thirty line, Texas could be broken up into four additional states.⁹⁶ Since that territory would be south of the Missouri Compromise boundary, these states would certainly all come in as slave states, along with the political muscle and control of the Senate and House. This was a persistent idea that lasted well into the 1850s, when the New York Herald supported the idea of splitting Texas into three or more slave states, along with the annexation of Mexico and Cuba.⁹⁷ The newly formed Republicans criticized the ploy, and Northern Democrats also rejected it as "impractical."⁹⁸

Slaveholders also felt tension from the Caribbean as Cuba seemed to garner the attention of British abolitionists. In fact, Cuban Creoles hoped for American annexation

in order to help protect their institution of slavery. And so, on top of the anxiety of the expansion of slavery through the victory of the Mexican War, for northerners there also lay the fear of a possible landgrab of Cuba.⁹⁹

There were casualties as a result of expansion. The Mexican Cession strained the sectional controversy to its core, but it also strained the unity of the Whigs. Northern Whigs opposed the land grab because of its apparent motivation towards the extension of slavery. Southern Whigs saw it as a choice between losing their party or losing the Deep South.¹⁰⁰ Historian Michael Holt argues that the annexation of Texas was “the” defining moment in Whig Party history. While most Democrats were able to live with the annexation, the opposite was true for the Whigs.¹⁰¹ The issue cut a deep scar within the party and ultimately killed it.

The war had barely ended when the sectional conflict came to the forefront once again. State legislatures from across the country voted in support of the Wilmot Proviso, or against forbidding slavery in the newly won territories. Some went as far as threatening the dissolution of the Union if southern rights were trampled on.¹⁰² Yet, this would not be the last of the sectional conflicts for, as the 1840s ended and the 1850s began, the same arguments came to the forefront repeatedly.

The transformation of the United States during this period was incredible, and the constitution was particularly instrumental. The republic grew in ideology with the birth of political parties, and as it grew, so did the constitution itself and its ability to become entangled within the institution of slavery. The nation also grew geographically, adding the Louisiana Territory in 1803, Florida in 1819, and Texas in 1845.¹⁰³ Historian Michael Morrison sadly refers to this growth, in particular the Texas Annexation, as “the

degradation of democracy.”¹⁰⁴ He equates the geographical expansion of the nation with the expansion of slavery and goes beyond arguing that the slave power was no longer content with sharing power. Instead, he says, it was demanding “absolute control” of the federal government.

It was within this backdrop that Congress met in 1849, where the sectional debate over slavery became such a crisis “that it threatened to tear the nation apart.”¹⁰⁵ This became the backdrop for the Compromise of 1850, for there was always something to be negotiated, won, or lost. This was a debate which began with the annexation of Texas, a slaveholding republic.¹⁰⁶

In the final analysis, it was Britain’s threat to abolish slavery in Texas which precipitated Tyler’s administration to seek an annexation treaty.¹⁰⁷ The actions of the meddlesome British were of particular concern to the Slave power because American slaveholders felt that Texas had always been theirs to win. Historian William Freehling has argued that Texas was indeed committed to joining the North American slaveholding republic. This eventually became a reality on July 4, 1845, when the Texas Convention unanimously “chose to consolidate enslaved Texas” within “enslaved America.”¹⁰⁸

Enter, the Missouri Compromise. From its inception, the Missouri Compromise appeared to be a geographically sour deal for the slave power. The bulk of the Louisiana territory was located north of the boundary which had been agreed on as a result of the crisis of 1820. Only one or maybe two more states would be able to be created as slave-states under the arrangement. However, for most, it appeared that the area northwest of the Missouri was merely a wasteland.¹⁰⁹ This is why the possibility of acquiring Texas became more than a political discussion and became a quest that would not cease until

the Republic was indeed annexed in 1845. Of course, with this came the belief that slavery would be allowed south of the Missouri Compromise line.

When it did eventually pass, the Missouri Compromise had been seen as a victory by all sides. For some strong abolitionists, it did continue to allow slavery and was a stinging indictment of how the forces at work were going to propagate slavery. Moreover, their strongest ally was going to be the constitution. Congress had brokered a deal which looked good for the antislavery forces as well. The northwestern portion of the Louisiana Territory was so vast and the territory south of the thirty-six thirty line was so miniscule as to present a paltry political challenge at best. But that all changed with the annexation of Texas.¹¹⁰

There was an enormous irony that while slavery had been abolished in the West Indies and Latin America, the institution was alive and flourishing in the “Model Republic” and was spreading across the Mississippi River.¹¹¹ The promise of this geographical area along with Mexico energized proslavery supporters, for they viewed this tropical territory as “historically and climatically” the perfect geographical location for slave labor.¹¹²

Robert Fogel argues that the slaveholders used their advantage and control in Congress and the presidency to pass proslavery laws that in essence made slavery completely unconstitutional and turned the federal government into a tool of the slaveocracy.¹¹³ He includes, among other instances, such legislation as the Fugitive Slave Law and the annexation of Texas as examples of those unconstitutional actions. Ironically, the slave power used the constitution to legally obtain all of those gains.

Slave power ambition did eventually carry through the Missouri Compromise, the annexation of Texas, and the Compromise of 1850 with its sole objective of extending the institution of slavery.¹¹⁴ In doing so, the slave power also enhanced its political muscle in its journey to reach the apex of political power and absolute control of the three branches of government. Once again, constitutional principles became the mechanism of choice, particularly the principle of popular sovereignty, which had also been veiled within the ideology of states' rights.

As we shall see in chapter five, these forces and mechanisms were all driven by the ideologies and belief systems of the two opposing geographical areas. These distinct regions gave rise to two distinct ways of life (one which would accept slavery, and one which would not). The following chapter examines newspaper accounts of this era focusing on the Missouri Compromise and the annexation of Texas. These accounts evidence regional differences in attitudes regarding slavery and annexation. More importantly, however, they reveal the extent to which constitutional ideas were present in the minds of Americans as they debated annexation and expansion in terms of slavery's future.

END NOTES

¹ Edgar E. Robinson, *The Evolution of American Political Parties: A Sketch of Party Development* (New York: Harcourt Brace, 1924). This is the political party which eventually evolved into the Jacksonian Democrats as they chose to drop the term "Republican" in the name of their political party from Democratic Republicans to simply Democrats.

² Paul Finkelman, *Slavery and the Founders* (New York: M.E. Sharpe, 2001), 127.

³ William W. Freehling, *The Road to Disunion: Secessionists at Bay, 1776-1854* (New York: Oxford University Press, 1991), Vol. 1, 368.

⁴ David Brion Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (New York: Oxford University Press, 2006), 271. In a direct contradiction to his Northwest Ordinance proposal of 1784, Jefferson now believed and argued that the diffusion of slaves over a greater geographical area would keep the slaves content and eventually facilitate their emancipation. In fact, from 1821 until the annexation of Texas in 1845 the United States acquired no new territory.

⁵ It is impossible to study one without having to analyze the other for these two territories, especially after 1820, began to have a symbiotic relationship in the American mind.

⁶ William Sumner Jenkins, *Pro-Slavery Thought in the Old South* (Chapel Hill: University of North Carolina, 1935), 173; Michael Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 1997), 170. Conservative Republicanism, which was brought in with Jefferson, and slavery were consistent in the eyes of the Jeffersonian Republicans.

⁷ Freehling, 23.

⁸ Marston Gilman Ostrander, *The Rights of Man in America, 1606-1861* (Columbia: University of Missouri Press, 1960), 251.

⁹ Ostrander, 251. Eli Whitney had a hand there as well.

¹⁰ Randolph B. Campbell, *Gone to Texas: A History of the Lone Star State* (New York: Oxford University Press, 2003), 110. The Spaniards were just as racist as slaveholders and justified their allowing in these individuals and the institution of slavery allowing themselves to believe that the institution did indeed have a Christianizing and civilizing benefit towards the Negroes.

¹¹ Charles Sellers, *The Market Revolution: Jacksonian America, 1815-1846* (New York: Oxford University Press, 1991), 410. The treaty was agreed to by the United States and Spain. Spain feared the aggressively expansionistic Americans, but that all changed when Mexico finally won its independence in August of 1821. The original negotiators for the Anglo colonization of Texas were originally agreed to by the Spanish and Austin's father, Moses. Ironically, both did not live long enough to see the result of their original negotiations.

¹² *Ibid.*, 183. John Quincy Adams, for one, "balked at renouncing future hopes for the strategic islands."

¹³ Freehling, 195. There is no doubt that this argument was used by "southern apologetics" to spread the institution of slavery into the new southern territories.

¹⁴ *Ibid.*, 151.

¹⁵ Campbell, 105. Each family would receive a league (4,428 acres) of land if they were going to ranch the area, or a labor (177 acres) if they planned to farm.

¹⁶ *Ibid.*, 112. "On a philosophical level, Austin, like many American leaders of his generation, thought slavery a "curse of curses," but as a practical matter he considered it "of greatest importance" to Texas. Without slavery, he explained to the governor of Coahuila y Texas in 1825, Texas could not attract the people to make it a land of rich plantations but would instead be populated by shepherds and the poor."

¹⁷ Gregg Cantrell, Stephen F. Austin: Empresario of Texas (New Haven: Yale University Press, 1999), 7-9.

¹⁸ Campbell, *Gone to Texas: A History of the Lone Star State*, 112. Randolph B. Campbell, *An Empire for Slavery: The Peculiar Institution in Texas, 1821-1865* (Baton Rouge: Louisiana State University Press, 1989), 32-33.

¹⁹ Campbell, *An Empire for Slavery: The Peculiar Institution in Texas, 1821-1865*, 29-30.

²⁰ Campbell, *Gone to Texas: A History of the Lone Star State*, 112.

²¹ Campbell, *An Empire for Slavery: The Peculiar Institution in Texas, 1821-1865*, 23-24.

²² Alice Dana Adams and Peter Smith, *The Neglected Period of Anti-Slavery in America, 1808-1831* (Gloucester: Peter Smith, 1964), 54.

²³ Campbell, *Gone to Texas: A History of the Lone Star State*, 113. Guerrero had been convinced by slaveholder boosters that Texas could only survive with and needed, "the aid of the robust and almost indefatigable arms of that race of human species which is called negroes, and who, to their misfortune, suffer slavery."

²⁴ *Ibid.*, 36.

²⁵ Campbell, *An Empire for Slavery: The Peculiar Institution in Texas, 1821-1865*, 29.

²⁶ *Ibid.*, 29.

²⁷ Davis, 284.

²⁸ Campbell, *An Empire for Slavery: The Peculiar Institution in Texas, 1821-1865*, 30-31.

²⁹ *Ibid.*, 31.

³⁰ Campbell, *Gone to Texas: A History of the Lone Star State*, 110.

³¹ Herbert Aptheker, *American Negro Slave Revolts* (New York: International Publishers, 1993), 81. The Constitution of the State of Coahuila-Texas of March 1827 outlawed slavery and the further introduction of slaves; in May of 1828, however, the government legally recognized the contracts made between masters and their workers. As the "bondsmen" grew restless, harsh slave owners resorted to particularly cruel discipline measures, such as extracting teeth and allowing dog attacks. The most lenient masters simply flogged them.

³² Campbell, *Gone to Texas: A History of the Lone Star State*, 45-46. Campbell writes that the "section on slavery, as it was originally written, provided that 'all persons of color who were slaves for life, previous to their emigration to Texas, and who are now held as bonded servants or otherwise, shall remain in the like state of servitude in which they would have been held in the country from which they came.' Congress could not prohibit the bringing of slaves to Texas by immigrants from the United States. It could not emancipate slaves; nor could slaveholders, unless provisions were made for removing the freedmen from the republic or congress agreed in advance that a particular slave's good conduct earned him the right to remain in Texas. Congress' permission was also required for any free Negro to emigrate to the republic. The original draft authorized congress to pass laws compelling the owners of slaves to treat them 'with humanity' and provide sufficient food and clothing. When slaves were accused of crimes, no grand jury was necessary, but they were to receive a jury trial. Congress could prevent the introduction of slaves 'as merchandise' or from any country other than the United States."

³³ Campbell, *Gone to Texas: A History of the Lone Star State*, 133. In 1836, a letter by David G. Burnet from New Jersey described the Mexicans as "the others a mongrel race of degenerate Spaniards and Indians more depraved than they." Some Mexicans had as negative view of the Texans as well: "They are a lazy people of vicious character," wrote José Maria Sanchez in 1828 of the Texans he had met.

³⁴ *Ibid.*, 132. In his work, *Gone to Texas*, Campbell clearly states that this difference was not THE cause of the Rebellion. He uses as his evidence the disturbances which occurred from 1832 to 1835 and how slavery was not the major issue in those disturbances.

³⁵ Campbell, *An Empire for Slavery: The Peculiar Institution in Texas, 1821-1865*, 35. Lundy's writes "that the immediate cause and leading object of the contest originated in a settled design, among the slaveholders of this country, (with land speculators and slave traders,) to wrest the large and valuable territory of Texas from the Mexican Republic, in order to re-establish the SYSTEM OF SLAVERY; to open a vast and profitable SLAVE-MARKET therein; and ultimately, to annex it to the United States."

³⁶ Tornel's writes: "That robber state, was settled by 'hordes of characterless villains whose sole object has been to re-establish slavery and the slave trade.'" He went on to assert that "... the land speculators of Texas have tried to convert it into a mart of human flesh where the slaves of the south might be sold and others from Africa might be introduced, since it is not possible to do it directly through the U.S."

³⁷ Campbell, *An Empire for Slavery: The Peculiar Institution in Texas, 1821-1865*, 36.

³⁸ Mark J. Stegmaier, *Texas, New Mexico, and the Compromise of 1850: Boundary Dispute & Sectional Crisis* (Kent: Kent State University Press, 1996), 6. Adams had been attempting to negotiate the acquisition of Texas and Mexico and was well aware of the United States' desire to acquire Texas.

³⁹ Campbell, *An Empire for Slavery: The Peculiar Institution in Texas, 1821-1865*, 37.

⁴⁰ Ibid., 41.

⁴¹ Ibid., 48.

⁴² Aptheker, 32. The Negroes who wound up in Texas quickly became enlightened of the Mexican antislavery regulations and grew restless. The result was the bondsmen's restlessness living under the yoke of slavery, and the restlessness of the white slaveowners who desired to hold human property more securely.

⁴³ Freehling, 450. Particularly curious is that even though there was such a divide between north and south when the era of Jackson's Texas began, "Jackson's emphasis on white men's equality was gospel everywhere in the nation, outside the oldest, crustiest South." This meant that, for the most part, and especially in his Southwest, "superior" whites held unequal power over "inferior" reds and blacks.

⁴⁴ Stegmaier, 6.

⁴⁵ Ibid., 8.

⁴⁶ Davis, 260-261.

⁴⁷ Freehling, 452.

⁴⁸ Henry H. Simms, *A Decade of Sectional Controversy, 1851-1861* (Chapel Hill: University of North Carolina Press, 1942), 43.

⁴⁹ Freehling, 451.

⁵⁰ Ibid., 368.

⁵¹ Ibid., 380. In a letter dated June 8, 1843, Lord Aberdeen, Her Majesty's Secretary of State for Foreign Affairs, writes that "the Texas president called slavery's existence a subject of deep regret." He further goes on to write that Houston "foresaw that Texas would sooner or later become the 'impound' of Black and Coloured population of the United States, to the republic's incalculable injury."

⁵² Stegmaier, 7. See also "Sam Houston's Letter to Andrew Jackson," *The History of Texas*, <http://www.sonofthesouth.net/texas/sam-houston-letters-jackson.htm>, accessed January, 8, 2009.

⁵³ James M. McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988), 66. Taylor proved to be a "free-soil wolf in the clothing of a state's rights sheep," for he knew that Mexican law forbade slavery in these regions. Jefferson Davis called it a "monstrous trick and injustice."

⁵⁴ Simms, 46.

⁵⁵ Davis, 281-282. The Abolition Act stated very basically that slaves would be made free and was passed in August of 1834. The act made all former slaves in Britain apprentices. By 1838, all formerly enslaved workers would be apprentices with all of the benefits of white apprentices, including overtime and improved working conditions.

⁵⁶ Ibid., 282. "During the 1830s and 1840s Britain and America veered toward war a number of times as a result of disputes over the Canadian border, the slave ship *Caroline*, America's annexation of Texas, and conflicts over the boundaries of territory in the Pacific Northwest. After President John Tyler secured Texas annexation in 1845, his expansionist successor, James K. Polk, was careful to settle the Oregon boundary issue before provoking the Mexican War."

⁵⁷ Michael A. Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 1997), 33 and 54.

⁵⁸ Freehling, 413.

⁵⁹ Ibid., 409.

⁶⁰ Ibid., 371.

⁶¹ Ibid., 371.

⁶² Ibid., 370.

⁶³ Don E. Fehrenbacher and Ward M. McAfee, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery* (New York: Oxford University Press, 2000), 127.

⁶⁴ Campbell, *Gone to Texas: A History of the Lone Star State*, 185.

⁶⁵ William Dusenberre, *Slavemaster President: The Double Career of James Polk* (New York: Oxford University Press, 2003), 170. Although Polk was not as blatant about his proslavery musings as was Calhoun, he was one who championed their cause and was able to harvest just enough political northern support to win the presidency and guarantee the expansion of slavery into the west, and in particular,

Texas. The "Southern Democratic Proviso," as Dusinger has come to call it, came to play where southerners insisted that southern rights, customs and way of life be maintained in the newly acquired southern territories.

⁶⁶ Benjamin P. Thomas, *Abraham Lincoln: A Biography* (New York: Alfred Knopf, 1952), 112. In a scene reminiscent of Florida in 2000, when Ralph Nadar took votes away from Gore, Birney took votes away from Clay and virtually assured the election of Polk. Clay was not certain of the annexation of Texas, but he was a slave owner, and the abolitionists in New York simply could not forget that when they voted.

⁶⁷ *Ibid.*, 112. Lincoln believed that the fight to abolish slavery had to be realistic. And for him, it was unrealistic to fight slavery where slavery already existed. Of course, these views, and his actions (he took several cases and represented both slave and slave owners without much enthusiasm one way or the other), took place in the 1840s.

⁶⁸ Michael F. Holt, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* (New York: Oxford University Press, 1999), 179.

⁶⁹ Morrison, 31.

⁷⁰ Freehling, 368.

⁷¹ *Ibid.*, 369.

⁷² Stegmaier, 12.

⁷³ Fehrenbacher, 125.

⁷⁴ Freehling, 448.

⁷⁵ *Ibid.*, 448. With the exception of those three Whigs, all Whigs, northern or southern, voted against annexation.

⁷⁶ *Ibid.*, 446.

⁷⁷ Fehrenbacher, 121.

⁷⁸ Dusinger, 148.

⁷⁹ *Ibid.*, 143.

⁸⁰ *Ibid.*, 152.

⁸¹ Thomas, 113.

⁸² *Ibid.*, 113.

⁸³ Dusinger, 133.

⁸⁴ Thomas, 125.

⁸⁵ Campbell, 234.

⁸⁶ Simms, 48.

⁸⁷ Allan Nevins, *Polk: The Diary of a President, 1845-1849* (London: Longmans, Green, 1952), 315. Among the opposition were Secretaries Buchanan and Walker, who desired to annex more Mexican territory, if not all of Mexico, and Northern Whigs who feared the expansion of slave territory.

⁸⁸ *Ibid.*, 330. President Polk assigned Senator J. M. Clayton of Delaware to chair the committee which included two Northern and two Southern men from each of the parties.

⁸⁹ *Ibid.*, 366.

⁹⁰ Freehling, 460.

⁹¹ Nevins, 367. The distance may have also made a difference as slaveholders often found resistance in Texas when they attempted to bring in their slaves, but continued to bring them in anyway.

⁹² Freehling, 496. Of course, he also knew that New Mexico was mostly desert and felt that no slaveholder would attempt to establish slavery there.

⁹³ Morrison, 19.

⁹⁴ Dusinger, 142. This might explain Polk's outburst on August 10, 1846 after the Wilmot Proviso had been introduced. In his words, "What connection slavery had with making peace with Mexico is difficult to conceive."

⁹⁵ Nevins, 182.

⁹⁶ Don E. Fehrenbacher, *Law, and Politics: The Dred Scott Case in Historical Perspective* (Oxford: Oxford University Press, 1981), 60.

⁹⁷ Kenneth M. Stampp, *America in 1857: A Nation on the Brink* (New York: Oxford University Press, 1990), 124.

⁹⁸ *Ibid.*, 124.

⁹⁹ Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery*, 128. In 1843, Daniel Webster sent a directive to the American consul in Havana to investigate a reported conspiracy to establish a "black Military Republic under British protection."

¹⁰⁰ Freehling, 457.

¹⁰¹ Holt, 220.

¹⁰² Thomas, 124-125.

¹⁰³ Morrison, 112.

¹⁰⁴ Ibid., 243.

¹⁰⁵ Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery*, 83.

¹⁰⁶ Thomas, *Abraham Lincoln: A Biography*, 131. The Compromise of 1850 included admitting California as a free state, allowing New Mexico and Utah the principle of popular sovereignty as a means to determine whether to allow slavery or not, the Texas boundary dispute with New Mexico is settled and Texas is paid 10,000,000 as payment for renouncing their claimed portion, the slave trade was abolished in the District of Columbia, and the issue of Fugitive Slaves is awarded to the federal court system.

¹⁰⁷ Freehling, 399.

¹⁰⁸ Ibid., 449.

¹⁰⁹ Allen C. Guelzo, *Abraham Lincoln: Redeemer President* (Grand Rapids: Eerdmans, 1999), 133.

¹¹⁰ Fehrenbacher, *Law, and Politics: The Dred Scott Case in Historical Perspective*, 66.

¹¹¹ Kenneth M. Stampp, *The Imperiled Union: Essays on the Background of the Civil War* (New York: Oxford University Press, 1981), 229. "It could no longer be viewed as a decrepit institution about to die; rather it showed enormous vitality, remarkable flexibility as a labor system, and every prospect of a long life." Only Cuba and Brazil remained as slaveholders in the western hemisphere; meanwhile, slavery was spreading into Missouri, Arkansas, and Texas in the United States.

¹¹² Freehling, 457.

¹¹³ Robert William Fogel, *Without Consent or Contract: The Rise and Fall of American Slavery* (New York: W.W. Norton, 1989), 338.

¹¹⁴ Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War*, 158. Alexander Stephens, the former vice-president of the Confederacy and former member of the House of Representatives, recalled of the South's policies and strategies as he spoke with good friend. After he was paroled in 1865, the former vice president wrote a dialogue in a two volume apologia explaining the South's positions and motives from sectional crises to the secession.

CHAPTER 5

A BRIEF STUDY IN THE NEWSPAPER FORCES THAT INFLUENCED THE CONSTITUTIONAL BATTLE FOR SLAVERY AND THE ACQUISITION OF TEXAS

In the early 1800s as the slave power was expanding through its constitutional advantage, another battle was being waged, that of popular opinion of the masses. This battle was as passionate, fanatical, and intense as the struggle which was being waged in Congress. The two most common methods for the delivery of this message were in the forms of pamphlets and newspapers. This chapter will study a sampling of some of the publications, in particular newspapers which published editorials, letters, and news stories which sought to win the hearts, minds, and, in particular, the opinions of the American populace over views of the institution of slavery. Specifically, this study will focus on two major events which have been discussed in preceding chapters, the Missouri Compromise of 1820 and the issues surrounding Texas Independence and Annexation. This study is important to this work because it shows the connection of the symbiotic relationship that existed between the movement on Capital Hill and the movement that existed within the American people.

While all of the examples presented will document the efforts to sway the ideology for or against slavery, special attention will also be given to the sophistication of the constitutional arguments presented by some of the writers. Their point of view is important to this study because of the way they displayed their arguments via constitutional principles.

As congressional and legal battles waged to determine national policy, the general public struggled with its identity as a slave nation. There was support for the institution in the North just as there was opposition to it in the South. However, when it came to the publications and what they published, or did not, it was evident that the regional way of life in the area determined the scope and content of the editorials. There were rare moments in both regions where the editors would reprint letters or editorials which previously appeared had been published in other newspapers. They would, in turn, respond to the argument with their own editorial comment. For the most part, however, editorial comment and letters to the editor were reserved for, and reflected, the majority regional ideology concerning the peculiar institution.

Historian Larry Tise has suggested that the Missouri question of 1819-1820 became the most published of all the exchanges in the period from the Revolution up to the Civil War.¹ In papers across the country, accounts of the debates in Congress and across the state houses were published in great detail. There was no shortage of editorial comment in those papers and the debates that were waged on both sides of the Mason-Dixie line.

On January 12, 1820, the Philadelphia newspaper, *Paulson's American Daily Advertiser*, published a critique, by an author only penned as a Philadelphian, on the

pamphlet *Free Remarks on the spirit of the Federal Constitution*.² At the core of the critique, besides the gushing accolades the Philadelphian makes towards the pamphlet, is the summarized argument which at its core is the, “spirit,” or intent of the Founding Fathers.³

It proves the original design, that slavery should be tolerated only in the states ‘then existing’ – shows that Virginia, and other states, clearly understood this to be the meaning of the powers delegated to congress, – and in evidence of such an interpretation being a just one, the author quotes the agreements of North Carolina and Georgia for a surrender of their western territories, in which what was considered as a fundamental article in respect to the admission of new states – the prohibition of slavery, was expressly guarded against by those states; demonstrating, as we firmly believe the fact to be, that the right and power of congress to keep the new states free from an acknowledged evil, was not denied, or doubted, until just now; but on the contrary, admitted or acquiesced in, in every case.⁴

In the pamphlet *Free Remarks on the Spirit of the Federal Constitution*, the author had argued that the founding fathers of the republic had intended that slavery be restricted to where it already existed and that emancipation would eventually come only when the nation was strong and secure.⁵ In his argument, the Philadelphian uses as his main core for the defense of the prohibition of slavery only the argument of what the original intent of the Founding Fathers was. Intent is always a difficult concept to prove.

On January 25, 1820, the very same newspaper ran an editorial by an author called Seneca. In it, the author attacked New Englanders and, in particular, those from Maine for “entering into this agreement.” In his argument, he states that political equality based on the admission of that New England state comes at the price of those who are enslaved.⁶ While political equality was constantly being sought in order to provide congressional balance, the lines had already been drawn, for whichever side held the upper hand would be able to implement the policies afforded to them by the Constitution.

The dubiousness of intent was also used in the South's arguments. On February 8, 1820, *The Lynchburg Press and Public Advertiser* published a letter signed only "R" in which the author chided Mr. Theodore Dwight, the secretary for the Hartford Convention, for his attack on Virginia and its objection for the exclusion of slavery in Missouri.⁷ In the letter, the author submitted Dwight's stinging criticisms of Virginia and Virginians. In his rebuttal, the writer directly attacked Dwight and his dubious history with the infamous Hartford Convention.

Who says this? Theodore Dwight, Secretary of the Hartford Convention – most excellent authority. Really, with no little charity towards Mr. Dwight to be silent on the subject, as his support is of serious injury and Mr. Dwight, himself before he attempts to excite jealousies and distraction, and array one state against another should reflect on his political career and should pass his hand over his brow, and exclaim, with the poet – "O, for a long sleep, and so forget it all."

Then, in conclusion, "R" finished his argument using the Constitutional defense which in time became the model in the argument for or against the institution.

Has not the constitution recognised slaves by giving their owners a share in the representation? "These, and other questions of constitutionality, of expediency, of justice, and of policy, will, no doubt, arise, and we trust will be agitated on strict grounds of principles and all attempts to introduce geographical distinctions, state jealousies, suspicious insinuations, and designing charges, will be discountenanced, we hope, by Congress.

This is a revealing example of how the Constitution began to be brought forth to defend slavery in the public domain.

On February 15, 1820, *Paulson's American Daily Advertiser* ran another editorial concerning the "Missouri Question." In it, the author used the argument of expected expansion of the nation in order to define whether the character of the nation would "depend upon the virtue, the number, and strength of our population."⁸ The author continued by issuing a warning that, should the issue in Missouri be allowed, as the

nation expanded the question would haunt the republic again and again until it reached the Pacific Ocean. The author also used another argument invoking yet another constitutional principle, that of individual rights and the threat of taking personal property away from slave owners.⁹

On February 22, 1820, the *Lynchburg Press and Public Advertiser* printed an editorial entitled "THE MISSOURI QUESTION." In it, the author implied several points.¹⁰ First, and importantly, he used the word "violent" to describe the opposition to the restrictions being debated concerning Missouri. Second, he made reference to the convention which nominated the electors for the presidential election which would be held later that year. The implication for the reader here was that the American people should wait and see how this runs its course before selecting the "perfect" electors to represent their positions. Finally, the author made reference to the spirit of compromise which created the nation and would be necessary to preserve the Union. This editorial is extremely interesting because it clearly voices not only the displeasure of the proposed restrictions, but the consequences should the negotiations favor eliminating slavery in Missouri. Whether they truly understood the advantage the three-fifths compromise afforded them is not clear, but, regardless, they were clearly aware of their influence in national elections through their ability to channel the constitutional principle of representative government. This, in and of itself, is telling of the symbiotic relationship that the slave power shared with their congressional voices, as well as the attitudes of the common man in the South at the beginning of the 1820s.

On March 3, 1820, The *Charleston Courier* ran a story concerning a senator from Connecticut and his vote on the Missouri Compromise. The story narrates how the people

of Hartford assembled on the lawn of the state house and burnt Senator Lanman's effigy. On the effigy were written the words, "LANMAN AND SLAVERY." The author of the article went on to state that, if indeed Mr. "Lanman has disgraced his constituents," then they could vote him out.¹¹ The author of the news account not only informed his readers of the events taking place in the North but also offered mild editorial comment concerning the right of the voters to oust their representative should they not agree with him. Once again, the principle of representative government was used in this argument.

Later that same March, the *Courier* reported on the Missouri Bill and its projected vote, which would "frustrate" admitting Missouri as a state in to the Union. Once again, the editor's addition to the story was of how the discussions had "been spun out beyond all reasonable limits."¹² The article went on to report how Clay had been "baffled" and of course there was praise for the representatives from South Carolina and their votes.

But the commentary did not end after the bill was voted on and passed. For months, and even years, after the Missouri Compromise, anonymous contributors and editors continued to express their opinion on the issue. In August 1820, *Paulson's American Daily Advertiser* published an extract from the sermon of a Massachusetts preacher. In it, the preacher heavily criticized the Missouri Compromise as a measure which was first and foremost an outrageous agreement which would increase the market for the slave trade and encourage all lands west of the Mississippi to enter the Union as Missouri had done, as a slave state.¹³ It also condemned the evil of the institution.

Their gradual emancipation is an object devoutly to be wished. It is what the laws of God, the rights of humanity, and the spirit of our Constitution unite to demand. But it is an object which, we regret to say, cannot be expected soon to take place. Nay we can hardly indulge the hope that it will take place at all, without the special interpolation of God. The

prospect of its being realized in the ordinary course of events, is entirely cut off by a recent act of our government.

The act was, of course, the Missouri Compromise. Here, the author of the story lifted the argument above man's law and invoked the laws of God, but he also invoked the "spirit" of the constitution. But once again, there was prophetic warning of the "interpolation" of God as the final measure which would emancipate the slaves. Little did the author know, that he was closer to prophecy than he might ever imagine.

Philadelphia had a much larger audience than any of the Southern newspapers researched in this study. Most of them were also published on a daily basis, an advantage over the Southern papers, which had a much smaller audience and were published twice or thrice weekly. And so, in Philadelphia, the Missouri Compromise continued to be assailed almost on a daily basis, although there were some exceptions.

As argued in chapter four, many of the advocates of the Missouri Compromise alleged that, in the end, there was much more land which could be converted into free states than those available for slavery.¹⁴ On the surface, this had looked like a better deal for free-soil advocates, and, in November of 1820, *Paulson's American Daily Advertiser* published a letter by Mr. Samuel Eddy, who had voted in favor of the Missouri Compromise.¹⁵ Eddy justified his vote by reason that, in the end, the territory in which slavery would be permitted was substantially smaller than the territory which would be free soil. But in his letter, Eddy carried the argument further in order to justify his vote, and went on to add that, in time, the people of Missouri would eventually "end the institution of their own accord."¹⁶ Curiously, there was no editorial comment accompanying the letter.

Yet, the assaults on the Compromise continued well into 1820 and 1821 in Philadelphia. The same newspaper published an excerpt from *Jefferson's Notes on Virginia*.¹⁷ Curiously, the excerpt published in the paper on that day was entitled "SLAVERY," but in *Jefferson's Notes* the passage comes from a section entitled "MANNERS."¹⁸ In the passage published that day, as in the original manuscript, Jefferson shares his thoughts, and, while the complete text is long and impossible to completely recreate in this study, some of the passages are compelling. They include the following:

The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other. . . . For in a warm climate, no man will labour for himself who can make another labour for him. This is so true, that of the proprietors of slaves a very small proportion indeed are ever seen to labour. And can the liberties of a nation be thought secure when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God? That they are not to be violated but with his wrath? Indeed I tremble for my country when I reflect that God is just: that his justice cannot sleep for ever: that considering numbers, nature and natural means only, a revolution of the wheel of fortune, an exchange of situation, is among possible events: that it may become probable by supernatural interference! The Almighty has no attribute which can take side with us in such a contest.

Following Jefferson's excerpts was another report concerning the Constitution of Missouri. The article itself reported on the state of the Constitution of Missouri and of course mentioned the provisions for slavery, but the focus of this article was one portion of the provision to prohibit any free blacks or mulattos from permanently making any attempt to settle in the state.¹⁹ It is important to point out that these notes had been published almost forty years before the actual Missouri Compromise and although the Compromise had already been reached, the purpose of this contrast was to focus clearly on Jefferson's contradictory views on the institution of slavery.²⁰

The attempts to criticize the Missouri Compromise went further than simply anonymous editorials. Some writers invoked their ability with prose. On August of 1820 *Paulson's American Daily Advertiser* published a poem entitled "SLAVERY." The author wrote:²¹

HARK! Heard ye not that piercing cry;
Which shook the waves and rent the sky!
E'en now, e'en now, on yonder western shores
Weeps pale Despair, and writhing Anguish roars:
In dark Missouri now, with hideous yell,
Fierce SLAVERY stalks, and slips the dogs of hell.
From vale to vale the gathering cries rebound,
And sable nations tremble at the sound!

Besides getting the readers' attention, the writer used the introduction to invoke his poetic license not only to condemn the evil of slavery but also to impress just how slithery the institution was that it continued to defy its eventual demise. But the prose continued, and the institution was not the only thing being assailed:

YE LEGISLATORS! Ye whose suffrage sways
Columbia's land, where none to despot homage pays,
Who right the injured, and reward he brave,
Stretch your strong arm, for ye have power to save
Thron'd in the vaulted heart, his dread resort,
Inexorable CONSCIENCE holds his court
With still small voice the plots of Guilt alarms,
Bares his mask'd brow his lifted hand disarms
But, wrapp'd in night with terrors all his own
He speaks in thunder, WHEN THE DEED IS DONE
Hear him ye SENATES! Hear his Truth sublime,
"He who allows Oppression shares the Crime"

After making the grand descriptions of the senators and of the potential good they carried with their vote, the author then described those who agreed as co-conspirators to the sin of slavery. But the author also went further here: his subtle reference to conscience suggests that, in the end, all would be judged by a higher moral court:

No radiant pearl, which crested Fortune wears
 No gem, that twinkling hangs from Beauty's ears,
 Not the bright stars, which night's blue arch adorn,
 Nor rising suns that gild the vernal morn,
 Shrine with such lustre as the tear, that breaks,
 For other's woe, down VIRTUE's manly cheeks.

Clearly, the institution of slavery was assailed, and the author infers that in time it will eventually fall into hell, foretelling its eventual demise. The prose was subtle, yet the message was strong, and the author spared no one, in particular the Senate.

Texas had long been the focus of articles, editorials, and letters in newspapers across the country. In the North it had long been the source of aggravation, not only in Congress, but in cities across the nation, and just, like in Congress, attempts were made to sway public opinion as well.

Perhaps, no other article in this research offers more proof of the sectional ideological disparity which already existed within the nation than the following. The subject concerns Texas, and at the core of this difference is an extract of a letter, "... from a gentleman in Virginia, well acquainted, from actual observation, with the province of Texas," to a member of Congress dated March 12, 1820. The exact same letter is published in Fredericksburg, Virginia and Philadelphia, Pennsylvania.²² In short, the letter offers a physical description of the vast new province of Texas. The letter is full of impressive depictions of this new, undeveloped and uninhabited land.²³ In fact, the letter described it as "the finest part of the world I ever beheld."

While *The Virginia Herald* simply printed the letter, *Paulson's American Daily Advertiser* introduced it with an editorial caveat:

The following is a description of the extensive domain which the profligate leading politicians of the South are so anxious to deprive Spain for the purpose of forming it into SLAVE STATES, and thereby opening

marts in which if the growers of Slaves may profitably sell their surplus black population. And, in addition to this advantage, the Southern Politicians openly boast that they will acquire two Members in the Senate of the United States from each of the new Slave States to be formed out of this immense territory; and, that the Slave Population, now rapidly increasing, will ere long give them an overwhelming majority in the House of Representatives, which unless providentially averted, will forever deprive the FREE STATES of all power in the Government of our country.

It is important to mention several noteworthy observations. These letters were published only weeks after the Missouri Compromise passed in Congress. We must remember that many Northerners had been under the impression that they had secured nine tenths of the Louisiana Territory as free soil, leaving a paltry portion to the slave power. Yet, in the editorial comment published in Philadelphia with the letter describing Texas, there was already mention of the political advantage the slave power could amass as several slave states would be formed from this vast new province.

During the early months of 1836, the Texas Revolution was covered extensively in newspapers across the South; however, the Charleston *Courier* wrote articles and letters from Texas about the revolution on an almost daily basis. Descriptive articles were constantly being reported concerning the major battles, and there were several calls to arms made during this time. Once the Revolution was over, *The Courier* reported on the ratified Constitution of Texas. While it did give some specifics, including the tenure of office for the president and how judges would not serve for life, the article focused mainly on the provisions for "servitude." Of particular interest, beyond the favorable conditions for bringing in slaves from the United States, was the provision which showed that absolutely no free person of African descent would be allowed to reside in Texas.²⁴

Even more enticing was the restriction on Congress's power to emancipate slaves in the newly formed republic. While the article never openly invited Southerners to settle in Texas, its coverage of Texas' newly passed slave policies seemed like an implicit advertisement of Texas as a legislative-friendly destination for slave owners.

Later that same month, there was a report in *The Courier* as to whether Texas should be recognized as a sovereign state. The author reported how a resolution from the state of Connecticut questioned whether any type of recognition of Texas should occur until the people of Mexico would have a say regarding Santa Anna's surrender of the territory. However, what made this story more interesting was the report of one Mr. Walker, who provided editorial comment. He warned that if the United States would not act to recognize Texas, then England would swoop in and make Texas as part of the Empire and create a real threat to the cotton growers of South Carolina and Georgia.²⁵ The movement was on in the South to recognize the newly formed Republic of Texas.

In December of the same year, *The Courier* reported a negotiation which the Texas Congress was conducting regarding two hundred million acres which it would make available at five cents an acre in order to raise twenty million dollars. Possibly the most noteworthy detail in this article occurred towards the end of the article, when the editor noted that this land was perfect for sugar and cotton and ripe for any "capitalists" who wished to invest.²⁶ Once again, while the article did not specifically invite South Carolinians to Texas, it did so indirectly.

Not all of the press coverage on Texas was sanguine, however. Once again, it was sectional ideology, with its competing view of constitutional principles, which determined the type of rhetoric used in these publications. For example, in April 1836, an

anonymous letter appeared in *Paulson's American Daily Advertiser*, addressed to Colonel Austin and others in Texas. In this letter, the writer did not mince his words as he called the rebels tyrants. He questioned the motives of their rebellion, which had been heavily publicized as an effort to achieve political liberty and escape Mexican tyranny. However, the writer also squarely blamed the increase of hostilities as a direct result of their "inflexible determination to infringe the fundamental laws of that nation by the establishment of slavery within her borders." But the attack on the Texans went even further:²⁷

That you unfurl the banners of freedom to cover the dark deformity of your cause; and shout the battle-cry of liberty and religion the more vehemently, that you may drown the groans of the oppressed, and stifle the appeals to Heaven and to man, of those you would sacrifice to your inordinate avarice and selfishness.

The harshness of the message was cloaked by the eloquence of the writer's technique. However, there was no doubt that the writer saw the Texas Revolution as an effort to expand the institution of slavery which was veiled within the rhetoric of republican ideals. This same argument eventually found itself into the halls of Congress.

A second letter to the editor appeared in Philadelphia that very same month; this one, however, was addressed to the Citizens of Philadelphia. In it, the writer cautioned Philadelphians to avoid financially supporting or joining the rebellion in Texas. The warning was that even though the rebels asked for assistance in the name of liberty, the fight concerned bondage, and sending financial support for this rebellion was therefore sending support towards the expansion of slavery.²⁸ In their eyes, the fight in Texas for slavery was cleverly veiled with the republican principle of liberty.

Attacks questioning the true motives of the Texas revolution appeared frequently in the Philadelphia newspaper. In June 1836, an editorial appeared in Paulson's *American Daily Advertiser* which chided the Texan struggle as a blatant proslavery effort to expand the institution.²⁹ The arguments became sharper and focused squarely on the motives of the rebels in the newly formed republic. In doing so, they made the connections to slavery and Texas, but even went as far to acknowledge how the settlers in Texas were using the principle of sovereignty to continue to expand the institution.

Not all of the rhetoric coming out of the Philadelphia daily newspaper attacked the Texans. In some cases, they published articles, editorials, and letters in which they questioned the motives of the South concerning the Texas Revolution, independence, and recognition as a sovereign state. Just as the Charleston *Courier* warned of dire consequences should the United States not recognize Texas, Philadelphia's *Paulson's* heavily criticized the South's motives in demanding immediate recognition of Texas Independence. In this article, the author analyzed different possible reasons for this haste. Besides the belief that many Americans had investments in Texas, there is what the author considered the more "weighty reason," that of opening a new market for the slave population which would increase the price of slaves.³⁰ In doing so, the writer also alluded to the presumption that should Mexico balk at Texas Independence and commence more military operations against her, then the United States would be obliged not only to protect Texas, but, with the same stroke, also to protect the institution of slavery already well established within it.

The comparative study of the arguments in both Philadelphia and Charleston provide a revealing illustration not only of the sectionalism that presided within the

ideological geography of the nation, but also of the sophistication of the rhetoric that evolved with time. Once again, this very same rhetoric found itself deeply embedded within Washington and the power brokers which decided the fate of both republics. So controversial was this rhetoric that it prevented Andrew Jackson from legally recognizing Texas independence until his final days in office.³¹

The rhetoric of the time only intensified, and the issue not only became whether Texas should be recognized, but whether it should be annexed into the United States. As the arguments grew deeper in Washington, they extended into the public domain as well in the form of editorials and letters. Once again, the arguments were not only about the institution of slavery, but also included their sharper and more sophisticated defenses which included the constitutional principles.

In January 1845, the *Charleston Courier* had two stories, one regarding a resolution which had been introduced into the Ohio Legislature against the Annexation of Texas into the Union and another separate story concerning the *Democratic Review* and its condemnation of annexation as well.³² The first mention was printed complete with editorial comment regarding the opposition to annexing Texas, but the second, heavily criticized and warned the Democratic stalwarts of New York that while they may still have had a say, their time of heavy influence was coming to an end and that South Carolina would eventually, and surely, be represented. The implication was explicit, namely that by opposing the interests of South Carolina, they would eventually lose not only their support but also the heavy power and influence they had wielded for years.

The rhetoric was heavy in January 1845 as another article was published in the *Charleston Courier* that for the first time linked Texas slavery with popular sovereignty.

Although the term popular sovereignty was not used, the article suggested that the people of Texas, “should for themselves determine whether they should have slavery or exclude it.”³³ While this was the first time the constitutional defense of popular sovereignty appeared, it would not be the last, as in the very same month there appeared another article in the *Courier*. This article again referred to the Democratic members of the House of Representatives from New York and how they opposed the admission of Texas without some restriction to slavery.³⁴ The article offered an alternative plan, proposed by one Mr. Robinson of the same state. His plan admitted Texas as a state within a certain area where popular sovereignty would determine whether slavery would exist in that territory or not. Again, the constitutional principle of popular sovereignty was used, but, significantly, the argument was quickly being refined as time passed.

The argument also deteriorated to attacks of ridicule when another article appeared in *The Courier* in which the writer mocked members of the American Foreign Anti-Slavery Society as they proposed a national day of fasting in order to avert the “calamity” of allowing the state of Texas into the Union.³⁵ The presidential election of 1844 had been extremely close, and it has long been speculated that the Abolitionists of New York refused to vote for Clay or Polk. At issue was the fact that Clay had been a slave owner himself, and, as a matter of principle, New York voters supported Liberty Candidate James J. Birney. This vote on principle was able to attract over sixty-eight thousand supporters, costing Clay the electoral votes of New York and the eventual presidency in 1845.³⁶

In Philadelphia, another newspaper took up the battle on the issue of Texas annexation and, in January of 1845, they too ran a series of arguments. Unlike their

counterpart *Paulson's American Daily Advertiser*, however, their editorials supported annexation, but for a distinctly different reason. Their concern surrounded the interference of Great Britain and France. *The Dollar Newspaper* of Philadelphia began a series in favor of annexation with their New Year's edition in 1845. On that day, they published an editorial entitled "The Designs of Britain, In Reference to Oregon, Texas and Mexico."³⁷ The author of the editorial focused on three issues, but the focus on Texas and Mexico was strongest. The implication was made that Britain's goal was to eventually obtain Texas and Mexico, much like it had obtained India, and their motives were clearly those of profit at the cost of the citizens of Texas, who were waiting to be annexed into the United States.

On July 2, 1845, the *Dollar Newspaper* of Philadelphia published an editorial entitled "Texas and Mexico: The Interference of England and France Established." This was a compelling and scathing editorial in which the writer implicated France and Britain and their motives with the interference Texas annexation.³⁸ In his conclusion, the writer opined that all three of those countries were incapable of stopping annexation. Britain would not quarrel, Mexico was incapable, and, in the end, France and Britain would eventually turn on one another, making the will of the people of Texas a reality. Once again, the subtle tone of popular sovereignty was used as a tool in order to show what the people of Texas truly desired. This is another revealing example of how the media connected Texas, slavery, and constitutional principles, along with the brotherhood of the citizens of the Republic of Texas, who were in reality former citizens of the United States.

While the northern Philadelphia newspaper employed the tactic of “frightening” the Northerners in regards to the motives of France, Great Britain, and Mexico, the Southern newspapers were more direct. In April of 1845, the *Richmond Enquirer* wrote a story which quoted Mr. Dudley Selden’s speech in New York.³⁹ In this speech, he warned that the battle for the annexation of Texas would divide the Democratic Party.⁴⁰ The warning was that while it would not break the party, it certainly would cause a strain, which proved true with Kansas-Nebraska Act in 1854. Ironically, it was this Act, however, which eventually brought down the Whigs, not the Democrats.

In May of 1845, the *Richmond Enquirer* published an editorial entitled “Fruits of the Annexation of Texas.” The editorial itself was an attempt to convince its readers of the advantages and rewards which Texas would bring with it once it joined the Union.⁴¹ This tactic had been used before in South Carolina, and its eventual motives seem to have been the attempt to draw Southern capitalists to the newly acquired Texas. The column was long, but the author focused on many key and positive points, including the benefits toward both the North and South. The author also touched upon the negative effects of not annexing Texas. These included a haven for run-away slaves and several duty free ports, which would rob not only the South, but also Northern New England, of valuable commerce. However, there was that caution, specifically fear for the nation that the editor seemed to view as impossible, yet worth mentioning.

Many commend that this extension of our territorial limits will be fatal to our Union and prosperity. We can see no such dark prospect ahead. Under our confederative system, the different sections and different interests will check each other in their attempted invasions of the Constitution – and like a well-balanced machine, our beautiful system will move on successfully – save, now and then, a few jars, which will serve to show the solid materials of which it is composed. Unless our memory betray us into error, Montesquieu, in his ‘Spirit of Laws’ ably contends that a Confederative

Republic, like our own, will admit of any extension – and becomes stronger and more durable, the wider the territory. At all events we augur no bad effect from the extension of our limits, where we have territorial rights. We must do our duty to ourselves and the world, and leave the rest to Providence.

While the addition of Texas did not bring an end to the Union, it certainly pushed the nation towards that event. Once again, the author used the constitutional principles of republicanism, checks and balances, and how expansion would eventually strengthen the nation, in this highly developed defense of annexation.

In Richmond, the newspaper continued its defense of annexation by offering a new approach to the issue. In June 1845, the *Richmond Enquirer* published an editorial where the annexation of Oregon and Texas were discussed in great detail. The editorial offered both hope and fear. First, it provided a vivid description of the extremely favorable response not only of the people of Texas, but also of government as well, to the issue of annexation to the United States. In doing so, the author inserted into the argument the constitutional principle of popular sovereignty. In the editorial, the author noted that the United States was already a very profitable and successful democracy and that to annex the Republic of Texas only made sense. On the other hand, the editor warned that, if the United States continued to waffle on the issue of Texas, Great Britain, France, and Mexico would surely do everything in their power not only to secure Texas but also to secure a more beneficial border for Mexico.⁴² The writer concluded with a warning that the loss of Texas would cost “the considerations of the political and commercial benefits to be obtained by us with annexation.” Once again, the constitutional principles of popular sovereignty and republicanism were invoked, and, in particular, the

loss the South would incur, especially with their three-fifths advantage afforded to them and guaranteed in the Constitution.

The rhetorical war for the hearts, minds, and attitudes concerning the institution of slavery was also waged across the Atlantic. A classic example of the attitudes that were being nourished in England is provided by the periodical, *John Bull*. The article was published in February 1845 in London, England. The author wrote an article with updates from Texas.⁴³ That report included a section of Sam Houston's "valedictory address" which was heavily strewn with the rejections of the United States towards the annexation of that republic. There was also a small report of the new president's main goal for his administration, for recognition and peace with Mexico. The article also provided editorial comment giving hope to its readers that the Republic of Texas would not become a part of the United States.

This study provides only a small sampling of the immense national conversation that took place between 1819 and 1844 concerning Texas, Missouri and slavery. It reveals just how the Missouri and Texas issues became so divisive and suspect. But, more importantly for this work, it illustrates that the argument evolved with a level of rhetorical sophistication in defense of the institution of slavery that first and foremost was grounded in a discussion of fundamental constitutional principles.

In the end, all of the newspaper rhetoric which defined the battle for American popular opinion, and all of the political influence which the slave power had gathered from the Constitutional Convention in 1787 through to the Compromises culminating with the Kansas-Nebraska Act and the Dred Scott Case, accomplished little. They accomplished little because the slave power proved unable, militarily and politically, to

realize its rhetorical position. Despite a sophisticated constitutional argument, the slave power failed to expand slavery or to rationalize even its existence, constitutional principles notwithstanding. Ultimately, it was the stroke of a pen, the same mechanism with which the South defended its cause from 1787 to 1861, which brought an end to the institution of slavery in the United States.

END NOTES

¹ Larry E. Tise, *Proslavery: A History of the Defense of Slavery in America, 1701-1840* (Athens: The University of Georgia Press, 1987), 55.

² *Paulson's American Daily Advertiser*, Philadelphia, Pennsylvania, January 12, 1820. While the original author of the pamphlet was a man named Robert Walsh who resided in Philadelphia at the time, it is not inconceivable to consider that he was the Philadelphian who published this editorial.

³ The "Philadelphian" uses words such as "entire satisfaction," and "eloquent."

⁴ *Paulson's American Daily Advertiser*, Philadelphia, Pennsylvania, January 12, 1820.

⁵ Larry E. Tise, *Proslavery: A History of the Defense of Slavery in America, 1701-1840* (Atlanta: University of Georgia Press, 1987), 56.

⁶ *Paulson's American Daily Advertiser*, Philadelphia, Pennsylvania, January 25, 1820. The agreement Seneca refers to is the Missouri Compromise. In particular Seneca refers to those who not only enslave, but who are part of the agreement, in scathing terms: "Who now is the monster in human form, that, without any compunctious visitings of conscience, can rivet the shackles of slavery upon a fellow being and compel him, like a beast of burden, to drag out a miserable existence, for the mere profit and convenience of its human task-masters." He goes on to call the agreement a complete "disgrace" and a complete attack on "the idea of a republican form of government."

⁷ *Lynchburg Press and Public Advertiser*, Lynchburg, Virginia, February 8, 1820. Only portions of Dwight's criticism of Virginia, and Virginians are published in the letter, but they are harsh: "And is it Virginia who is thus charged with attempts to excite rebellion against the national government? Virginia? Which has produced a Washington, a Jefferson, a Madison, a Monroe and other worthies . . . Virginia, who has always been foremost in the march of principle, always the steady friend and patron of American liberty and independence."

⁸ *Paulson's American Daily Advertiser*, Philadelphia, Pennsylvania, February 15, 1820.

⁹ The author writes of the nation's future: "Far be it from us to endeavor to shake for a moment the sacred claim of private property; we should abhor and detest that man who could suggest the measure on any pretensions, but we are arguing as to the future. If the exertion is ever to be made, or ever to succeed, let the blow now be struck. Settle the principle, and discord is at an end." Prophetically, this writer was predicting not only the sectional conflicts concerning the addition of western lands, but of an eventual confrontation.

¹⁰ *Lynchburg Press and Public Advertiser*, Lynchburg, Virginia, February 22, 1820. According to the article, "The agitation of the public mind in Virginia, representing the proposed restriction on Missouri, is represented as being more violent, and more extensive than on any session in recent history. A meeting of the members of the legislature which had been called for the purpose of nominating electors for the approaching presidential election, was postponed until further information could be received from Washington, respecting the views of the great republican leaders upon this interesting subject. *Principles, not men*, is the motto avowed at this meeting. We hope however, for her own sake, and for the sake of the Union, that Virginia will do nothing rashly on this occasion. The spirit of compromise was necessary in forming the Union: and however long the Union may continue, the spirit of compromise will always be found necessary to preserve it."

¹¹ *The Courier*, Charleston, South Carolina, March 3, 1820. "We cannot, however, but regret the occurrence, as popular outrages of the kind, are never calculated to do good. If Mr. Lanman had disgraced his constituents, the people can apply the remedy at the election, by selecting rulers of more principle, capacity and independence."

¹² *The Courier*, Charleston, South Carolina, March 8, 1820. The argument was reasonable in respects to the slavery issue and unreasonable in the ability to find common ground or compromise on the issue. It alleged that "Mr. Sergeant's close and acute reasoning completely baffled the eloquence and artifice of Mr.

Clay. There can be little doubt that the House will steadfastly adhere to the restriction, which, it is generally thought, will frustrate, at least for the present, the admission of Missouri, as a state, into the Union."

¹³ *Paulson's American Daily Advertiser*, Philadelphia, Pennsylvania, August 16, 1820.

¹⁴ Robert Pierce Forbes, *The Missouri Compromise and Its Aftermath* (Chapel Hill: University of North Carolina Press, 2007), 97. Several northerners saw the compromise as a remarkably generous deal by the South, "The Southerners had conceded nine-tenths of the Louisiana Territory."

¹⁵ *Paulson's American Daily Advertiser*, Philadelphia, Pennsylvania, November 14, 1820. "The territory therefore within which Slavery is permitted is a small space compared with the whole territory from which it is excluded. Add to this, the probability, as is asserted by those who profess to be acquainted, that in a short time, the people of Missouri will, of their own accord, exclude Slavery from their State, the majority in favour of it being small."

¹⁶ Pierce, 97-98. Samuel Eddy was a U.S. Representative from Rhode Island who changed his vote at the last minute and helped to carry through the Missouri Compromise.

¹⁷ *Paulson's American Daily Advertiser*, Philadelphia, Pennsylvania, November 30, 1820.

¹⁸ William Peden, ed., *Thomas Jefferson's Notes on the State of Virginia* (Chapel Hill: University of North Carolina Press, 1955), v and 162. This original work was written in 1782 by Jefferson.

¹⁹ *Paulson's American Daily Advertiser*, Philadelphia, Pennsylvania, November 30, 1830. "Our present object is, to show to what shifts men of intelligence and high reputation as politicians, will resort, to smooth the way for the establishment of a point, which their logic would not support, nor their consciences justify, if it were placed before them unconnected with the powerful interests and passions by which they are both so strongly biased in the present instance. The question here alluded, is contained in that provision of the constitution, which makes the duty of the legislature of Missouri to pass laws to prevent free blacks and mulattoes from gaining a settlement in that State."

²⁰ William W. Freehling, *The Road to Disunion: Secessionists at Bay, 1776-1854* (New York: Oxford University Press, 1991), Vol. 1, 155. As a result of his support of the Missouri Compromise, Jefferson emerged as a territorial expansionist.

²¹ *Paulson's American Daily Advertiser*, Philadelphia, Pennsylvania, August 30, 1820.

²² See *Paulson's American Daily Advertiser*, Philadelphia, Pennsylvania, April 15, 1820, and *The Virginia Herald*, Fredericksburg, Virginia, April 19, 1820.

²³ Other vivid and complimentary descriptions from the letter included: "The soil is far superior to any thing I ever saw, the Mississippi bottoms not excepted. The climate is peculiarly adapted to the culture of sugar and cotton, for an hundred fifty miles from the Gulf towards the mountains. After you have travelled about that distance, on an average, the country becomes more broken and a little hilly, in some places the rock is to be seen on the surface. Nevertheless, that part of it is well calculated for farming and grazing, the latter particularly in many places salt is found in great abundance; so much so, that I have seen vallies so completely covered with it, that it resembled a large white frost; consequently, your cattle get what they want of it, and the grass being so exceedingly fine, that without feeding them, they continue fat winter and summer."

²⁴ *The Courier*, Charleston, South Carolina, June 11, 1836. Specific details concerning servitude were given in this report: "Servitude is established as to slaves now in Texas, and as to such as may be brought from the U.S. Congress is denied the power to emancipate slaves. Free persons, of African descent, in whole or in part, are forbidden to reside permanently in the republic; and the importation or admission of negroes, except from the U.S., is forever prohibited and declared to be piracy."

²⁵ *The Courier*, Charleston, South Carolina, June 20, 1836. The paper reported that "Mr. Walker replied, and said that if we do not promptly recognize the independence of Texas, the Commissioners, who have been waiting here in order to get this act done, will be recalled, and in disgust Texas will make application to England - to England, who wants a country where she can start the cotton planters against the cotton planters of South Carolina and Georgia; where she can sell her manufactures, and by opening this new market severely injure the interests of the planters, manufacturers and merchants of the Union."

²⁶ *The Courier*, Charleston, South Carolina, December, 17, 1836. Charlestonians read: "Most of these lands being the best sugar and cotton lands in the world, they think there can be no doubt of her ability to meet any demand that may come against her. The gentleman with whom we have conversed is very sanguine in his expectations, and considers it an excellent opportunity for capitalists who may wish to make a safe and profitable investment."

²⁷ *Paulson's American Daily Advertiser*, Philadelphia, Pennsylvania, April 12, 1836. The letter is long and just as passionate. In the last paragraph the writer compared the success of Texas with the success of bondage. "A deep feeling against you is fast pervading the mind of this community. The success of Texas is becoming identified with the extension of slavery."

²⁸ *Paulson's American Daily Advertiser*, Philadelphia, Pennsylvania, April, 20, 1836. The letter is lengthy but an excerpt is telling of the passion the writer displays: "Philadelphians be generous if ye will, but be just also, and not too credulous. For not every one that invokes the name of Liberty is her true worshipper; neither is the great cause of human freedom furthered by every revolution. And if the fate of Texas was in your hands – if her very existence rested upon your decision – she should yet expunge from her constitution its authorization of slavery before she received the aid of a single Pennsylvanian."

²⁹ *Paulson's American Daily Advertiser*, Philadelphia, Pennsylvania, April, 30, 1836. The paper reported that "When a country like this, rebels against its lawful sovereign, under the pretext of oppression; by a catalogue of its grievances, enlists the sympathies of justice, humanity and freedom, and thereby receiving succour is enabled by an accident to gain a present advantage, in spite of the greater power of its parent state, and uses the first act of its half established sovereignty, not to palliate the irremediable evil of long continued slavery, as the United States were forced to do, but to introduce, perpetuate, and extend this grievous curse, against the opinion and awakened feeling of all Christendom, it incurs no small risk of forfeiting the good wishes of mankind, and, enfeebled by a withdrawal of that sympathy and succour which made it strong, of falling back into the hands of its former masters."

³⁰ *Paulson's American Daily Advertiser*, Philadelphia, Pennsylvania, June 29, 1836. Besides explaining how a new market for slaves will be created, the editorial goes on to describe the richness of the land and the size of the territory and how they will eventually annex this "vast domain" to the United States: "They state also, that in extent of territory it is equal to all New England, New York, New Jersey and Pennsylvania. It is their object and that probably of most of the slave states to annex this vast domain to the United States."

³¹ Michael A. Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 1997), 14.

³² *The Courier*, Charleston, South Carolina, January 1, 1845. Both articles appeared on separate pages, but the second one, regarding the "Democratic Review," condemned the "old hunkers" of the Democratic party from New York, and while how they did carry weight, that their force alone would not determine the fate of the issue, because South Carolina would not be neglected and be well represented in the final outcome. The Democratic Review was a periodical published from 1837–1859 by John L. O'Sullivan.

³³ *The Courier*, Charleston, South Carolina, January 24, 1845. This article was in a section entitled "Correspondence of the Courier." In this letter, there was great emphasis on the events occurring in Texas, including the commerce of Texas. But then the article moved to the discussions occurring in Washington, in particular from Mr. March of Vermont and Mr. Hudson of Massachusetts. Mr. Hudson was quoted, "The commerce of Texas he decided as trifling, and he sneered at the suggestions offered by Southern men of the tendency of the measure to promote northern manufactures. These suggestions, he said, came from those who pronounced poor cotton spinners, like himself, plunderers, and who sought annexation with a view to such an increase of the political power of the South as would tend to the destruction of manufactures." Marsh's argument is then presented, "The argument of Mr. Marsh, of Vermont, was very similar. Both of these gentlemen took the ground that the Constitution imposed no obligation on the North to strengthen and perpetuate the institution of slavery and they strongly intimated that the Constitution did not contemplate the continuance of the inequality of representation." The argument from the South for the issue of the people of Texas themselves was then presented.

³⁴ *The Courier*, Charleston, South Carolina, January 27, 1845. Charlestonians learned that "This plan admits Texas as a State with an area limited to the extent of the largest State of the Union say sixty-four thousand square miles, and leaves to the people of that State the question of the continuance of slavery. It provides that slavery shall not exist in the other portions of the territory ceded to the Union without the future assault of Congress!"

³⁵ *The Courier*, Charleston, South Carolina, January 28, 1845. The paper warned: "The object is, to avert, by supplication and fasting, the threatened measure of annexation. These men now have the coolness to call upon Heaven to avert a 'calamity' which they did their best to bring about last November at the polls."

³⁶ Charles Sellers, *The Market Revolution: Jacksonian America, 1815-1846* (New York: Oxford University Press, 1991), 417. They voted on principle even though they knew Birney had no chance of winning the presidency. It has been speculated that for their cause, Clay would have been the lesser of two evils because at least he did not approve of the annexation of Texas if it meant war with Mexico.

³⁷ *The Dollar Newspaper*, Philadelphia, Pennsylvania, January 1, 1845. The implication was that Mexico was the gateway to the Pacific, India, China, and to the Oregon Territory. "Mexico is the gate between the Atlantic and Pacific, or rather, between Eastern and Southern Asia and Europe. Even without a canal throughout Panama, the British could drive out the Pacific all commerce but their own, with the comparatively short passage from India or China to Mexican ports on the Pacific, a comparatively short passage over Mexico on railroads, and comparatively short passage from the Gulf to American and European ports."

³⁸ *The Dollar Newspaper*, Philadelphia, Pennsylvania, July 2, 1845. In this editorial the writer offers no proof of the allegations but makes inferences based on the suspected motives from the actions of those countries involved. "But would Mexico, without their instigation, have made any proposition to Texas? At least she would have made none without some immediate or prospective advantage; and we cannot comprehend how Mexico could derive any benefit from relinquishing her claims to Texas, and paying a large sum of money to the Texan government. She would not have offered this sacrifice without an equivalent; and as Texas independence offers none, we must infer that the equivalent was expected from the other side of the Atlantic."

³⁹ *New York Times*, New York City, New York, November 28, 1855. Dudley Selden was a legislator from Schenectady and served in the New York Legislature. He had been elected to the House of Representatives as a Democrat but could not align himself with the Jacksonians in their battle with the Bank of the United States. He eventually broke ties with Democrats and developed close ties to Henry Clay and the Whigs.

⁴⁰ *Daily Richmond Enquirer*, Richmond, Virginia, April 18, 1845. The paper asked: "Are there any disaffected Democrats to be drawn from your support either on the TARIFF, or on the compromise asked in the slave institutions of Texas, no stone will be unturned to secure their opposition. Already we are taunted with the epithets of Northern and Southern wing; already the wedge is fixed that is intended to sever the union of the Democratic party, and who, traitor like, is there that desires to strike the blow?" The editorial described this as the "danger is not over."

⁴¹ *Daily Richmond Enquirer*, Richmond, Virginia, May 27, 1845.

⁴² *Richmond Enquirer*, Richmond, Virginia, June 11, 1845.

⁴³ *John Bull*, London, England, February 1, 1845. Londoners read: "The attitude of Texas now, to my apprehension, is one of peculiar interest. The United States have spurned her twice already. Let her, therefore, maintain her position firmly, as it is, and work out her own political salvation. Let her legislation proceed upon the supposition that we are to be and remain an independent people. If Texas goes begging again for admission into the United States, she will only degrade herself; they will spurn her again from their threshold, and other nations will look on her with unmingled pity. Let Texas, therefore maintain her position. If the United States shall open the door and ask her to come into her great family of States, you will then have other conductors, better than myself, to lead you into an union with the beloved land from which we have sprung – the land of the broad stripes and bright stars. But let us be as we are until the opportunity is presented, and let then us go in, if at all united in one phalanx, and sustained by the opinion of the world."

CHAPTER 6

CONCLUSION

As the Age of Enlightenment was coming to a close, its effects on the Constitution seemed to be transparent. The influence of Locke, Montesquieu, Hobbs and Rousseau heavily affected the document and profoundly impacted the recreation of the republic. The theories of freedom, consent, and trust, combined with the belief of government's responsibility for the common good and the protection of natural rights, were thrust not only into the discourse of the period but also into the actual document which came to form the government for the new republic.

The foundations of the document which breathed life into it were the constitutional principles which Madison had imbedded within it. These principles, which included republicanism, popular sovereignty, checks and balances, separation of power, federalism, and individual rights, represented the best thoughts of the best thinkers from the Age of Enlightenment. Of these principles, republicanism, which was what fed the political discontent and fueled the "imperial crises," became the scheme the Founding Fathers viewed as the mechanism which could provide the greatest potential for the young republic.¹

Historian Larry Tise has argued that, when the revolution of 1800 occurred, the entire nation embraced the thought of Jefferson's conservative republicanism, and slavery

was very much a part of that revolution and political thought.² In embracing that political thought, the nation, as a whole, became what historians Alfred and Ruth Blumrosen have termed a *Slave Nation* or what historians Don Fehrenbacher and Ward McAfee have characterized as *The Slaveholding Republic*.

At the very base of this conservative republicanism was the belief by proslavery supporters that if American republicanism were to become a reality, slavery would be an indispensable feature.³ What drove the establishment and the eventual arguments for the proslavery defense were the fundamental beliefs held by the population of the South that they could simply not envision, or even fathom, a world without slavery.⁴ For them, freedom and liberty was only what they perceived it to be, and nothing else — a conviction they carried with them, and proudly declared, when South Carolina seceded from the Union.⁵

Accordingly, the republican ideals that existed at the time were what fed the movement not only to defend slavery but also to help “the peculiar institution” proliferate as the nation expanded westward. It was those very same ideals that helped to forge the arguments, in Congress and the public domain, in defense of slavery when the sectional divisions began to show a glaring difference in ideology.

But that belief alone was not enough to shelter the institution of slavery because, as the nation continued to grow and expand, sectional divisions began to show themselves as obvious opposition to the institution became more vociferous in the political arena as well as in public forums. Michael Morrison has argued that republicanism was a concept which became “protean,” and, that with time, was stripped of its conservative definition with a more coherent meaning that incorporated what the

Republican Party perceived to be the true republican ideals, which included the principles of liberty and equality.⁶ As individuals began deriving their arguments against republicanism based on slavery, one of their fundamental objections was that it created the “purest and most exclusive form of aristocracy”—an aristocracy which was unwilling to change its core belief system.⁷

Historian William Freeling has also made the case that the meaning of republicanism eventually changed with time. He argues that its transformation occurred when the Age of Jefferson turned into the Age of Jackson and republicanism morphed from elitist to egalitarian.⁸ This transformation was what fed the first organized mass movements against slavery forty years after the American Revolution.

With a belief in conservative republicanism as their ideological philosophy when open dissension began to appear against slavery, the slave power began using constitutional principles as a defense mechanism not only to protect but also to expand the institution as well. In fact, the Constitution provided an umbrella of protection, and as this study has argued, principles were used to ward off criticism and attacks on the institution, time and again. Popular sovereignty eventually became the main tool for the slave power, but the rest of the principles played a role as well. Federalism and limited government were used as a mechanism to dictate to the federal government that the Constitution provided them with the right to regulate their own “domestic” institutions.⁹ State’s rights was the principle which complimented popular sovereignty, but it also worked with federalism to justify leaving the institution in place. The principle of individual rights was constantly being put into motion in regards to runaway slaves or when the opposition began even to hint that free soil could become part of the new

territories that already held an enslaved population within themselves. Along with individual rights, every man was guaranteed not to lose his property, whether he was on slave soil or free.

Eventually, the slave power came to control all three branches of government, and even the system of checks and balances could do nothing to stop it. When one includes the three-fifths accommodation and the protections against insurrections which were guaranteed to the slave-holders, it would have been almost an impossible task for any president, much less a Congress to abolish slavery in 1860.

Whether the institution of slavery was secure or not after the election of Abraham Lincoln is a topic which will be debated for generations to come. One thing is certain: it had been constitutionally protected since the re-creation of the country, and the slave power very quickly realized that the document itself was a friend of their peculiar institution. What is even more impressive is how they were able to hone their constitutional defenses as the assaults against it became stronger and more logical.

This study has covered portions of the antebellum era in an effort to show instances of how the Constitution was indeed used as the main mechanism to help protect and expand slavery in chapters three and four. It has also illustrated how those arguments spilled into the public arena via newspapers of the era and how those arguments morphed into the sharp, defined, and even eloquent justifications that they became. In the final analysis, there is no doubt the constitution did develop and evolve as the Founding Fathers had intended, but it did so as a pro-slavery document. While this thesis has argued that its most prolific tools were indeed those republican-based constitutional principles, it is remarkable how proslavery boosters perfected those arguments in the

newspapers of the time in the form of editorials, letters, and articles. The rhetoric of the time achieved almost artistic level as the debates for, and against, slavery were readily made available to the general population as they read their newspapers.

But let us go back even further: had the Articles of Confederation survived the Critical Period, there would have been no constitutional principles that the slave power could use to protect their institution. State's rights, which the Confederation was founded on, could not have been enough to protect the institution of slavery against the abolition forces that were sure to come. At best, it would have left slavery's fate to be decided on a state by state basis. The study of Texas in this thesis provides a perfect illustration of just how vulnerable slavery was without the protection of the Constitution.

However, when the slave power, in the form of the newly created Confederacy, seceded from the Union, it also removed itself from under that umbrella of Constitutional protection which had so effectively safeguarded the institution. When dealing with the rebellious states, the president used the broad executive powers delegated to him in time of emergencies to quell the insurrection – – ironically, the same mechanism that had been used to protect slave holders from slave insurrections. The South literally gave him the power to preclude any constitutional principles from protecting their beloved peculiar institution. In the end, their actions doomed them to the kind of republicanism which had already morphed across the country except for the south. One they did understand, but did not accept for many years, even after the Civil War.

The outcome of these events combined with the South's failure to accept this new version of republicanism greatly impacted generations of African Americans during the Reconstruction Period and beyond. These events also greatly affected manifest destiny,

but African Americans were not the only ones who were greatly impacted as the United States expanded west. So too, were the Mexicans who lost their land to unwelcomed squatters, and, of course, the Native Americans who were pushed aside, and suffered immense casualties. Both of these groups became unwelcome strangers in their own lands after they lost them.

There is no doubt that the constitution was a product of an age when inequality and prejudice battled the impulse towards liberty and equality at every turn; for a time these more sinister forces held sway, but perhaps we may take solace in the fact that, ironically, that same mechanism which was manipulated to enslave millions was eventually used to emancipate them.

END NOTES

¹ Daniel J. McInerney, *The Fortunate Heirs of Freedom: Abolition & Republican Thought* (Lincoln: University of Nebraska Press, 1994), 10. McInerney writes that the "language of republicanism in America grew out of classical theory, civic humanist thought, and radical whig traditions elaborated during the imperial crises of the late eighteenth century. Republican advocates clarified colonial discontent, fueled the movement for separation from Britain, and shaped debates over the first state and national governments. Key elements of the republican argument remained constant over time and formed a recognizable core of ideas and values. Republicanism was not only a way of organizing and operating a political order but a way of thinking about power in general and about government, society, history, ethics, and religion in particular. Proponents spoke about authority, liberty, virtue, corruption, and resistance as they tried to resolve a recurring problem: the way corruptible men and women wielded the power that had to exist in any political order."

² Larry E. Tise, *Proslavery: A History of the Defense of Slavery in America, 1701-1840* (Athens: The University of Georgia Press, 1987), xvii. Tise refers to them as the "defenders of slavery."

³ Larry E. Tise, *Proslavery: A History of the Defense of Slavery in America, 1701-1840* (Athens: The University of Georgia Press, 1987), 116. Tise writes: "Most proslavery advocates went further in their legal justifications. In a republican government, they said, slavery was necessary to protect the rights of freemen. In fact, slavery ensured American republicanism by protecting property, fostering equality, and guaranteeing liberty to nonslaves. Therefore, not only did the Constitution permit the continuation of slavery, but it also permitted restrictions on the rights of free Negroes and required the return of fugitive slaves to their masters. Since slavery was demonstrably an essential feature of American republicanism, many proslavery writers argued that no amendment could be added to the Constitution that altered the nature of government or did not generally discuss the constitutional question in detail, whenever and wherever they did, they were agreed on these points. Southern-based writers stressed them more often and with greater vehemence. But they were not alone in their contentions."

⁴ Paul Finkelman, *Defending Slavery: Proslavery Thought in the Old South* (New York, Bedford/St. Martin's, 2003), ix. According to Finkelman, "White Southerners could not conceive of a world in which slavery did not exist. As Alexander Stephens, the Confederate vice president noted, slavery was the 'cornerstone' of the would-be Southern nation. The war was, from the beginning, about slavery, and by the end it was only about slavery. White Confederates fought so hard to preserve slavery because they had so deeply internalized the proslavery ideology that they could not conceive of a world in which there was no slavery and in which African Americans were free, and perhaps enfranchised citizens."

⁵ William Jenkins, *Pro-Slavery Thought in the Old South* (Chapel Hill: University of North Carolina, 1935), 295. Jenkins writes: "Hence, Governor McDuffie declared that slavery was the 'cornerstone of our republican edifice,' and with the same confidence the Southern leaders declared that the last stronghold of republicanism would be in the slaveholding States. Consequently, South Carolina, when she came to secede from the Union, declared 'we are vindicating the great cause of free government, more important, perhaps, to the world, than the existence of all the United States.'"

⁶ Michael A. Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 1997), 170. According to Morrison, "Historians, nonetheless, continue to point out that the ideological heritage of that era -- republicanism -- had evolved (or devolved) since 1776 or 1787. Changing attitudes sheared republicanism of its moral dimension, its assumption that a natural aristocracy would perceive the general good more clearly than could the masses, its antiparty bias, its anticommercial bent (at least for most Americans), and the historic connection between property and full citizenship. Republicanism over the years had become less coherent, more protean."

⁷ Morrison, p.111.

⁸ William W. Freehling, *The Road to Disunion: Secessionists at Bay, 1776-1854, Volume 1* (New York: Oxford University Press, 1991), 148.

⁹ Paul Finkelman, *Defending Slavery: Proslavery Thought in the Old South* (New York, Bedford/St. Martin's, 2003), 4.

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BIOGRAPHICAL SKETCH

José Juan “J.J.” Guajardo graduated from the University of Texas at Austin in 1978. Shortly after graduation he began teaching in Brownsville, Texas where he taught a total of twenty-one years in the public school system. In the fall of 2001 he began teaching in Mission, Texas, and, after moving up to the high school, began teaching history in the social studies department. In 2006 he was given the opportunity to teach Advanced Placement U.S. History and decided to return to school in order to give his students a better opportunity to learn history. That fall he began his graduate studies in American History.

Currently Jose holds educator certifications for Elementary Self Contained, Bilingual, ESL, Secondary Spanish, and a Social Studies Composite. He is also certified for Advanced Placement U.S. History and Gifted and Talented. He currently teaches AP U.S. History at Mission High School in Mission, Texas, and in 2006 was honored as Teacher of the Year. His professional associations include the American Historical Association and the Texas Classroom Teachers Association. Amongst other honors, J.J. includes the National Scholars Honor Society (Magna Cum Laude) and the History Honor Society (Phi Alpha Theta).

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