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Slavery, the Convention, and Civil Rights



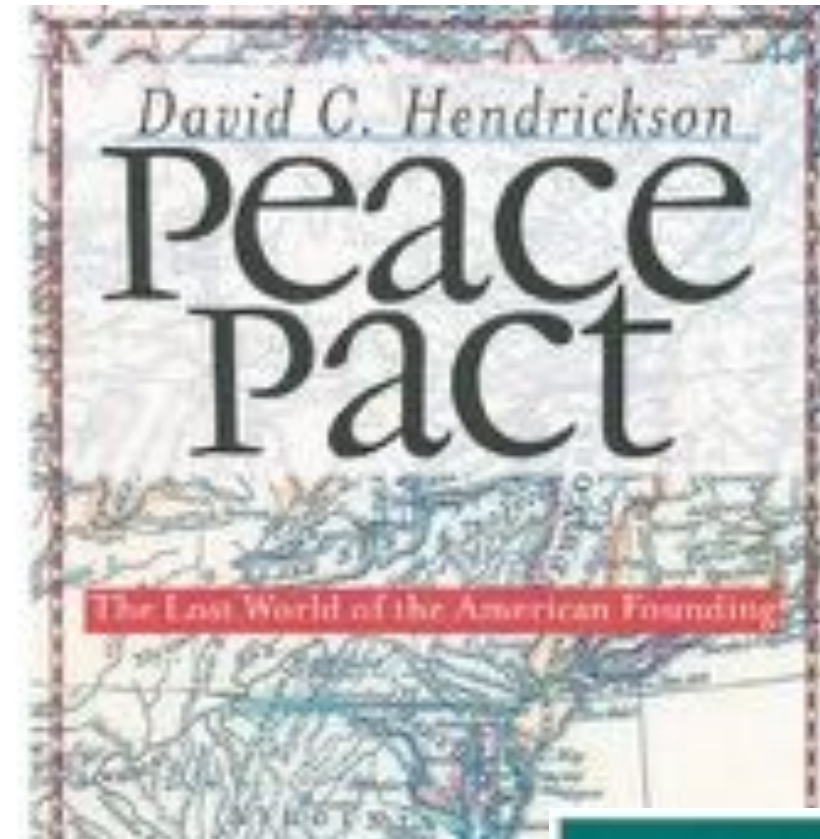
The three-fifths clause



The Convention in Historiography

An Economic Interpretation of the Constitution of the United States

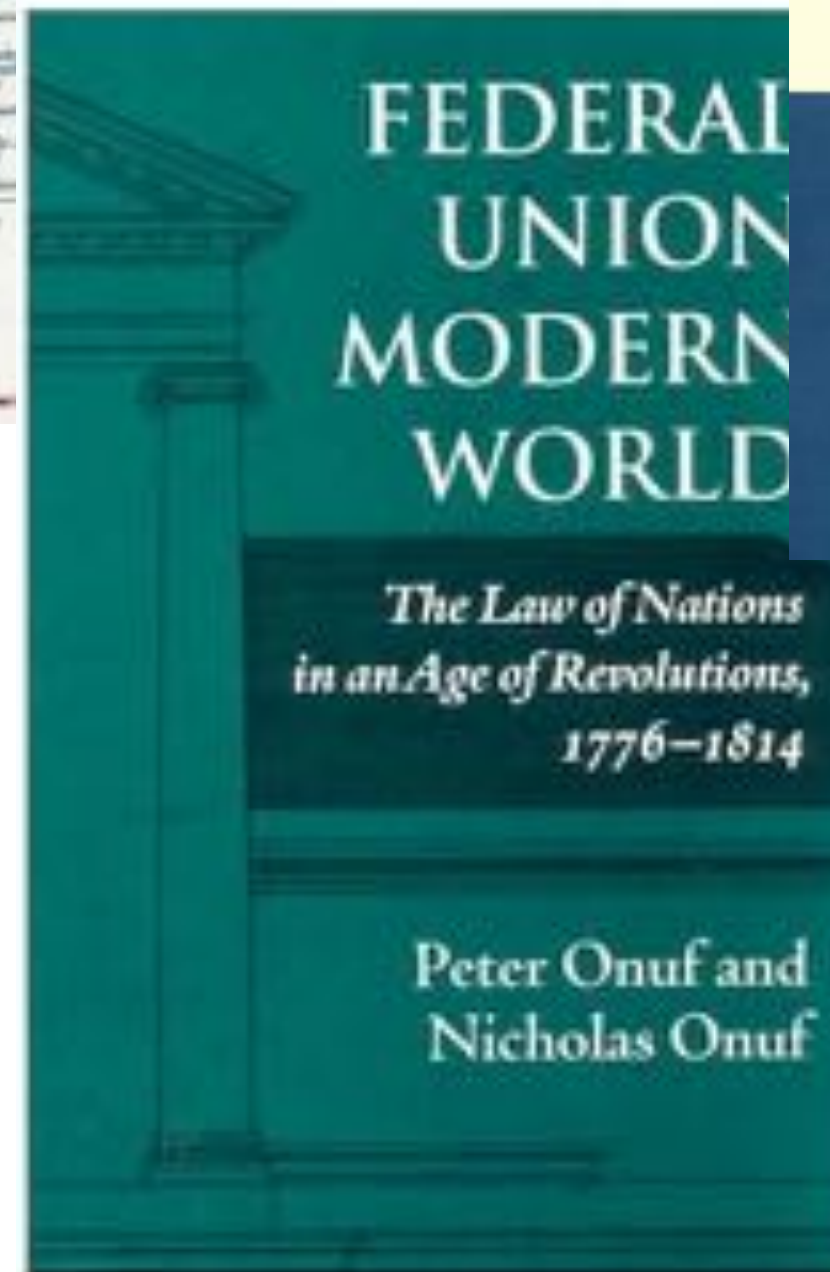
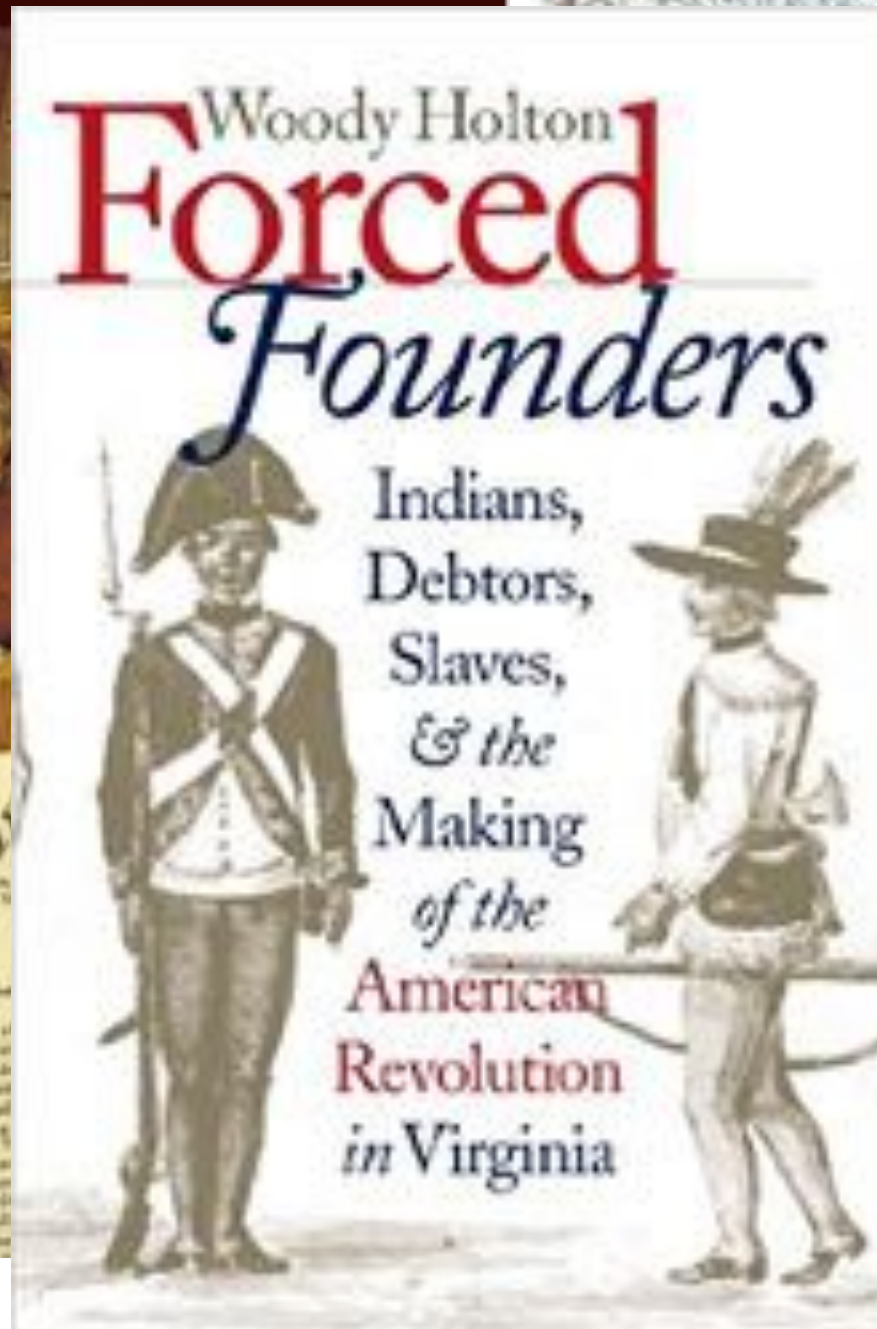
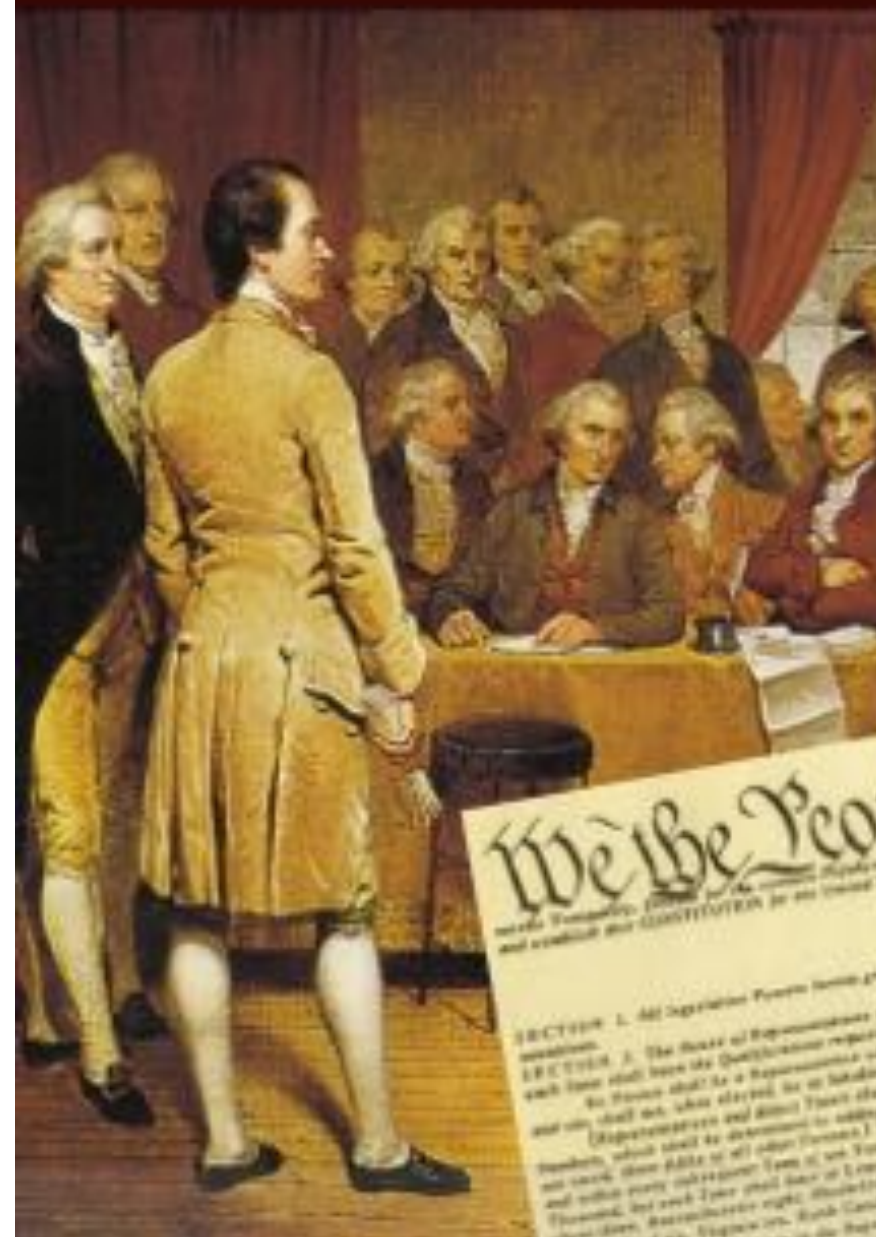
Charles A. Beard



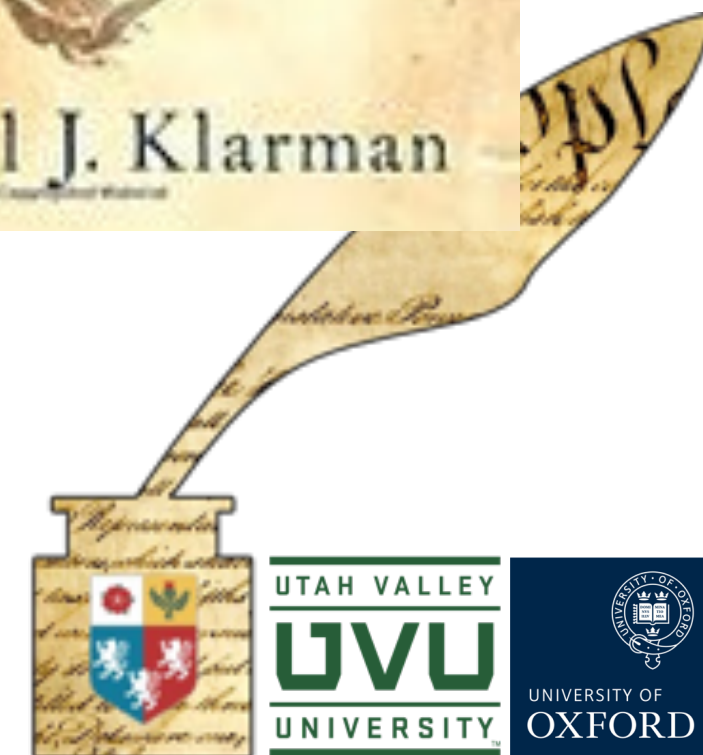
THE ORIGINS OF THE FEDERAL REPUBLIC



The FRAMERS' COUP
The MAKING of the UNITED STATES CONSTITUTION
Michael J. Klarman



JURISDICTIONAL CONTROVERSIES IN THE UNITED STATES, 1775-1787
PETER S. ONUF



OF QUESTION WAS NOT BE COURSED.



Our democracy's founding ideals were false when they were written. *Black Americans* have fought to make them true.

By Nikole Hannah-Jones
AUG. 14, 2019

For President
Richard Duncan
For Vice President
Ricky Johnson
Nonparty candidates

For President
Hillary Clinton
For Vice President
Tim Kaine
Democratic

For President
Donald J. Trump
For Vice President
Michael R. Pence
Republican

For President
Gary Johnson
For Vice President
William Weld

For President
WHS in
For Vice President

America holds onto an undemocratic assumption from its founding: that some people deserve more power than others.

By Jamelle Bouie
AUG. 14, 2019



Was the constitutional convention pro slavery?



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Tools

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Why the Constitution Was Indeed Pro-Slavery - The Atlantic

19 Sept 2015 — The Constitution that protected slavery for three generations, until a devastating war and a constitutional amendment changed the game, was ...



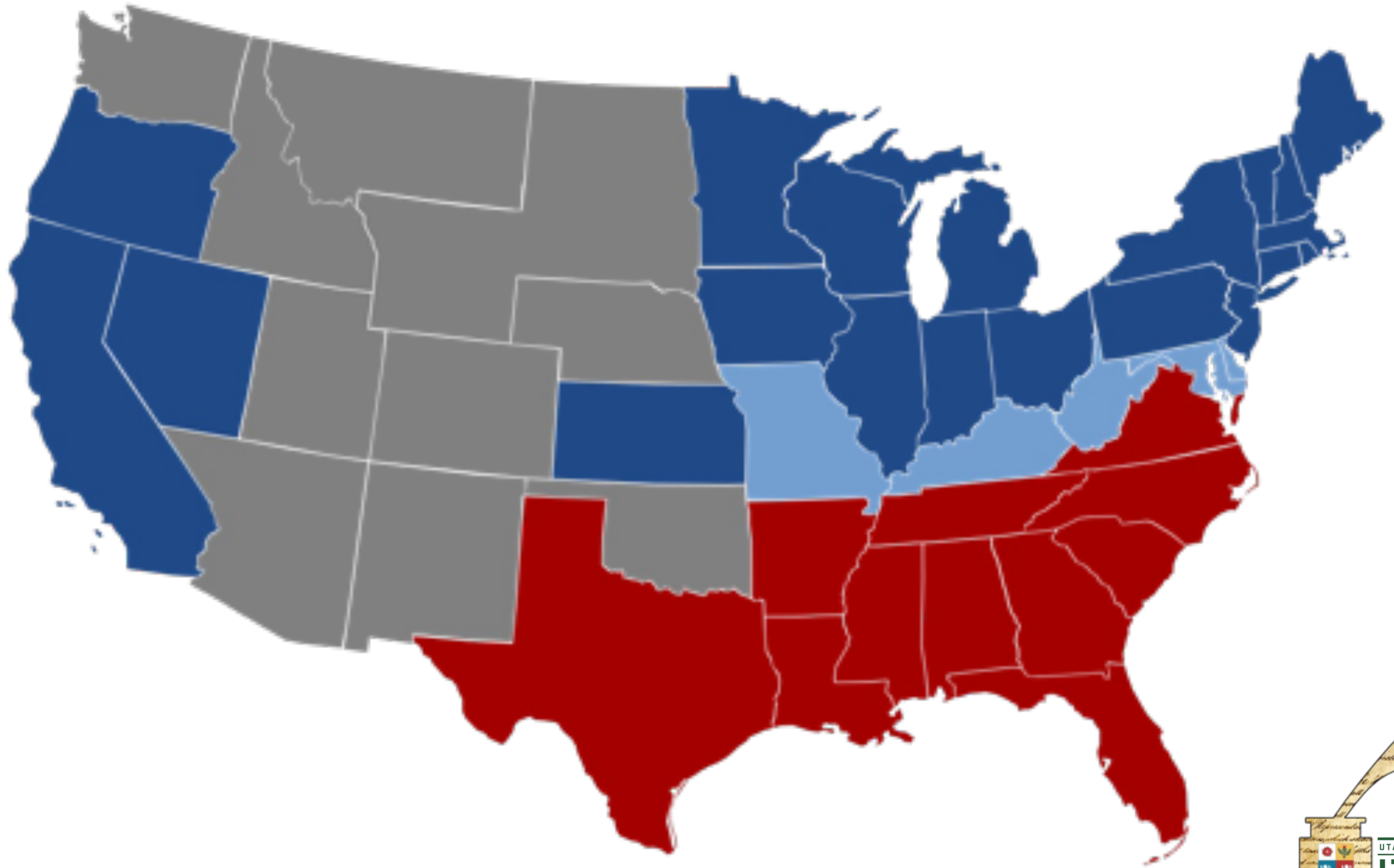


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*The Ideological
Origins of the
American
Revolution*



PULITZER
PRIZE
in
HISTORY

BERNARD
BAILYN



WINNER OF THE FRANCIS PARKMAN PRIZE

"Profoundly important. . . Every page of Morgan's book speaks of a sensitive understanding of human nature, as well as of a scrupulous attention to scholarly exactitude." —J. R. Pink, *New York Review of Books*

*American Slavery,
American Freedom*

EDMUND S. MORGAN

AUTHOR OF THE BEST-SELLING *BENJAMIN FRANKLIN*

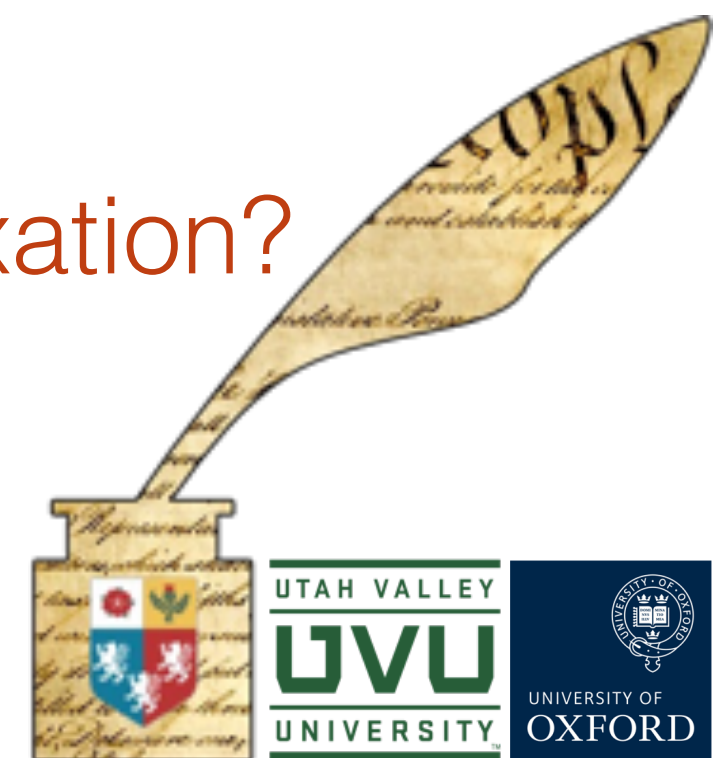
Ways to end slavery

- Contain the slave trade and contain the expansion of slavery.
- Discover that slavery was not in fact protected by law (the 1772 decision by Mansfield in *Somerset v Stewart*; Mass. in 1783).
- Gradual emancipation (with or without colonization policies).
- Compensated emancipation (British Empire 1833).



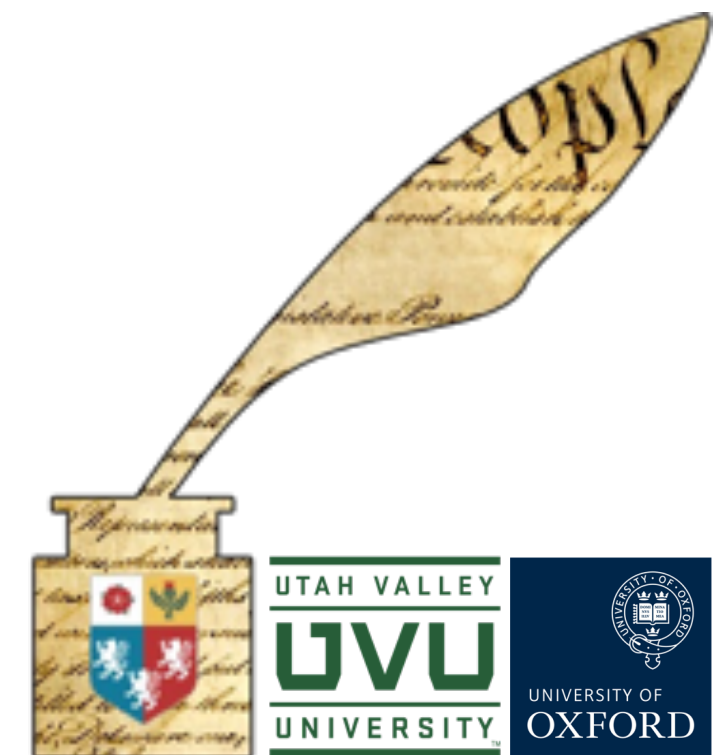
Ways in which slavery impacted the Union

- Could the Federal Government prevent the movement of enslaved people into Federal territory?
- Could the Federal Government require that new states adopted anti-slavery or pro-slavery constitutions?
- Could slaveowners recover run-away slaves from 'free' states and territories?
- If there was a dispute over whether a person was a slave, where was that dispute to be decided?
- Could slave-owners move with their slaves into 'free' states and territories? If so, how long could they live there?
- How should enslaved populations be represented in Congress or assessed for taxation?
- Could the citizens of 'free' states be forced to pay for the enforcement of slavery?



Issues decided by the Dredd Scott Case

- Should the Missouri Supreme Court have overturned the decision of the Missouri circuit court and continued to enforce the laws of non-slave states in Missouri?
- How did *state* citizenship relate to *Federal* Citizenship?



State	Legislation to end slavery	Final date anyone was enslaved in the state
New York	1799 /1827	1827*
Pennsylvania	1780	1847*
Massachusetts	None. Court case 1783	*
Connecticut	1784 / 1848	1857*



Abolishing Slavery in the New United States

- New Jersey
 - Importation of slaves banned in 1788, but at the same time free blacks prohibited from settling in the State.
 - 1804 - any slaves born after the act were free, but again required to serve as indentured labour until 25 or 21.
 - Free people of colour were disenfranchised in 1807, and not given the vote again until 1875.
 - 1846 - remaining slaves in the state were freed, but made indentured servants for life.



Abolishing Slavery in the New United States

- Rhode Island
 - 1774 prohibition on importation of slaves
 - 1784 gradual emancipation. Children of slaves born after this date indentured until 21 or 18.
 - 1843 constitution finally outlawed slavery.



Opinion

The Electoral College Was Not a Pro-Slavery Ploy

There is a lot wrong with how we choose the president. But the framers did not put it into the Constitution to protect the South.

By Sean Wilentz

Mr. Wilentz is the author, most recently, of "No Property in Man: Slavery and Antislavery at the Nation's Founding."

April 4, 2019



Opinion

Actually, the Electoral College Was a Pro-Slavery Ploy

That fact alone doesn't mean it ought to be scrapped. But we should be clear about its disreputable origins.

By Akhil Reed Amar

Mr. Amar is a professor at Yale Law School.

April 6, 2019



The Proslavery Origins of the Electoral College

Cardozo Law Review, Vol. 23, 2002

13 Pages • Posted: 13 Aug 2009

Paul Finkelman

Gratz College; Albany Law School - Government Law Center

Date Written: 2002

Abstract

In this article, Professor Finkelman reflects on the origins of the Electoral College in light of the results of the 2000 election. In 2000, although George W. Bush lost the popular vote, he was still able to capture the presidency due to his majority in the Electoral College. Professor Finkelman dispels the two most common myths about the creation of the Electoral College: (1) that it was meant to protect the smaller states and (2) that the Founders mistrusted the general public. In fact, Professor Finkelman holds that the Electoral College is directly related to the 3/5 compromise and is an antiquated relic of slavery that is in need of reevaluation.

Keywords: Electoral College, George W. Bush



Nicholas Guyatt's review of my *No Property in Man* [*NYR*, June 6] charges that the book isn't really a work of history at all but, at bottom, a political polemic disguised as history, an act of projection aimed at Bernie Sanders and Guyatt's own "younger generation of scholars."

I can only conjecture why Guyatt, a former student in my Princeton graduate seminar, felt compelled to defame my professional integrity. On the level of historical scholarship,

I can only conjecture why Guyatt, a former student in my Princeton graduate seminar, felt compelled to defame my professional integrity. On the level of historical scholarship, Guyatt's constant distortion of the book's evidence and contentions betrays a peculiar confusion in which historical dogma and its imperatives prevail over facts and reason.

At every turn, Guyatt either garbles or corrupts my arguments. According to him, the book makes a "case for an

State Plan.^[24] For this reason, James Madison is sometimes called the Father of the Constitution.^[24] Presented by Virginia governor Edmund Randolph on May 29, 1787, the Virginia Plan proposed a very powerful bicameral legislature.^[24] Both houses of the legislature would be determined proportionately.^[24] The lower house would be elected by the people, and the upper house would be elected by the lower house.^[24] The executive would exist solely to ensure that the will of the legislature was carried out and would therefore be selected by the legislature.^[24] The Virginia Plan also created a judiciary, and gave both the executive and some of the judiciary the power to veto, subject to override.

New Jersey Plan [edit]

Main article: *New Jersey Plan*

After the Virginia Plan was introduced, New Jersey delegate William Paterson asked for an adjournment to contemplate the Plan.^[24] Under the *Articles of Confederation*, each state had equal representation in Congress, exercising one vote each.^[24] The Virginia Plan threatened to limit the smaller states' power by making both houses of the legislature proportionate to population. On June 14 and 15, 1787, a small-state caucus met to create a response to the Virginia Plan. The result was the New Jersey Plan, otherwise known as the Small State Plan.^[24]

Paterson's New Jersey Plan was ultimately a rebuttal to the Virginia Plan, and was much closer to the initial call for the Convention: drafting amendments to the *Articles of Confederation* to fix the problems in it.^[24] Under the New Jersey Plan, the existing Continental Congress would remain, but it would be granted new powers, such as the power to levy taxes and force their collection.^[24] An executive branch was created, to be elected by Congress (the plan allowed for a multi-person executive).^[24] The executives would serve a single term and were subject to recall on the request of state governors.^[24] The plan also created a judiciary that would serve for life, to be appointed by the executives.^[24] Lastly, any laws set by Congress would take precedence over state laws.^[24] When Paterson reported the plan to the Convention on June 15, 1787, it was ultimately rejected, but it gave the smaller states a rallying point for their interests.^[24]

Hamilton's plan [edit]

Unimpressed with the New Jersey Plan and the Virginia Plan, Alexander Hamilton proposed his own plan. It also was known as the British Plan, because of its resemblance to the British system of strong centralized government.^[24] In his plan, Hamilton advocated virtually doing away with state sovereignty and consolidating the states into a single nation.^[24] The plan featured a bicameral legislature, the lower house elected by the people every three years. The upper house would be elected by electors chosen by the people and would serve for life.^[24] The plan also gave the Governor, an executive elected by electors for a life-term of service, an absolute veto over bills.^[24] State governors would be appointed by the national legislature,^[24] and the national legislature had veto power over any state legislation.^[24]

Hamilton presented his plan to the Convention on June 18, 1787.^[24] The plan was perceived as a well-thought-out plan, but it was not considered, because it resembled the British system too closely.^[24] It also contemplated the loss of most state authority, which the states were unwilling to allow.

Pinckney's plan [edit]

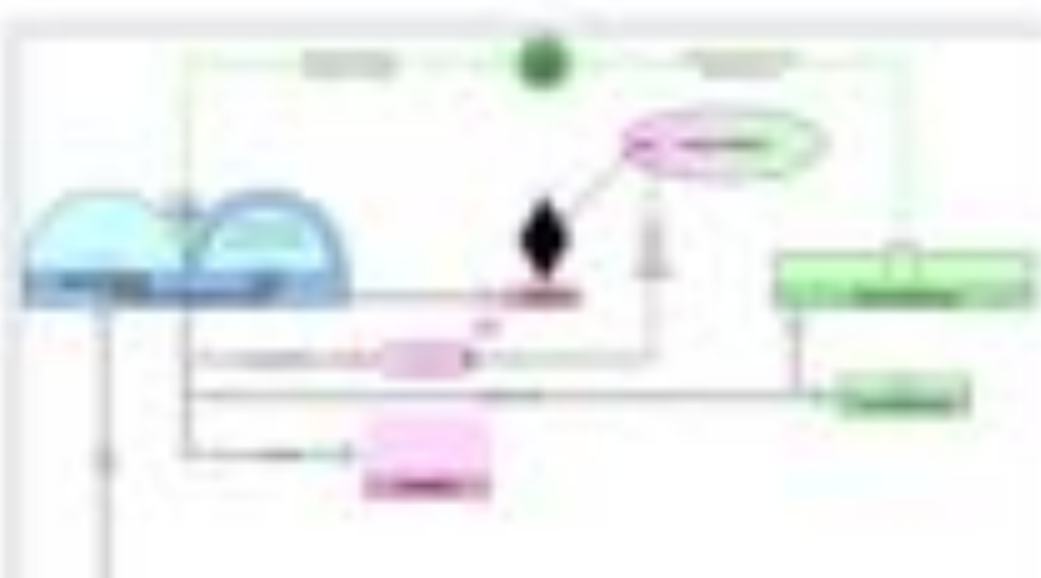
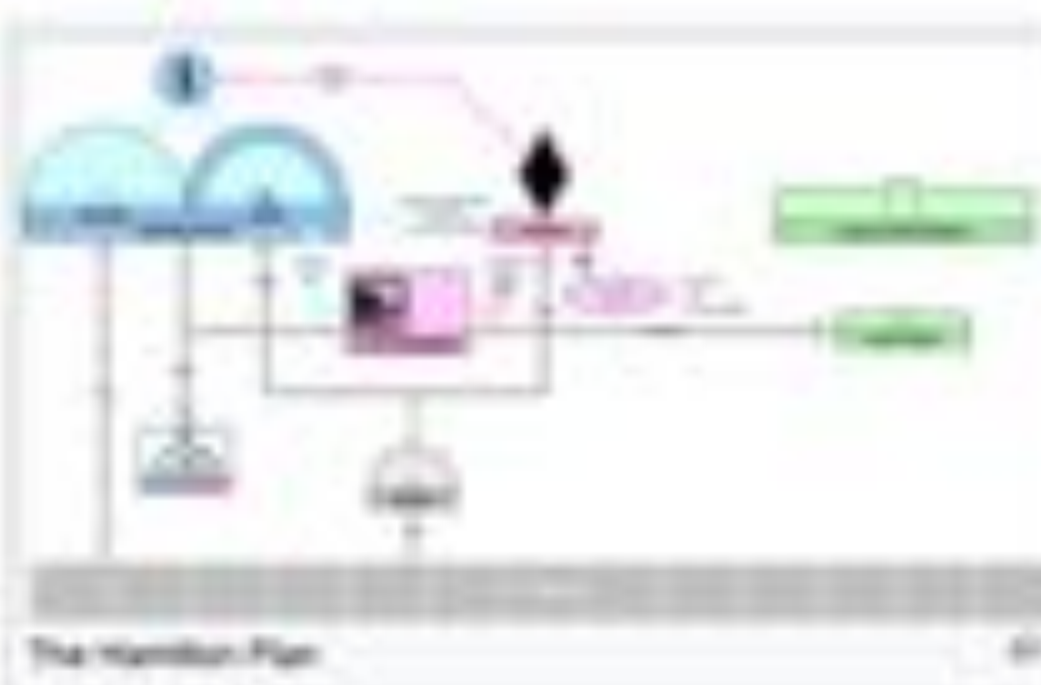
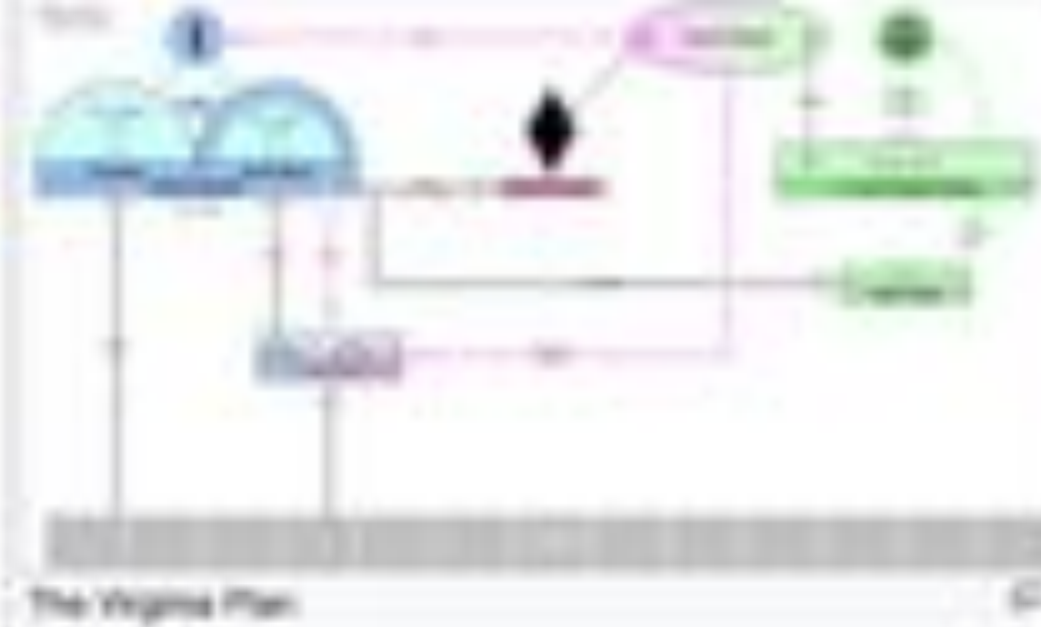
Immediately after Randolph finished laying out the Virginia Plan, Charles Pinckney of South Carolina presented his own plan to the Convention. As Pinckney did not write it down, the only evidence of the plan are Madison's notes,^[24] so the details are somewhat vague. It was a confederation, or treaty, among the thirteen states. There was to be a bicameral legislature made up of a Senate and a House of Delegates. The House would have one member for every one thousand inhabitants. The House would elect Senators who would serve by rotation for four years and represent one of four regions. Congress would meet in a joint session to elect a President, and would also appoint members of the cabinet. Congress, in joint session, would serve as the court of appeal of last resort in disputes between states. Pinckney did also provide for a supreme Federal Judicial Court. The Pinckney plan was not debated, but it may have been referred to by the *Committee of Detail*.^[24]

Connecticut Compromise [edit]

Main article: *Connecticut Compromise*

The *Connecticut Compromise*, forged by Roger Sherman from Connecticut, was proposed on June 11.^[24] In a sense it blended the Virginia (large-state) and New Jersey (small-state) proposals. Ultimately, however, its main contribution was in determining the apportionment of the Senate, and thus retaining a federal character in the constitution. Sherman sided with the two-house national legislature of the Virginia Plan, but proposed "That the proportion of suffrage in the 1st. branch [house] should be according to the respective numbers of free inhabitants; and that in the second branch or Senate, each State should have one vote and no more."^[24] This plan failed at first, but on July 23 the question was finally settled.^[24]

What was ultimately included in the constitution was a modified form of this plan. In the Grand Committee, Benjamin Franklin successfully proposed the requirement that revenue bills originate in the house. But the final July 18 vote on the compromise still left the Senate looking like the Confederation Congress. In the preceding weeks of debate, Madison, King, and Gouverneur Morris each vigorously opposed the compromise for this reason.^[24] Then on July 23, just before most of the convention's work was referred to the *Committee of Detail*, Morris and King moved that state



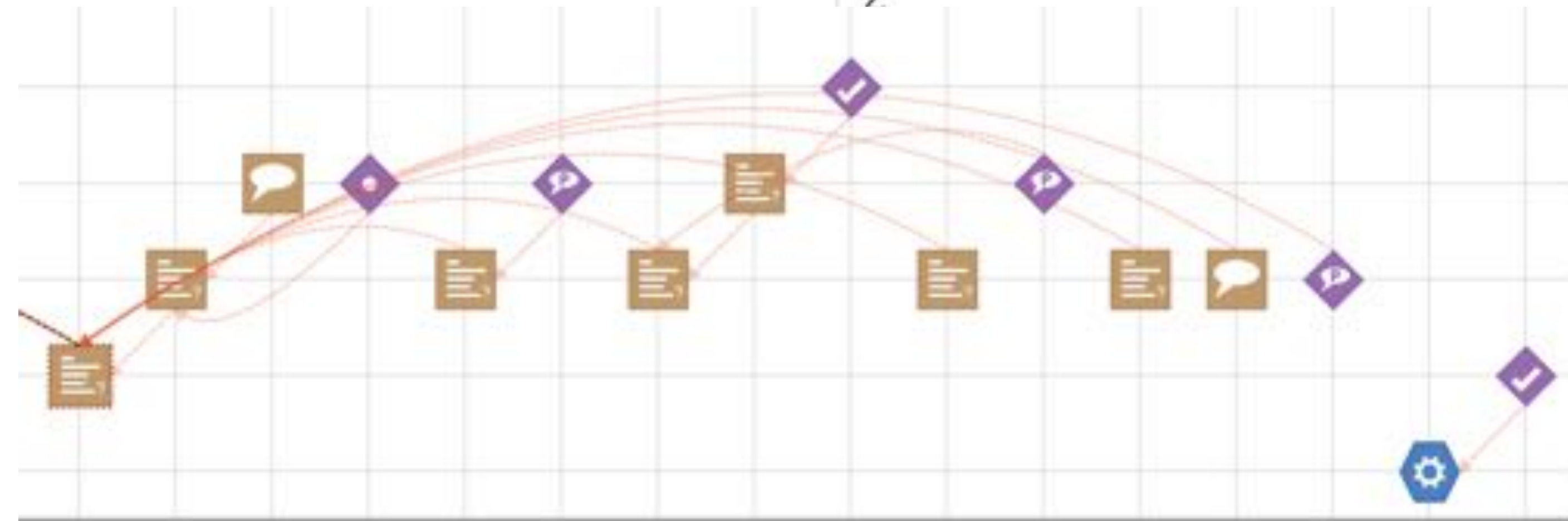
Slavery? Part 1 - 30 May 1787

The following resolution was then moved by Mr Randolph,

Resolved that the rights of suffrage in the national legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

1. Resolved that the articles of Confederation ought to be so corrected & enlarged as to accomplish the objects proposed by their institution; namely. "common defence, security of liberty and general welfare."
2. Resd. therefore that the rights of suffrage in the National Legislature should be proportioned to the Quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.
3. Resd. that the National Legislature ought to consist of two branches.
4. Resd. that the members of the first branch of the National Legislature should be chosen by the people of the several States.

Agreed text	Intermediate text	Proposed text	Highlight changes
[Randolph's Resolutions]			
1.			
2.			



consisting of a supreme



Slavery? Part 1 - 30 May 1787

The following resolution was moved by Mr. Morris.

Resolved that the equal confederation ought not to be on an equitable ratio of representation.

Randolph's Second Resolution proposal

The following resolution was moved by Mr. Madison

Resolved that the rights of suffrage

It was moved and seconded to add the words "to the present system".

Randolph's Second Resolution (Virginia)

It was then moved and seconded

Resolved that the rights of suffrage be according to the present system.

Mr. Reade

Resolved that the equal confederation ought not to be on an equitable ratio of representation.

Mr. Gordon

Mr. Madison



...uties from any change on, it might

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...ostpone the consideration of the last resolution — And, on the question to postpone, it passed in the affirmative.

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It was moved by Mr Wilson seconded by Mr C. Pinckney to postpone the

Mr. Dickinson moved as an amendment, to add the words, "according to the taxes and contributions of each state actually collected and paid into the national treasury."

2. Resolved that the right of suffrage in the first branch of the national

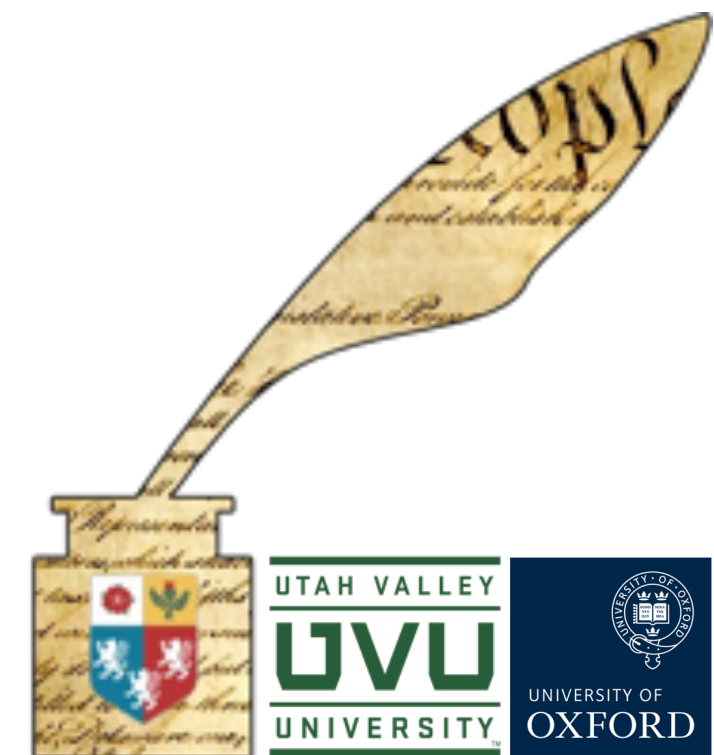
Legislature ought not to be according to the rule established in the articles of confederation; but according to some equitable ratio of

representation, representation, in proportion to the whole number of white and other free Citizens and inhabitants of every age, sex and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians, not paying taxes in each State.

Debating the New Jersey Plan

4. Will it secure the internal tranquillity of the States themselves? The insurrections in Massts. admonished all the States of the danger to which they were exposed. Yet the plan of Mr. P. contained no provisions for supplying the defect of the Confederation on this point. According to the Republican theory indeed, Right & power being both vested in the majority, are held to be synonymous. According to fact & experience, a minority may in an appeal to force be an overmatch for the majority. 1. If the minority happen to include all such as possess the skill & habits of military life, with such as possess the great pecuniary resources, one third may conquer the remaining two thirds. 2. one third of those who participate in the choice of rulers may be rendered a majority by the accession of those whose poverty disqualifies them from a suffrage, & who for obvious reasons may be more ready to join the standard of sedition than that of the established Government. 3. Where slavery exists, the Republican Theory becomes still more fallacious.

(Madison)



Slavery and the Convention



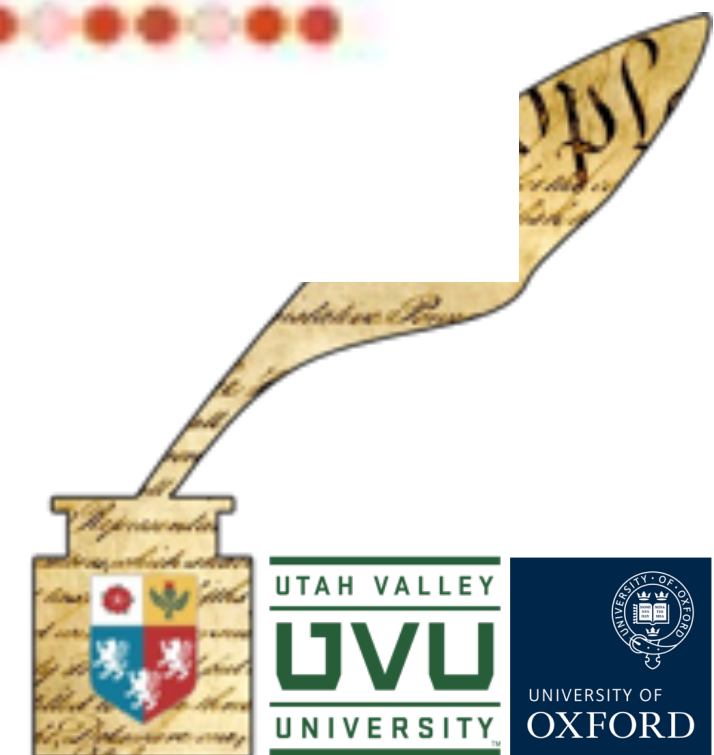
The Convention

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To view a session, click on the corresponding session below.



Search:



Slavery and the Convention

8th August

Sect. 4. As the prop
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Mr. King wished to know what influence the vote just passed was meant have on the succeeding part of the Report, concerning the admission of slaves into the rule of Representation. He could not reconcile his mind to the article if it was to prevent objections to the latter part. The admission of slaves was a most grating circumstance to his mind, & he believed would be so to a great part of the people of America. He had not made a strenuous opposition to it heretofore because he had hoped that this concession would have produced a readiness which had not been manifested, to strengthen the Genl. Govt. and to mark a full confidence in it. The Report under consideration had by the tenor of it, put an end to all these hopes. In two great points the hands of the Legislature were absolutely tied. The importation of slaves could not be prohibited — exports could not be taxed. Is this reasonable? What are the great objects of the Genl. System? 1. defence agst. foreign invasion. 2. agst. internal sedition. Shall all the



Slavery and the Convention

21st August

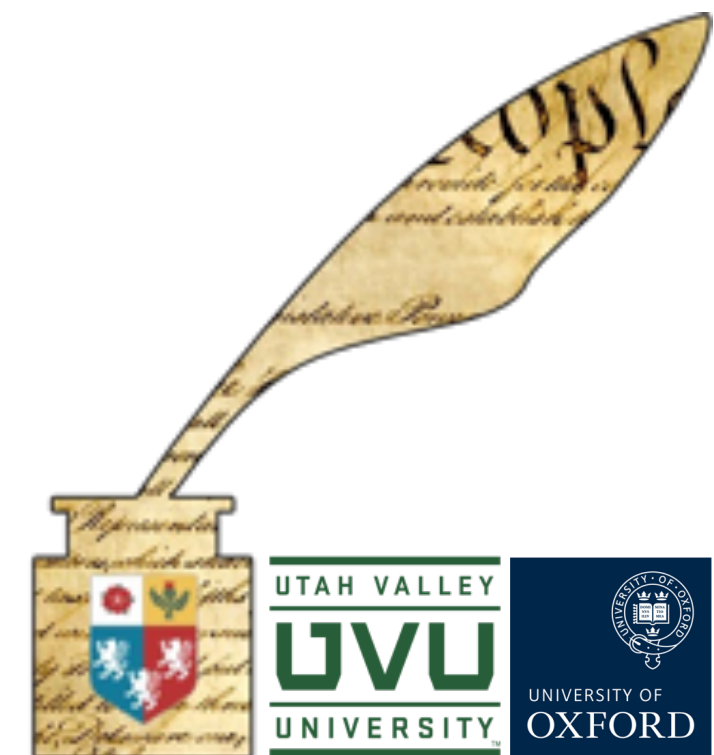
Sect. 3. The proportions of direct taxation shall be apportioned to the whole number of free citizens and inhabitants, of every age, sex and condition, including those bound to servitude for the term of years, (except Indians not paying taxes) who, within three years after the first meeting of the Legislature, shall be taken as the standard, and in the term of every ten years afterwards, be taken as the standard; and the Legislature shall direct.

Sect. 4. No tax or duty shall be laid by the Legislature on the importation or migration of free persons as the several States shall think proper.

Mr L— Martin, proposed to vary the sect: 4. art VII so as to allow a prohibition or tax on the importation of slaves. 1. As five slaves are to be counted as 3 free men in the apportionment of Representatives; such a clause wd. leave an encouragement to this traffic. 2 slaves weakened one part of the Union which the other parts were bound to protect: the privilege of importing them was therefore unreasonable — 3. it was inconsistent with the principles of the revolution and dishonorable to the American character to have such a feature in the Constitution.

Mr Rutledge did not see how the importation of slaves could be encouraged by this section. He was not apprehensive of insurrections and would readily exempt the other States from the obligation to protect the Southern against them. — Religion & humanity had nothing to do with this question — Interest alone is the governing principle with Nations — The true question at present is whether the Southern States shall or shall not be parties to the Union. If the Northern States consult their interest, they will not oppose the increase of Slaves which will increase the commodities of which they will become the carriers.

Mr. Elseworth was for leaving the clause as it stands. let every State import what it pleases. The morality or wisdom of slavery are considerations belonging to the States themselves — What enriches a part enriches the whole, and the States are the best judges of their particular interest. The old confederation had not meddled with this point, and he did not see any greater necessity for bringing it within the policy of the new one:



Slavery and the Convention

22nd August

Section 9. Art. VII sect 4. resumed. Mr. Sherman was for leaving the clause as it stands. He disapproved of the slave trade: yet as the States were now possessed of the right to import slaves, as the public good did not require it to be taken from them, & as it was expedient to have as few objections as possible to the proposed scheme of Government, he thought it best to leave the matter as we find it. He observed that the abolition of slavery seemed to be going on in the U. S. & that the good sense of the several States would probably by degrees compleat it. He urged on the Convention the necessity of despatching its business.

Col. Mason. This infernal trafic originated in the avarice of British Merchants. The British Govt. constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing States alone but the whole Union. The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the Enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves, as it did by the Tories. He mentioned the dangerous insurrections of the slaves in Greece and Sicily; and the instructions given by Cromwell to the Commissioners sent to Virginia, to arm the servants & slaves, in case other means of obtaining its submission should fail. Maryland & Virginia he said had already prohibited the importation of slaves expressly. N. Carolina had done the same in substance. All this would be in vain if S. Carolina & Georgia be at liberty to import. The Western people are already

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Slavery and the Convention

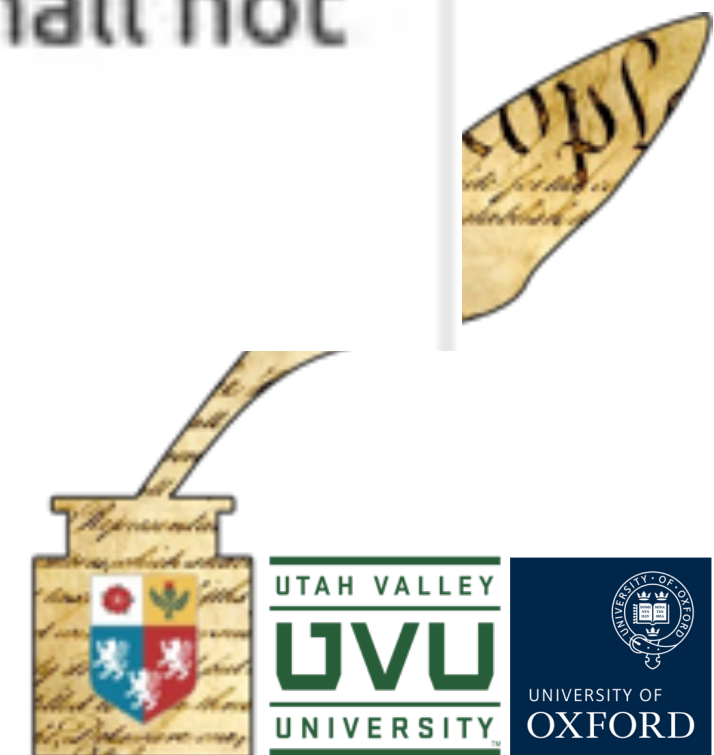
25th August

Clauses for the Grand Committee on Taxation

Sect. 4. [No tax or duty shall be laid by the Legislature on articles exported from any State;] the migration or importation of such persons as the several States now existing shall think proper to admit, shall not be prohibited by the Legislature prior to the year 1800 — but a Tax or Duty may be imposed on such migration or importation at a rate not exceeding the average of the Duties laid on Imports.

Col: Mason was not against using the term “slaves” but agst naming N— C— S— C. & Georgia, lest it should give offence to the people of those States.

Mr. Govr. Morris \ exported from any State;] the migration or importation of such persons
... as the several States now existing shall think proper to admit,
importation of slaves into N. Carolina, S— Carolina & Georgia shall not
be prohibited by the Legislature prior to the year 1808.



Slavery and the Convention

28th August

Any person charged with treason, felony, or other crime in any State, who shall flee from justice, and any fugitive slave or servant, who shall be found in any other State, shall, on demand of the Executive Power of the State from which he fled, be delivered up, to the Executive Power of the State having jurisdiction

Mr. Wilson. This would oblige the Executive of the State to do it, at the public expence.

Mr Sherman saw no more propriety in the public seizing and surrendering a slave or servant, than a horse.



Near final change

15 Sept 1787



A person charged in any
shall flee from justice, and
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No person **legally** held to service or labour in one **state**, **state** under the
laws thereof, escaping into another, shall in consequence of regulations
subsisting therein be discharged from such service or labor, but shall be
delivered up on claim of the party to whom such service or labour may
be due.

Art. IV. sect 2. parag: 3. the term “legally” was struck out, and
“under the laws thereof” inserted after the word “State,” in
compliance with the wish of some who thought the term legal
equivocal, and favoring the idea that slavery was legal in a moral
view—



The Creation of the Electoral College

A collection highlighting important moments in the debate over how a President should be chosen for the United States.

Cite as: N. P. Cole, Grace Mallon and Kat Howarth, *The Creation of the Electoral College*, Quill Project at Pembroke College (Oxford, accessed 2019)

List of conventions with comments

To see where the comments are in the convention, click on the corresponding convention below.



Locations of comments in the convention

To see highlight the related comments to the session in the convention, click on the corresponding coloured circle below.



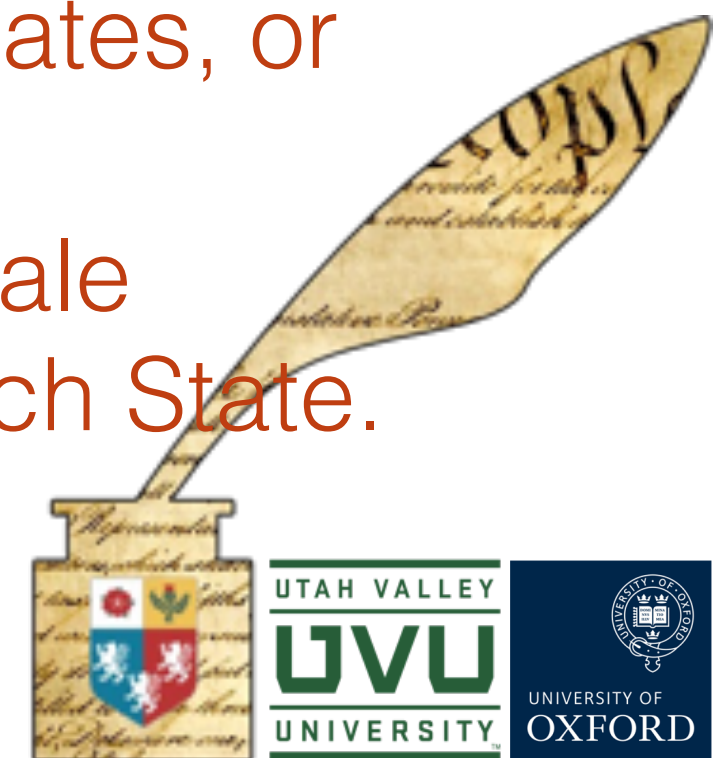
What happened to the Fourteenth Amendment?

- 1866 Civil Rights Act
 - It provides for the equality of citizens of the United States in the enjoyment of "civil rights and immunities." What do these terms mean? Do they mean that in all things civil, social, political, all citizens, without distinction of race or color, shall be equal? By no means can they be so construed. Do they mean that all citizens shall vote in the several States? No; for suffrage is a political right which has been left under the control of the several States, subject to the action of Congress only when it becomes necessary to enforce the guarantee of a republican form of government (protection against a monarchy). Nor do they mean that all citizens shall sit on the juries, or that their children shall attend the same schools. The definition given to the term "civil rights" in Bouvier's Law Dictionary is very concise, and is supported by the best authority. It is this: "Civil rights are those which have no relation to the establishment, support, or management of government."
 - But not everyone agreed in so narrow a definition.
 - Passed over the veto of the President.
 - The basis for the 14th Amendment.



What happened to the Fourteenth Amendment?

- All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
- Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.



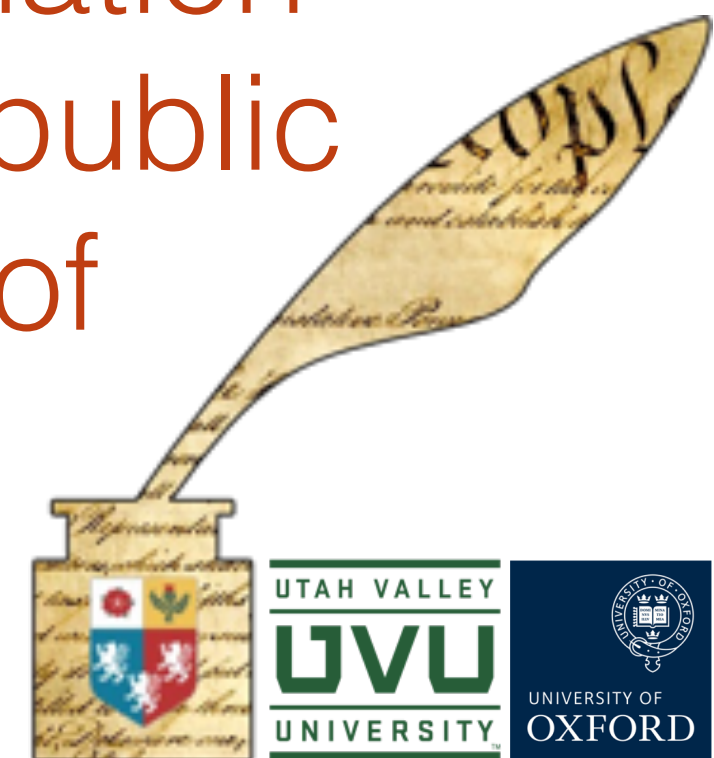
What happened to the Fourteenth Amendment

- Barron v. Baltimore 1833 (Bill of Rights only Apply to the States)
- Slaughter House Cases 1873
- Majority held that the Police Powers of the States were not restricted by the Fourteenth Amendment — it only protected Federal Privileges and Immunities.
 - “We think this distinction and its explicit recognition in this amendment of great weight in this argument, because the next paragraph of this same section, which is the one mainly relied on by the plaintiffs in error, speaks only of privileges and immunities of citizens of the United States, and does not speak of those of citizens of the several States. The argument, however, in favor of the plaintiffs rests wholly on the assumption that the citizenship is the same, and the privileges and immunities guaranteed by the clause are the same.”
 - “The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of habeas corpus, are rights of the citizen guaranteed by the Federal Constitution.”
 - “Was it the purpose of the fourteenth amendment, by the simple declaration that no State should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned, from the States to the Federal government? And where it is declared that Congress Shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States? All this and more must follow if the proposition of the plaintiffs in error be sound....”
 - It is so clearly a provision for that race and that emergency, that a strong case would be necessary for its application to any other.
- Do also read the Justice Stephen J. Field Dissent — who thought the majority had gutted the Fourteenth Amendment.



What happened to the Fourteenth Amendment?

- 1875 Civil Rights 'Enforcement' Act would have banned segregation.
- 1883 'Civil Rights Cases' held that the Fourteenth Amendment did not give Congress the power to restrict discrimination by private businesses.
- 1965 The Supreme Court held that Congress could use the **commerce clause** to regulate private businesses.
- which brings us to the Civil Rights Acts of 1957 (gathering information and protected Federal Elections), 1964 (voting, discrimination in public accommodations, equality in employment) and 1968 (Indian Bill of Rights, Open Housing Act, Housing Rights Act, Anti-Riot Act).





United States Thirteenth Amendment 1863-65

Secretary's Desk ⓘ



United States Fourteenth Amendment & The Civil Rights Act of 1866 *

Secretary's Desk ⓘ



United States Fifteenth Amendment

Secretary's Desk ⓘ



DEAR SIR: I have just read yours of the 19th, addressed to myself through the New York Tribune. If there be in it any statements, or assumptions of fact, which I may know to be erroneous, I do not now and here controvert them. If there be in it any inferences which I may believe to be falsely drawn, I do not now and here argue against them. If there be perceptible in it an impatient and dictatorial tone, I waive it in deference to an old friend whose heart I have always supposed to be right.

As to the policy I "seem to be pursuing," as you say, I have not meant to leave any one in doubt.

I would save the Union. I would save it the shortest way under the Constitution. The sooner the national authority can be restored the nearer the Union will be "the Union as it was." If there be those who would not save the Union unless they could at the same time save slavery, I do not agree with them. If there be those who would not save the Union unless they could at the same time destroy slavery, I do not agree with them. My paramount object in this struggle is to save the Union, and is not either to save or to destroy slavery. If I could save the Union without freeing any slave I would do it, and if I could save it by freeing all the slaves I would do it; and if I could save it by freeing some and leaving others alone, I would also do that. What I do about slavery and the colored race, I do because I believe it helps to save this Union; and what I forbear, I forbear because I do not believe it would help to save the Union. I shall do less whenever I shall believe what I am doing hurts the cause, and I shall do more whenever I shall believe doing more will help the cause. I shall try to correct errors when shown to be errors; and I shall adopt new views so fast as they shall appear to be true views.

I have here stated my purpose according to my view of official duty; and I intend no modification of my oft-expressed personal wish that all men every where could be free. Yours,

A. LINCOLN.

WASHINGTON.

THURSDAY MORNING, AUGUST 22, 1862.

RECEIVED, AUGUST 22, 1862.

A LETTER FROM THE PRESIDENT.

Executive Mansion,
Washington, August 22, 1862.

Mr. Simon Cameron,
Dear Sir: I have just read yours of the 19th, addressed to myself through the New York Tribune. It does not contain any statements of fact, which I may know to be erroneous, and I do not now and here controvert them. If there be in it any inferences which I may believe to be falsely drawn, I do not now and here argue against them. If there be perceptible in it an impatient and dictatorial tone, I waive it in deference to an old friend whose heart I have always supposed to be right.

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Innovations of the Constitutional Convention

- Strong claim to being one of the first proofs that a system of government could be created through a process of negotiation.
- Avoided a binary choice between Federalism (as it had been understood) and a Single National Government.
- Entrenched the ideas of popular accountability and limited government against critics, even if many of those ideas are still being worked out.





He has waged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. This piratical warfare, the opprobrium of INFIDEL powers, is the warfare of the CHRISTIAN king of Great Britain. Determined to keep open a market where MEN should be bought and sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce. And that this assemblage of horrors might want no fact of distinguished die, he is now exciting those very people to rise in arms among us, and to purchase that liberty of which he has deprived them, by murdering the people for whom he also obtruded them: thus paying off former crimes committed against the LIBERTIES of one people, with crimes which he urges them to commit against the LIVES of another.



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Wherefore the poets say,
"It is right that Hellenes should rule over barbarians;"
as if they thought that the barbarian and the slave were by nature one.

Aristotle, *Politics* 1



[Private Law] is composed of three elements, and consists of precepts belonging to the natural law, to the law of nations, and to the civil law.

Justinian, *Institutes*, 1



The chief division in the rights of persons is this: men are all either free or slaves.

1. Freedom, from which men are said to be free, is the natural power of doing what we each please, unless prevented by force or by law.
2. Slavery is an institution of the law of nations, by which one man is made the property of another, contrary to natural right.

...



3. Slaves are denominated servi, because generals order their captives to be sold, and thus preserve them, and do not put them to death. Slaves are also called mancipia, because they are taken from the enemy by the strong hand.
4. Slaves either are born or become so. They are born so when their mother is a slave; they become so either by the law of nations, that is, by captivity, or by the civil law, as when a free person, above the age of twenty, suffers himself to be sold, that he may share the price given for him.
5. In the condition of slaves there is no distinction; but there are many distinctions among free persons; for they are either born free, or have been set free.



This institution took its rise from the law of nations; for by the law of nature all men were born free; and manumission was not heard of, as slavery was unknown. But when slavery came in by the law of nations, the boon of manumission followed. And whereas all were denominated by the one natural name of "men," the law of nations introduced a division into three kinds of men, namely, freemen, and in opposition to them, slaves; and thirdly, freedmen who had ceased to be slaves.

Justinian, *Institutes*, 1



Interlude: lawyers always lawyers

- Slaves may be manumitted by their masters at any time; even when the magistrate is only passing along, as when a praetor, or praeses, or proconsul is going to the baths, or the theater.
- The question hence arose, if a female slave with child is made free, but again becomes a slave before the child is born, whether the child is born free or a slave? Marcellus thinks it is born free, for it is sufficient for the unborn child, if the mother has been free, although only in the intermediate time; and this is true.

American Slavery as Exceptional



- 1769-> Granville Sharp and English campaigners against the slave trade.
- 1787 Society for Effecting the Abolition of the Slave Trade





- 1772: Mansfield's judgement in Somerset's Case
 - 'The state of slavery is of such a nature, that it is incapable of being introduced on any reasons, moral or political; but only positive law, which preserves its force long after the reasons, occasion, and time itself from whence it was created, is erased from memory: it's so odious, that nothing can be suffered to support it, but positive law. Whatever inconveniences, therefore, may follow from a decision, I cannot say this case is allowed or approved by the law of England; and therefore the black must be discharged.'
 - (as reported by Capel Lofft)



- 1788 William Pitt establishes a Parliamentary enquiry into the slave trade
- 1807 Britain abolishes the slave trade. America abolishes the slave trade from 1808.





'The matter left to the jury was whether it was necessary that the slaves were thrown into the sea, for they had no doubt that the case of slaves was the same as if horses had been thrown overboard.'

(Mansfield in the Zong case)



Enlightenment Philosophy



But in a monarchical government, where it is of the utmost importance that human nature should not be debased, or dispirited, there ought to be no slavery. In democracies, slavery is contrary to the spirit of the constitution; it only contributes to give a power and luxury to the citizens which they ought not to have.

Montesquieu, *The Spirit of the Laws* XV



These reasons of the civilians are all false. It is false that killing in war is lawful, unless in a case of absolute necessity: but when a man has made another his slave, he cannot be said to have been under a necessity of taking away his life, since he actually did not take it away. War gives no other right over prisoners than to disabate them from doing any further harm, by securing their persons. All nations concur in detesting the murdering of prisoners in cold blood.

Nor is it true, that a freeman can sell himself.

Montesquieu, *The Spirit of the Laws* XV



The lawfulness of putting a malefactor to death arises from this circumstance: the law by which he is punished was made for his security. A murderer, for instance, has enjoyed the benefit of the very law which condemns him; it has been a continual protection to him; he cannot, therefore, object to it. But it is not so with the slave. The law of slavery can never be beneficial to him; it is in all cases against him, without ever being for his advantage; and therefore this law is contrary to the fundamental principle of all societies.

If it be pretended that it has been beneficial to him, as his master has provided for his subsistence, slavery, at this rate, should be limited to those who are incapable of earning their livelihood. But who will take up with such slaves? As to infants, nature, who has supplied their mothers with milk, had provided for their sustenance; and the remainder of their childhood approaches so near the age in which they are most capable of being of service that he who supports them cannot be said to give them an equivalent which can entitle him to be their master.

Montesquieu, *The Spirit of the Laws* XV



- 1823 Anti-Slavery Society
- Abolition of slavery act 1833 (compensation paid to owners)



- Slavery abolished in France and French Colonies in 1794
- Napoleon attempts to restore it in 1802, causing the Haiti to declare independence .
 - (side-note, do encourage students to read the 1801 and 1805 Constitutions for Haiti).
- France abolishes slavery in 1848.
- Jefferson illegally kept slaves in France between 1784 and 1789.



Abolishing Slavery in the New United States

- Pennsylvania - “An Act for the Gradual Abolition of Slavery” 1780
 - No further admission of slaves into the state.
 - Anyone a slave before 1780 was still a slave for life (freed by an act in 1847)
 - All children born in Pennsylvania were free (but were indentured servants until 28).
 - A register of slaves to be maintained annually (to prevent fraud).
 - Explicit exemption to allow members of Congress to bring their slaves into the state.



Abolishing Slavery in the New United States

- Massachusetts
 - “All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.” (1780 Declaration of Rights)
 - Brom and Bett v. Ashley (1781) a jury agreed that this language had ended slavery in the state.
 - [1835 a mob attacks William Garrison in Boston]
 - Commonwealth v. Aves (1836) any slave brought into the state was free.



Abolishing Slavery in the New United States

- New York
 - 1781 - any slaves who had fought for 3 years with the Revolution were freed.
 - 1799 - Act for the Gradual Abolition of Slavery.
 - Any child born after 4th July 1799 would be free, but indentured as a servant until 28 or 25.
 - 1817 - All slaves born before 1799 would also be free in 1827.
 - 1821 State Constitution set a separate property qualification for free Black Men. Equal voting rights not obtained until 1870.



Abolishing Slavery in the New United States

- New Jersey
 - Importation of slaves banned in 1788, but at the same time free blacks prohibited from settling in the State.
 - 1804 - any slaves born after the act were free, but again required to serve as indentured labour until 25 or 21.
 - Free people of colour were disenfranchised in 1807, and not given the vote again until 1875.
 - 1846 - remaining slaves in the state were freed, but made indentured servants for life.



Abolishing Slavery in the New United States

- Rhode Island
 - 1774 prohibition on importation of slaves
 - 1784 gradual emancipation. Children of slaves born after this date indentured until 21 or 18.
 - 1843 constitution finally outlawed slavery.



Nicholas Guyatt's review of my *No Property in Man* [*NYR*, June 6] charges that the book isn't really a work of history at all but, at bottom, a political polemic disguised as history, an act of projection aimed at Bernie Sanders and Guyatt's own "younger generation of scholars."

I can only conjecture why Guyatt, a former student in my Princeton graduate seminar, felt compelled to defame my professional integrity. On the level of historical scholarship,

I can only conjecture why Guyatt, a former student in my Princeton graduate seminar, felt compelled to defame my professional integrity. On the level of historical scholarship, Guyatt's constant distortion of the book's evidence and contentions betrays a peculiar confusion in which historical dogma and its imperatives prevail over facts and reason.

At every turn, Guyatt either garbles or corrupts my arguments. According to him, the book makes a "case for an

State Plan.^[24] For this reason, James Madison is sometimes called the Father of the Constitution.^[24] Presented by Virginia governor Edmund Randolph on May 29, 1787, the Virginia Plan proposed a very powerful bicameral legislature.^[24] Both houses of the legislature would be determined proportionately.^[24] The lower house would be elected by the people, and the upper house would be elected by the lower house.^[24] The executive would exist solely to ensure that the will of the legislature was carried out and would therefore be selected by the legislature.^[24] The Virginia Plan also created a judiciary, and gave both the executive and some of the judiciary the power to veto, subject to override.

New Jersey Plan [edit]

Main article: *New Jersey Plan*

After the Virginia Plan was introduced, New Jersey delegate William Paterson asked for an adjournment to contemplate the Plan.^[24] Under the *Articles of Confederation*, each state had equal representation in Congress, exercising one vote each.^[24] The Virginia Plan threatened to limit the smaller states' power by making both houses of the legislature proportionate to population. On June 14 and 15, 1787, a small-state caucus met to create a response to the Virginia Plan. The result was the New Jersey Plan, otherwise known as the Small State Plan.^[24]

Paterson's New Jersey Plan was ultimately a rebuttal to the Virginia Plan, and was much closer to the initial call for the Convention: drafting amendments to the *Articles of Confederation* to fix the problems in it.^[24] Under the New Jersey Plan, the existing Continental Congress would remain, but it would be granted new powers, such as the power to levy taxes and force their collection.^[24] An executive branch was created, to be elected by Congress (the plan allowed for a multi-person executive).^[24] The executives would serve a single term and were subject to recall on the request of state governors.^[24] The plan also created a judiciary that would serve for life, to be appointed by the executives.^[24] Lastly, any laws set by Congress would take precedence over state laws.^[24] When Paterson reported the plan to the Convention on June 15, 1787, it was ultimately rejected, but it gave the smaller states a rallying point for their interests.^[24]

Hamilton's plan [edit]

Unimpressed with the New Jersey Plan and the Virginia Plan, Alexander Hamilton proposed his own plan. It also was known as the British Plan, because of its resemblance to the British system of strong centralized government.^[24] In his plan, Hamilton advocated virtually doing away with state sovereignty and consolidating the states into a single nation.^[24] The plan featured a bicameral legislature, the lower house elected by the people every three years. The upper house would be elected by electors chosen by the people and would serve for life.^[24] The plan also gave the Governor, an executive elected by electors for a life-term of service, an absolute veto over bills.^[24] State governors would be appointed by the national legislature,^[24] and the national legislature had veto power over any state legislation.^[24]

Hamilton presented his plan to the Convention on June 18, 1787.^[24] The plan was perceived as a well-thought-out plan, but it was not considered, because it resembled the British system too closely.^[24] It also contemplated the loss of most state authority, which the states were unwilling to allow.

Pinckney's plan [edit]

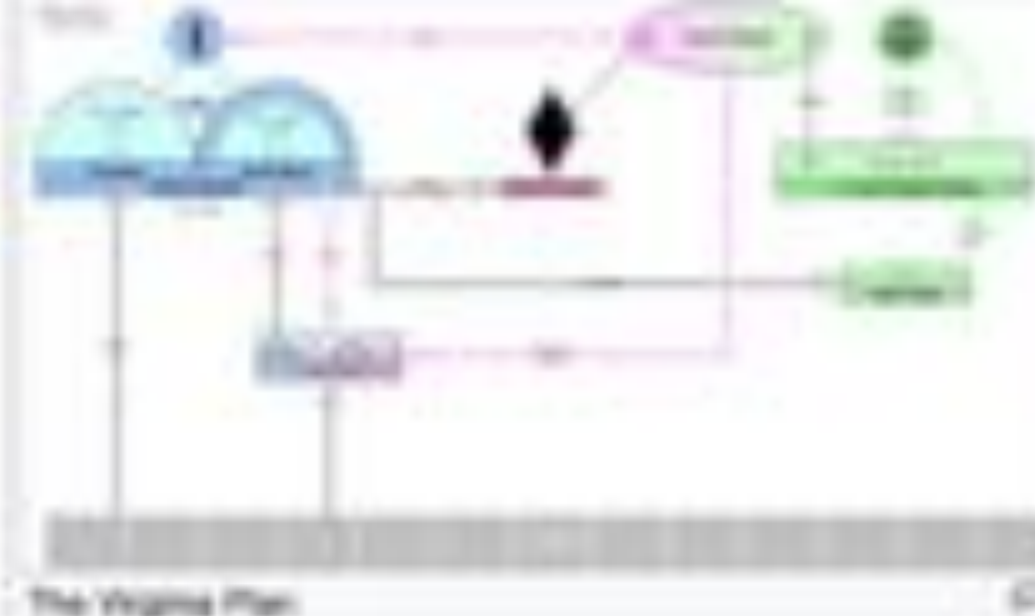
Immediately after Randolph finished laying out the Virginia Plan, Charles Pinckney of South Carolina presented his own plan to the Convention. As Pinckney did not write it down, the only evidence of the plan are Madison's notes,^[24] so the details are somewhat vague. It was a confederation, or treaty, among the thirteen states. There was to be a bicameral legislature made up of a Senate and a House of Delegates. The House would have one member for every one thousand inhabitants. The House would elect Senators who would serve by rotation for four years and represent one of four regions. Congress would meet in a joint session to elect a President, and would also appoint members of the cabinet. Congress, in joint session, would serve as the court of appeal of last resort in disputes between states. Pinckney did also provide for a supreme Federal Judicial Court. The Pinckney plan was not debated, but it may have been referred to by the *Committee of Detail*.^[24]

Connecticut Compromise [edit]

Main article: *Connecticut Compromise*

The *Connecticut Compromise*, forged by Roger Sherman from Connecticut, was proposed on June 11.^[24] In a sense it blended the Virginia (large-state) and New Jersey (small-state) proposals. Ultimately, however, its main contribution was in determining the apportionment of the Senate, and thus retaining a federal character in the constitution. Sherman sided with the two-house national legislature of the Virginia Plan, but proposed "That the proportion of suffrage in the 1st. branch [house] should be according to the respective numbers of free inhabitants; and that in the second branch or Senate, each State should have one vote and no more."^[24] This plan failed at first, but on July 23 the question was finally settled.^[24]

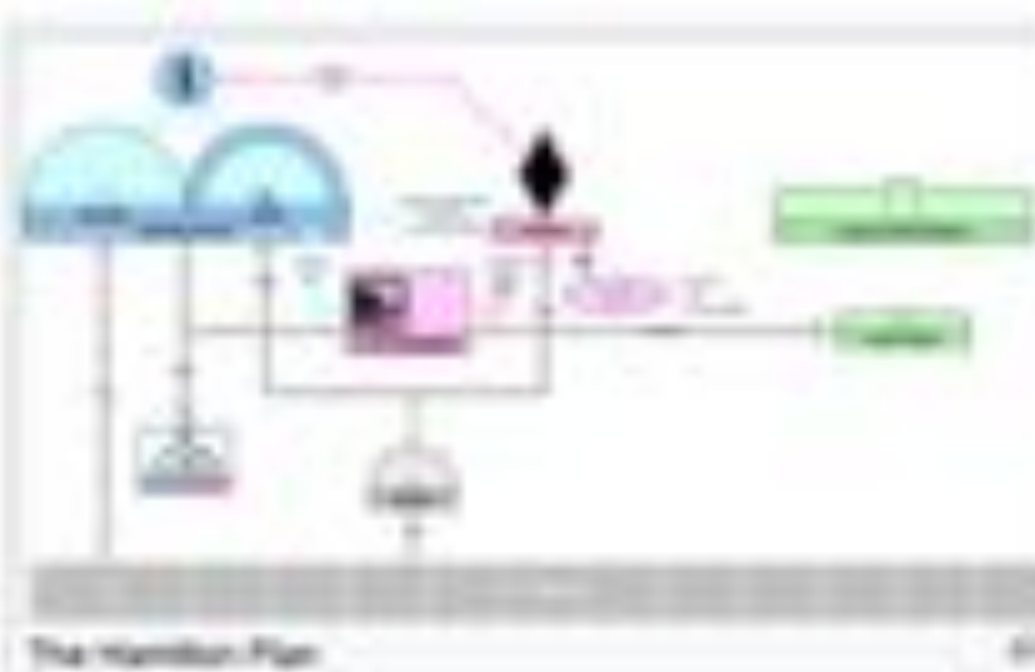
What was ultimately included in the constitution was a modified form of this plan. In the Grand Committee, Benjamin Franklin successfully proposed the requirement that revenue bills originate in the house. But the final July 18 vote on the compromise still left the Senate looking like the Confederation Congress. In the preceding weeks of debate, Madison, King, and Gouverneur Morris each vigorously opposed the compromise for this reason.^[24] Then on July 23, just before most of the convention's work was referred to the *Committee of Detail*, Morris and King moved that state



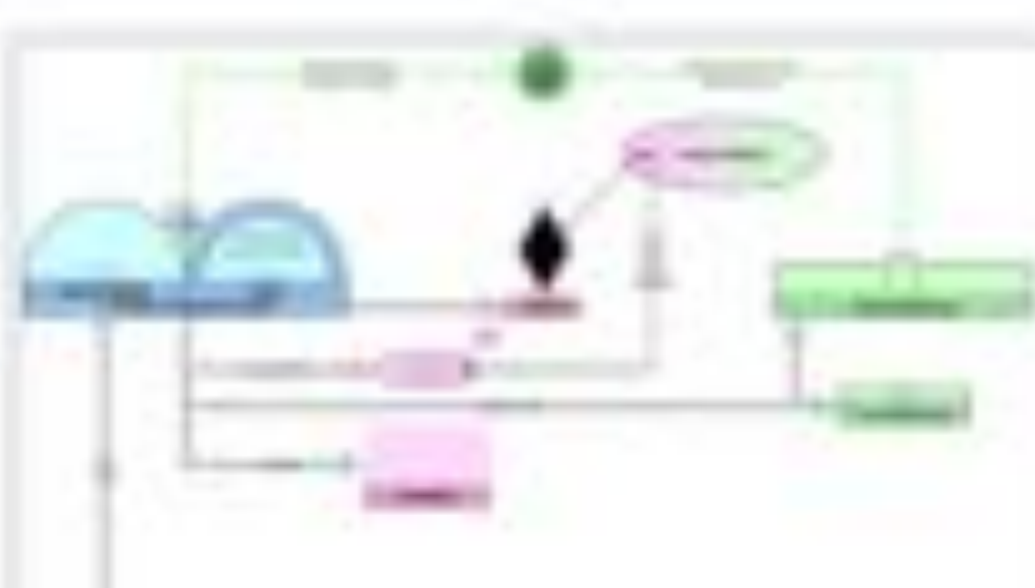
The Virginia Plan



The New Jersey Plan



The Hamilton Plan



Opinion

The Electoral College Was Not a Pro-Slavery Ploy

There is a lot wrong with how we choose the president. But the framers did not put it into the Constitution to protect the South.

By Sean Wilentz

Mr. Wilentz is the author, most recently, of "No Property in Man: Slavery and Antislavery at the Nation's Founding."

April 4, 2019



Opinion

Actually, the Electoral College Was a Pro-Slavery Ploy

That fact alone doesn't mean it ought to be scrapped. But we should be clear about its disreputable origins.

By Akhil Reed Amar

Mr. Amar is a professor at Yale Law School.

April 6, 2019



The Proslavery Origins of the Electoral College

Cardozo Law Review, Vol. 23, 2002

13 Pages • Posted: 13 Aug 2009

Paul Finkelman

Gratz College; Albany Law School - Government Law Center

Date Written: 2002

Abstract

In this article, Professor Finkelman reflects on the origins of the Electoral College in light of the results of the 2000 election. In 2000, although George W. Bush lost the popular vote, he was still able to capture the presidency due to his majority in the Electoral College. Professor Finkelman dispels the two most common myths about the creation of the Electoral College: (1) that it was meant to protect the smaller states and (2) that the Founders mistrusted the general public. In fact, Professor Finkelman holds that the Electoral College is directly related to the 3/5 compromise and is an antiquated relic of slavery that is in need of reevaluation.

Keywords: Electoral College, George W. Bush



A Curious Formality

JOURNAL

Tuesday June 5 1787.

When any great Business is in Agitation that requires much Debate, or a Bill for a publick Tax is to be committed, the House doth use to Resolve into a *Grand Committee*

If the *Committee* cannot perfect the Business at that Sitting, they

as other *Committee* is to be made the House, and 'd, *That the Committee another Time on*

metimes falls out, received a full *De-* *mittee*, and it is Resolved in the

House, the *Speaker* is again call'd to the *Chair* for that purpose.

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Resolved that this House will to-morrow again itself into a Committee of the whole House to consider of the

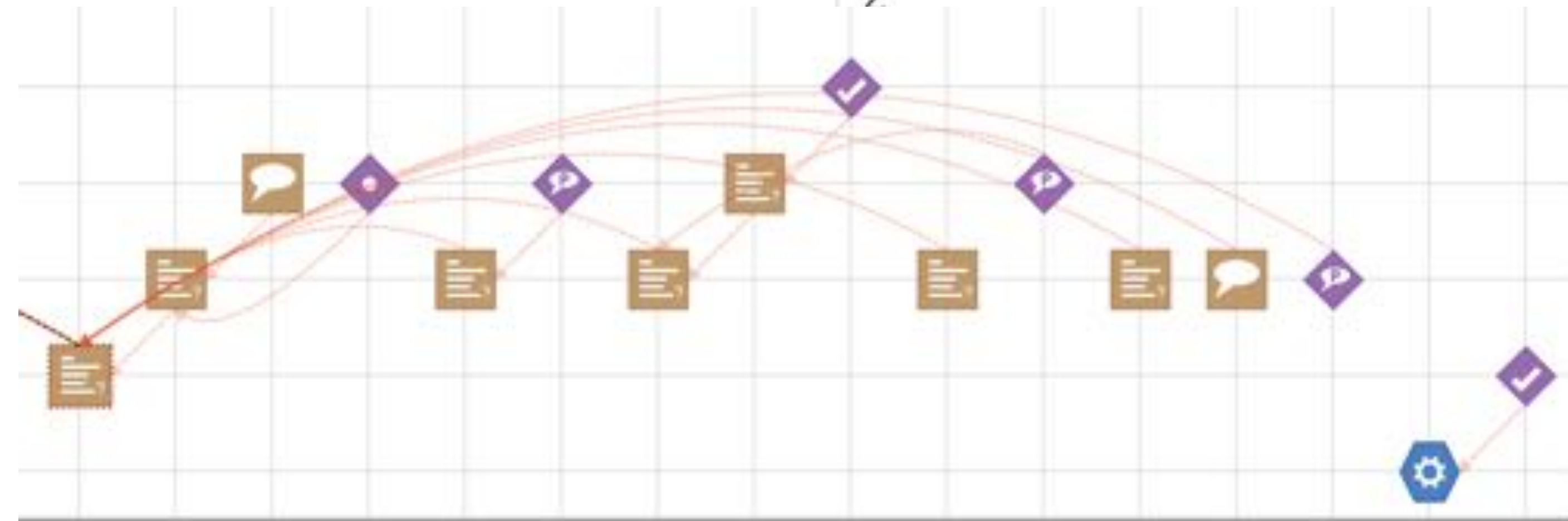
Slavery? Part 1 - 30 May 1787

The following resolution was then moved by Mr Randolph,

Resolved that the rights of suffrage in the national legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.

1. Resolved that the articles of Confederation ought to be so corrected & enlarged as to accomplish the objects proposed by their institution; namely. "common defence, security of liberty and general welfare."
2. Resd. therefore that the rights of suffrage in the National Legislature be proportioned to the Quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.
3. Resd. that the National Legislature ought to consist of two branches.
4. Resd. that the members of the first branch of the National Legislature be chosen by the people of the States.

Agreed text	Intermediate text	Proposed text	Highlight changes
[Randolph's Resolutions]			
1.			
2.			



consisting of a supreme



Slavery? Part 1 - 30 May 1787

The following resolution was moved by Mr. Morris.

Resolved that the equal confederation ought not to be on an equitable ratio of representation.

Randolph's Second Resolution proposal

The following resolution was moved by Mr. Madison

Resolved that the rights of suffrage

It was moved and seconded to add the words "to the present system".

Randolph's Second Resolution (Virginia)

It was then moved and seconded

Resolved that the rights of suffrage be according to the present system.

Mr. Reade

Representative of Delaware

Mr. Gordon

Mr. Madison



...ties from any change on, it might

...members of discord in regret; that national

...or the sovereign the place.

...ostpone the consideration of the last resolution — And, on the question to postpone, it passed in the affirmative.

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It was moved by Mr Wilson seconded by Mr C. Pinckney to postpone the

Mr. Dickinson moved as an amendment, to add the words, "according to the taxes and contributions of each state actually collected and paid into the national treasury."

2. Resolved that the right of suffrage in the first branch of the national

Legislature ought not to be according to the rule established in the articles of confederation; but according to some equitable ratio of

representation, representation, in proportion to the whole number of white and other free Citizens and inhabitants of every age, sex and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, except Indians, not paying taxes in each State.

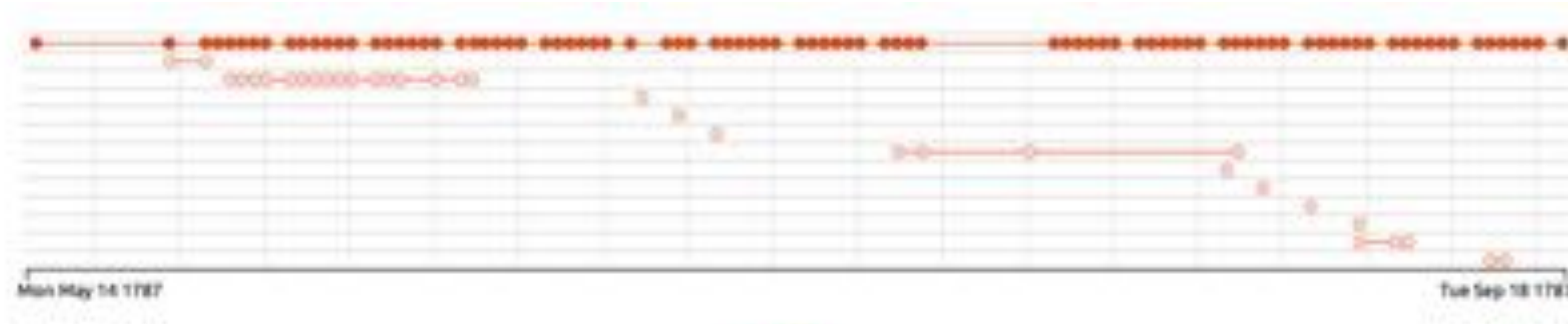
Debating the New Jersey Plan

4. Will it secure the internal tranquillity of the States themselves? The insurrections in Massts. admonished all the States of the danger to which they were exposed. Yet the plan of Mr. P. contained no provisions for supplying the defect of the Confederation on this point. According to the Republican theory indeed, Right & power being both vested in the majority, are held to be synonymous. According to fact & experience, a minority may in an appeal to force be an overmatch for the majority. 1. If the minority happen to include all such as possess the skill & habits of military life, with such as possess the great pecuniary resources, one third may conquer the remaining two thirds. 2. one third of those who participate in the choice of rulers may be rendered a majority by the accession of those whose poverty disqualifies them from a suffrage, & who for obvious reasons may be more ready to join the standard of sedition than that of the established Government. 3. Where slavery exists, the Republican Theory becomes still more fallacious.

(Madison)



Slavery and the Convention



The Convention

1787-05-14 10:00:00

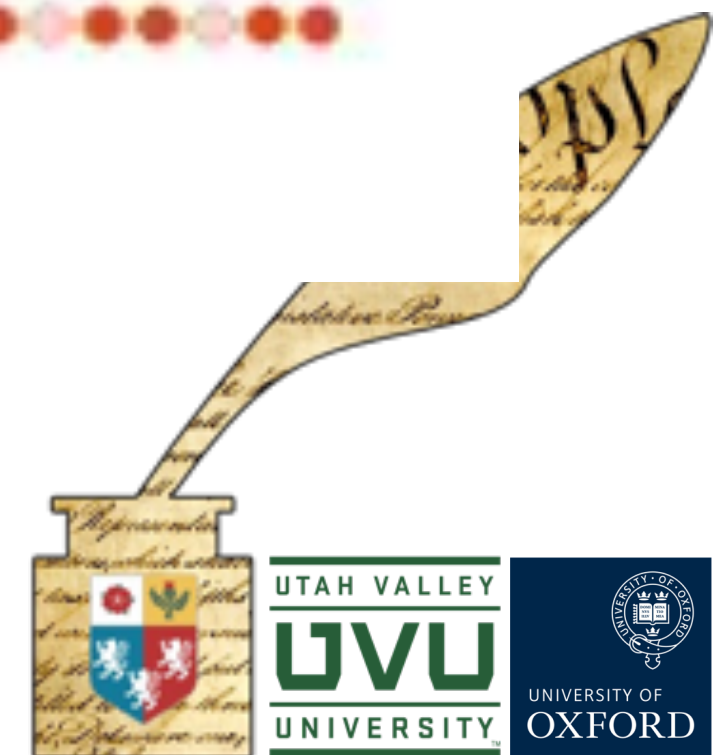
To view a session, click on the corresponding session below.



Search:

slave|

Search



Slavery and the Convention

8th August

Sect. 4. As the prop
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Mr. King wished to know what influence the vote just passed was meant have on the succeeding part of the Report, concerning the admission of slaves into the rule of Representation. He could not reconcile his mind to the article if it was to prevent objections to the latter part. The admission of slaves was a most grating circumstance to his mind, & he believed would be so to a great part of the people of America. He had not made a strenuous opposition to it heretofore because he had hoped that this concession would have produced a readiness which had not been manifested, to strengthen the Genl. Govt. and to mark a full confidence in it. The Report under consideration had by the tenor of it, put an end to all these hopes. In two great points the hands of the Legislature were absolutely tied. The importation of slaves could not be prohibited — exports could not be taxed. Is this reasonable? What are the great objects of the Genl. System? 1. defence agst. foreign invasion. 2. agst. internal sedition. Shall all the



Slavery and the Convention

21st August

Sect. 3. The proportions of direct taxation shall be apportioned to the whole number of free citizens and inhabitants, of every age, sex and condition, including those bound to servitude for the term of years, (except Indians not paying taxes) who, within three years after the first meeting of the Legislature, shall direct.

Sect. 4. No tax or duty shall be laid by the Legislature on the migration or free persons as the several States shall think proper.

Mr L— Martin, proposed to vary the sect: 4. art VII so as to allow a prohibition or tax on the importation of slaves. 1. As five slaves are to be counted as 3 free men in the apportionment of Representatives; such a clause wd. leave an encouragement to this traffic. 2 slaves weakened one part of the Union which the other parts were bound to protect: the privilege of importing them was therefore unreasonable — 3. it was inconsistent with the principles of the revolution and dishonorable to the American character to have such a feature in the Constitution.

Mr Rutledge did not see how the importation of slaves could be encouraged by this section. He was not apprehensive of insurrections and would readily exempt the other States from the obligation to protect the Southern against them. — Religion & humanity had nothing to do with this question — Interest alone is the governing principle with Nations — The true question at present is whether the Southern States shall or shall not be parties to the Union. If the Northern States consult their interest, they will not oppose the increase of Slaves which will increase the commodities of which they will become the carriers.

Mr. Elsworth was for leaving the clause as it stands. let every State import what it pleases. The morality or wisdom of slavery are considerations belonging to the States themselves — What enriches a part enriches the whole, and the States are the best judges of their particular interest. The old confederation had not meddled with this point, and he did not see any greater necessity for bringing it within the policy of the new one:



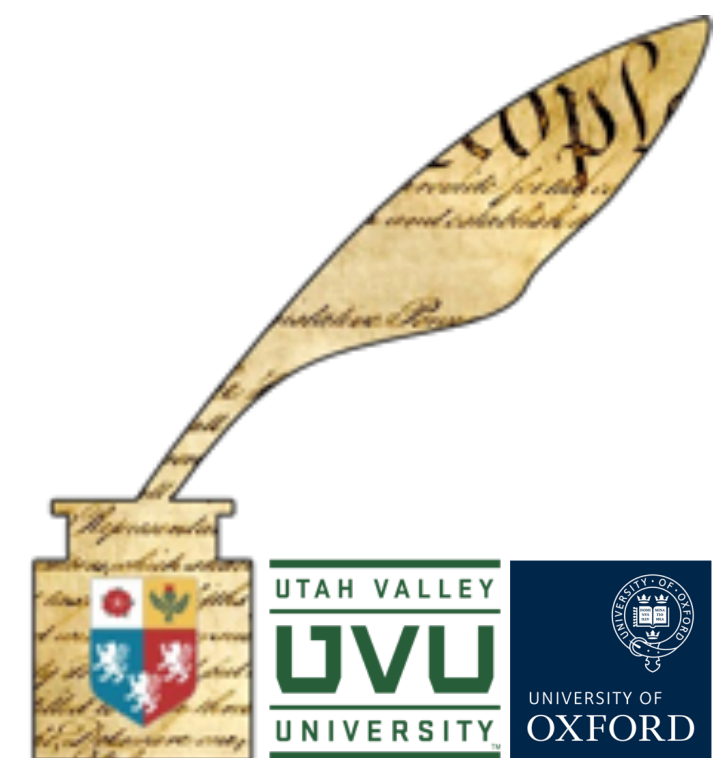
Slavery and the Convention

22nd August

Section 4. resumed. Mr. Sherman was for leaving the clause as it stands. He disapproved of the slave trade: yet as the States were now possessed of the right to import slaves, as the public good did not require it to be taken from them, & as it was expedient to have as few objections as possible to the proposed scheme of Government, he thought it best to leave the matter as we find it. He observed that the abolition of slavery seemed to be going on in the U. S. & that the good sense of the several States would probably by degrees compleat it. He urged on the Convention the necessity of despatching its business.

Col. Mason. This infernal trafic originated in the avarice of British Merchants. The British Govt. constantly checked the attempts of Virginia to put a stop to it. The present question concerns not the importing States alone but the whole Union. The evil of having slaves was experienced during the late war. Had slaves been treated as they might have been by the Enemy, they would have proved dangerous instruments in their hands. But their folly dealt by the slaves, as it did by the Tories. He mentioned the dangerous insurrections of the slaves in Greece and Sicily; and the instructions given by Cromwell to the Commissioners sent to Virginia, to arm the servants & slaves, in case other means of obtaining its submission should fail. Maryland & Virginia he said had already prohibited the importation of slaves expressly. N. Carolina had done the same in substance. All this would be in vain if S. Carolina & Georgia be at liberty to import. The Western people are already

are on articles
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er to admit.



Slavery and the Convention

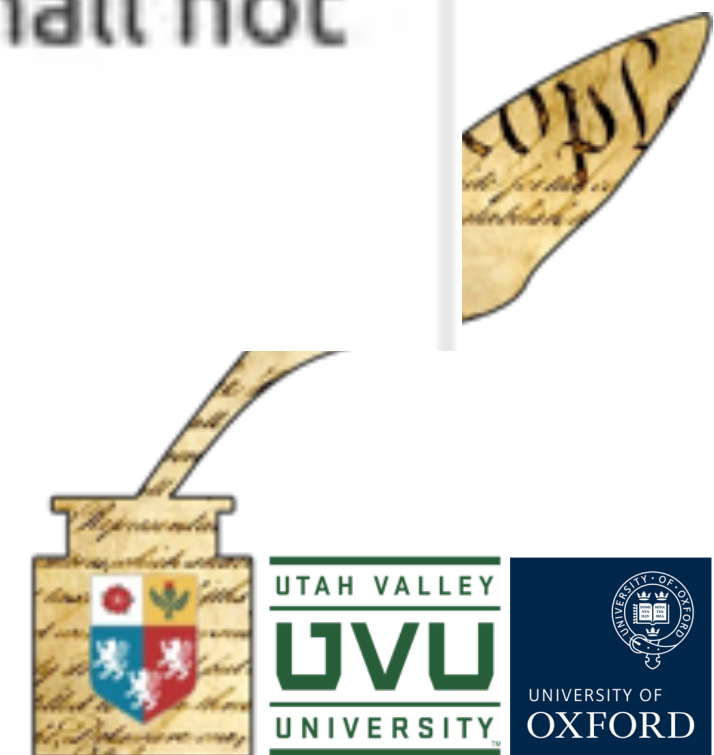
25th August

Clauses for the Grand Committee on Taxation

Sect. 4. [No tax or duty shall be laid by the Legislature on articles exported from any State;] the migration or importation of such persons as the several States now existing shall think proper to admit, shall not be prohibited by the Legislature prior to the year 1800 — but a Tax or Duty may be imposed on such migration or importation at a rate not exceeding the average of the Duties laid on Imports.

Col: Mason was not against using the term “slaves” but agst naming N— C— S— C. & Georgia, lest it should give offence to the people of those States.

Mr. Govr. Morris \ exported from any State;] the ~~migration or importation of such persons~~
as the several States now existing shall think proper to admit,
importation of slaves into N. Carolina, S— Carolina & Georgia shall not
be prohibited by the Legislature prior to the year 1808.



Slavery and the Convention

28th August

Any person charged with treason, felony, or other crime in any State, who shall flee from justice, and any fugitive slave or servant, who shall be found in any other State, shall, on demand of the Executive Power of the State from which he fled, be delivered up, to the Executive Power of the State having jurisdiction

Mr. Wilson. This would oblige the Executive of the State to do it, at the public expence.

Mr Sherman saw no more propriety in the public seizing and surrendering a slave or servant, than a horse.



Near final change

15 Sept 1787



A person charged in any
shall flee from justice, and
of the executive author
up, to be removed to th

No person **legally** held to service or labour in one **state**, **state** under the
laws thereof, escaping into another, shall in consequence of regulations
subsisting therein be discharged from such service or labor, but shall be
delivered up on claim of the party to whom such service or labour may
be due.

Art. IV. sect 2. parag: 3. the term “legally” was struck out, and
“under the laws thereof” inserted after the word “State,” in
compliance with the wish of some who thought the term legal
equivocal, and favoring the idea that slavery was legal in a moral
view—



The Creation of the Electoral College

A collection highlighting important moments in the debate over how a President should be chosen for the United States.

Cite as: N. P. Cole, Grace Mallon and Kat Howarth, *The Creation of the Electoral College*, Quill Project at Pembroke College (Oxford, accessed 2019)

List of conventions with comments

To see where the comments are in the convention, click on the corresponding convention below.



Locations of comments in the convention

To see highlight the related comments to the session in the convention, click on the corresponding coloured circle below.



Opinion

The Electoral College Was Not a Pro-Slavery Ploy

There is a lot wrong with how we choose the president. But the framers did not put it into the Constitution to protect the South.

By Sean Wilentz

Mr. Wilentz is the author, most recently, of "No Property in Man: Slavery and Antislavery at the Nation's Founding."

April 4, 2019



Opinion

Actually, the Electoral College Was a Pro-Slavery Ploy

That fact alone doesn't mean it ought to be scrapped. But we should be clear about its disreputable origins.

By Akhil Reed Amar

Mr. Amar is a professor at Yale Law School.

April 6, 2019



The Proslavery Origins of the Electoral College

Cardozo Law Review, Vol. 23, 2002

13 Pages • Posted: 13 Aug 2009

Paul Finkelman

Gratz College; Albany Law School - Government Law Center

Date Written: 2002

Abstract

In this article, Professor Finkelman reflects on the origins of the Electoral College in light of the results of the 2000 election. In 2000, although George W. Bush lost the popular vote, he was still able to capture the presidency due to his majority in the Electoral College. Professor Finkelman dispels the two most common myths about the creation of the Electoral College: (1) that it was meant to protect the smaller states and (2) that the Founders mistrusted the general public. In fact, Professor Finkelman holds that the Electoral College is directly related to the 3/5 compromise and is an antiquated relic of slavery that is in need of reevaluation.

Keywords: Electoral College, George W. Bush



“We subscribe to the doctrine,” might one of our Southern brethren observe, “that representation relates more immediately to persons, and taxation more immediately to property, and we join in the application of this distinction to the case of our slaves. But we must deny the fact, that slaves are considered merely as property, and in no respect whatever as persons. The true state of the case is, that they partake of both these qualities: being considered by our laws, in some respects, as persons, and in other respects as property. In being compelled to labor, not for himself, but for a master; in being vendible by one master to another master; and in being subject at all times to be restrained in his liberty and chastised in his body, by the capricious will of another, the slave may appear to be degraded from the human rank, and classed with those irrational animals which fall under the legal denomination of property.

Federalist 54



In being protected, on the other hand, in his life and in his limbs, against the violence of all others, even the master of his labor and his liberty; and in being punishable himself for all violence committed against others, the slave is no less evidently regarded by the law as a member of the society, not as a part of the irrational creation; as a moral person, not as a mere article of property. The federal Constitution, therefore, decides with great propriety on the case of our slaves, when it views them in the mixed character of persons and of property. This is in fact their true character.

...

Let the case of the slaves be considered, as it is in truth, a peculiar one. Let the compromising expedient of the Constitution be mutually adopted, which regards them as inhabitants, but as debased by servitude below the equal level of free inhabitants, which regards the SLAVE as divested of two fifths of the MAN.



“After all, may not another ground be taken on which this article of the Constitution will admit of a still more ready defense? We have hitherto proceeded on the idea that representation related to persons only, and not at all to property. But is it a just idea? Government is instituted no less for protection of the property, than of the persons, of individuals. The one as well as the other, therefore, may be considered as represented by those who are charged with the government. Upon this principle it is, that in several of the States, and particularly in the State of New York, one branch of the government is intended more especially to be the guardian of property, and is accordingly elected by that part of the society which is most interested in this object of government. In the federal Constitution, this policy does not prevail. The rights of property are committed into the same hands with the personal rights. Some attention ought, therefore, to be paid to property in the choice of those hands.



Such is the reasoning which an advocate for the Southern interests might employ on this subject; and although it may appear to be a little strained in some points, yet, on the whole, I must confess that it fully reconciles me to the scale of representation which the convention have established.



Slavery in the American Imagination



Were it not that I am principled agt. selling negros, as you would do cattle in a market, I would not, in twelve months from this date, be possessed of one, as a slave. I would be happily mistaken, if they are not to be found a very troublesome species of property 'ere many years pass over our heads; (but this is by the by)

George Washington to Alexander Sportswood
November 23, 1794



We have never entertained a doubt that the condition of the Southern slaves is the best and most desirable for the negroes, as a class, that they have ever been found in or are capable of. There is abundant evidence to prove that the black man's lot as a slave, is vastly preferable to that of his free brethren at the North. A Boston paper of recent date tells of a likely negro man, twenty-eight years old, who purchased his freedom in Virginia and removed to Boston.--He is sober, industrious and willing to work, but instead of meeting with sympathy from the Abolitionists, he had been deceived, cheated and driven from their presence. The writer describes him as bemoaning his hard lot, weeping like a child, lamenting that he had ever left his former master, and declaring that if he had the means he would gladly return to the old Virginia plantation. And this, we have reason to believe, is not an isolated case, but the experience of a large majority of emancipated slaves and runaway negroes in the Northern States.

Va. - The Spectator, December 6, 1859,
p. 2, c. 1



The intelligent, christian slave-holder at the South is the best friend of the negro. He does not regard his bonds-men as mere chattel property, but as human beings to whom he owes duties. While the Northern Pharisee will not permit a negro to ride on the city railroads, Southern gentlemen and ladies are seen every day, side by side, in cars and coaches, with their faithful servants. Here the honest black man is not only protected by the laws and public sentiment, but he is respected by the community as truly as if his skin were white. Here there are ties of genuine friendship and affection between whites and blacks, leading to an interchange of all the comities of life. The slave nurses his master in sickness, and sheds tears of genuine sorrow at his grave. When sick himself, or overtaken by the infirmity of age, he is kindly cared for, and when he dies the whites grieve, not for the loss of so much property, but for the death of a member of the family.--This is the relation which slaves generally, and domestic servants universally, sustain to their white masters.

Va. - The Spectator, December 6, 1859,
p. 2, c. 1



There is a vast deal of foolish talk about the delights of freedom and the hardships of slavery. In one sense no one, white or black, is free in this world. The master orders his slave to work in a certain field, when he perhaps would prefer to go elsewhere--this is slavery. But is the master free to do as he pleases! Not so.--He is driven by as stern a necessity to labor with his hands or confine himself to business, as the slave ever feels. We are all therefore slaves.--But when the man, whatever his complexion, recognizes the fact that his lot is ordained of God, and cheerfully acquiesces, he becomes a free man in the only true sense. He then chooses to do and to bear what otherwise might be irksome and intolerable.

Va. - The Spectator, December 6, 1859,
p. 2, c. 1



The New York Herald publishes the speech of one of the "clerical agents," relative to the runaway slaves in Canada, together with an account of the unfortunate fugitives in Nova Scotia. The condition of both, says the Herald, is miserable and degraded in the extreme. . . . The wretched lot to which these poor fugitives are abandoned by the abolitionists, after they are stolen away from their comfort and the protection of their Southern homes, is the most pitiable to which their race is condemned, outside of the original savage state from which they have been rescued.

The Spectator, January 17, 1860, p. 2, c. 2



On the other hand, in regard to the treatment of Virginia slaves, the Norfolk Herald mentions a fact or two. It states that a gentleman of Norfolk county, whose name is given, lately paid to his servants \$550, for corn raised by them for their own benefit on his land. Another gentleman paid to his servants \$600, earned in the same way; and another paid \$300. Such treatment of slaves is not peculiar to Norfolk county, but is practiced more or less all over the State. We know it is not uncommon in this region.

The negroes alluded to, says the [Norfolk] Herald, like millions in the Southern States, are not only plentifully provided for in every way, but they are saving money to use as they may find best in coming years--and withal they seem as happy as lords. They work well and cheerfully in the day, and at night, during the holidays they sing, dance and smoke, eat sweet potatoes, drink hard cider, sit around big kitchen fires, "laugh and grow fat," regardless of all the "tomfoolery" and nonsense about the "poor oppressed slaves."

The Spectator, January 17, 1860, p. 2, c. 2



While the crazy fanatics of the North imagine that the poor negro, smarting under a galling sense of his degradation, and inspired by a noble impulse of resistance to tyranny, is ready at a moment's warning to grasp the murderous pike and fight for his freedom, the people of the South feel the most perfect security in the full assurance that they possess not only the willing obedience but the strong attachment of their slaves. It is a most egregious blunder to suppose that we who live in the enjoyment of all the benefits of the "peculiar institution," live also in constant dread of insurrection and rebellion, and go to our beds at night with the terrible apprehension that our throats may be cut before morning. Not a bit of it. We sleep as soundly and sweetly as though we were surrounded by an armed body guard of chosen defenders, in the confident belief that our ebony friends will not feel the slightest disposition to "rise" . . .

The Staunton Spectator, November 29, 1859, p. 2, c. 2



The state of public feeling at present establishes the fact that no apprehension of danger from servile insurrection is felt by the people of the South. The danger is apprehended outside of the State, from the insane crew who entertain such unfounded opinions in regard to the condition of the slaves, and their disposition to free themselves from bondage. In the prospect of further invasion of our State for the purpose of rescuing those who have already stained its soil with blood, we see the people of Virginia leaving their wives and children in the hands of their faithful domestics, and repairing to the borders of Virginia, far away from their homes, to repel the insolent foe. They leave their families behind without an apprehension of danger from those who are supposed at the North to be ready to massacre them at the first favorable opportunity. . . .

The Staunton Spectator, November 29, 1859, p. 2, c. 2



Unpicking the Compromise



“I believe this government cannot endure, permanently half slave and half free.

I do not expect the Union to be dissolved -- I do not expect the house to fall -- but I do expect it will cease to be divided.

It will become all one thing or all the other.”

Lincoln, Springfield, Illinois
June 16, 1858.



...it being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States...

Kansas-Nebraska Act (1854)



That the institution of slavery existed prior to the formation of the federal Constitution, and is recognized by its letter, and all efforts to impair its value or lessen its duration by Congress, or any of the free states, is a violation of the compact of Union and is destructive of the ends for which it was ordained, but in defiance of the principles of the Union thus established, the people of the Northern states have assumed a revolutionary position toward the Southern states;

The Mississippi Resolutions



And now the State of South Carolina having resumed her separate and equal place among nations, deems it due to herself, to the remaining United States of America, and to the nations of the world, that she should declare the immediate causes which have led to this act.

Declaration of the Immediate Causes...South Carolina



In the opinion of the Court the legislation and histories of the times, and the language used in the Declaration of Independence, show that neither the class of persons who had been imported as slaves nor their descendants, whether they had become free or not, were then acknowledged as a part of the people nor intended to be included in the general words used in that memorable instrument....

Roger Taney, The Dred Scott
Majority Decision 1857



He [Scott] is averred to have had a negro ancestry, but this does not show that he is not a citizen of Missouri, within the meaning of the act of Congress authorizing him to sue in the Circuit Court. It has never been held necessary, to constitute a citizen within the act, that he should have the qualifications of an elector. Females and minors may sue in the Federal courts, and so may any individual who has a permanent domicile in the State under whose laws his rights are protected, and to which he owes allegiance.

McLean, The Dred Scott
Dissenting Opinion, 1857



In the argument, it was said that a colored citizen would not be an agreeable member of society. This is more a matter of taste than of law. Several of the States have admitted persons of color to the right of suffrage, and in this view have recognised them as citizens; and this has been done in the slave as well as the free States. On the question of citizenship, it must be admitted that we have not been very fastidious. Under the late treaty with Mexico, we have made citizens of all grades, combinations, and colors. The same was done in the admission of Louisiana and Florida. No one ever doubted, and no court ever held, that the people of these Territories did not become citizens under the treaty. They have exercised all the rights of citizens, without being naturalized under the acts of Congress.

McLean, The Dred Scott
Dissenting Opinion, 1857



There is no nation in Europe which considers itself bound to return to his master a fugitive slave, under the civil law or the law of nations. On the contrary, the slave is held to be free where there is no treaty obligation, or compact in some other form, to return him to his master. The Roman law did now allow freedom to be sold. An ambassador or any other public functionary could not take a slave to France, Spain, or any other country of Europe, without emancipating him. A number of slaves escaped from a Florida plantation, and were received on board of ship by Admiral Cochrane; by the King's Bench, they were held to be free.

McLean, *The Dred Scott
Dissenting Opinion*, 1857



No case in England appears to have been more thoroughly examined than that of Somerset....

The weight of this decision is sought to be impaired, from the terms in which it was described by the exuberant imagination of Curran. The words of Lord Mansfield, in giving the opinion of the court, were such as were fit to be used by a great judge, in a most important case. It is a sufficient answer to all objections to that judgment, that it was pronounced before the Revolution, and that it was considered by this court as the highest authority. For near a century, the decision in Somerset's case has remained the law of England. The case of the slave Grace, decided by Lord Stowell in 1827, does not, as has been supposed, overrule the judgment of Lord Mansfield. Lord Stowell held that, during the residence of the slave in England, 'No dominion, authority, or coercion, can be exercised over him.' Under another head, I shall have occasion to examine the opinion in the case of Grace.

McLean, The Dred Scott
Dissenting Opinion, 1857



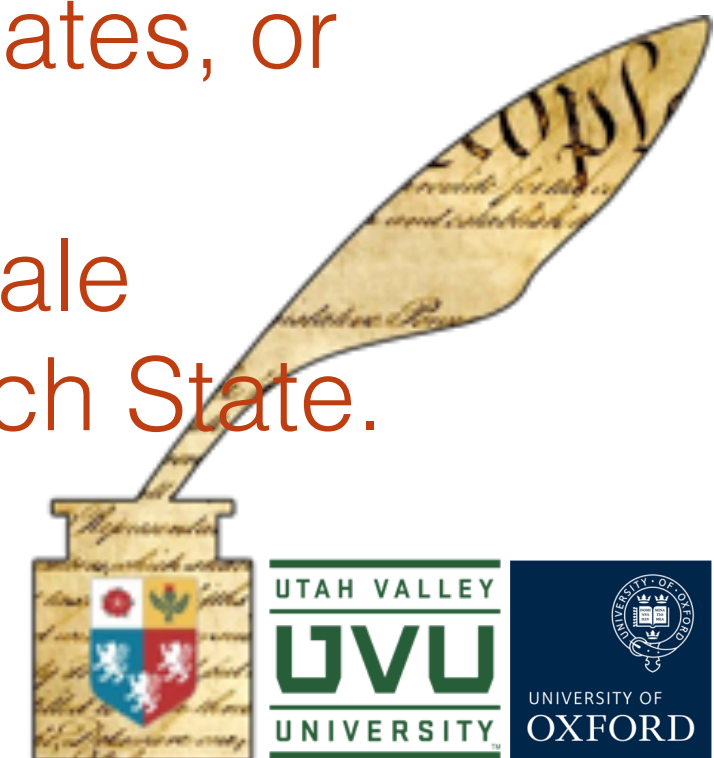
What happened to the Fourteenth Amendment?

- 1866 Civil Rights Act
 - It provides for the equality of citizens of the United States in the enjoyment of "civil rights and immunities." What do these terms mean? Do they mean that in all things civil, social, political, all citizens, without distinction of race or color, shall be equal? By no means can they be so construed. Do they mean that all citizens shall vote in the several States? No; for suffrage is a political right which has been left under the control of the several States, subject to the action of Congress only when it becomes necessary to enforce the guarantee of a republican form of government (protection against a monarchy). Nor do they mean that all citizens shall sit on the juries, or that their children shall attend the same schools. The definition given to the term "civil rights" in Bouvier's Law Dictionary is very concise, and is supported by the best authority. It is this: "Civil rights are those which have no relation to the establishment, support, or management of government."
 - But not everyone agreed in so narrow a definition.
 - Passed over the veto of the President.
 - The basis for the 14th Amendment.



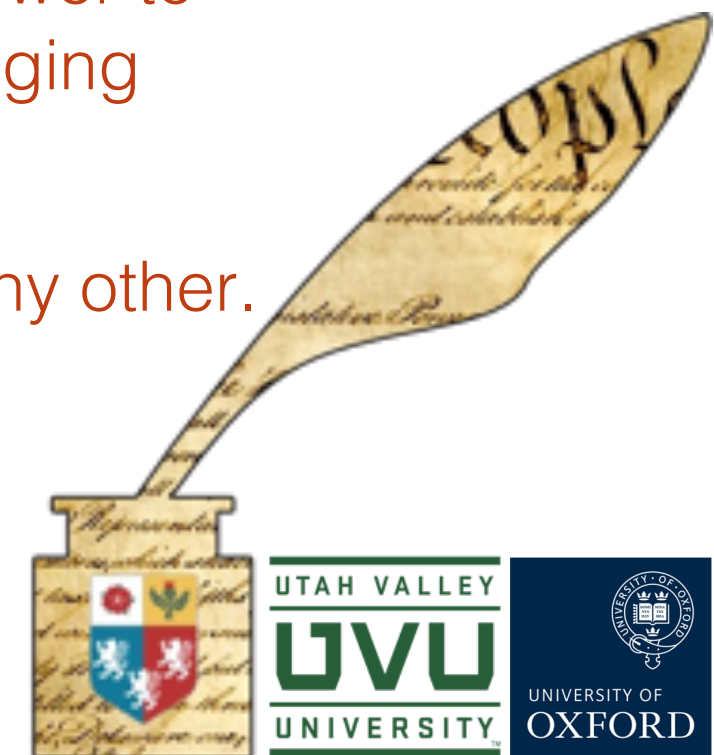
What happened to the Fourteenth Amendment?

- All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
- Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.



What happened to the Fourteenth Amendment

- Barron v. Baltimore 1833 (Bill of Rights only Apply to the States)
- Slaughter House Cases 1873
- Majority held that the Police Powers of the States were not restricted by the Fourteenth Amendment — it only protected Federal Privileges and Immunities.
 - “We think this distinction and its explicit recognition in this amendment of great weight in this argument, because the next paragraph of this same section, which is the one mainly relied on by the plaintiffs in error, speaks only of privileges and immunities of citizens of the United States, and does not speak of those of citizens of the several States. The argument, however, in favor of the plaintiffs rests wholly on the assumption that the citizenship is the same, and the privileges and immunities guaranteed by the clause are the same.”
 - “The right to peaceably assemble and petition for redress of grievances, the privilege of the writ of habeas corpus, are rights of the citizen guaranteed by the Federal Constitution.”
 - “Was it the purpose of the fourteenth amendment, by the simple declaration that no State should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned, from the States to the Federal government? And where it is declared that Congress Shall have the power to enforce that article, was it intended to bring within the power of Congress the entire domain of civil rights heretofore belonging exclusively to the States? All this and more must follow if the proposition of the plaintiffs in error be sound....”
 - It is so clearly a provision for that race and that emergency, that a strong case would be necessary for its application to any other.
- Do also read the Justice Stephen J. Field Dissent — who thought the majority had gutted the Fourteenth Amendment.



What happened to the Fourteenth Amendment?

- 1875 Civil Rights 'Enforcement' Act would have banned segregation.
- 1883 'Civil Rights Cases' held that the Fourteenth Amendment did not give Congress the power to restrict discrimination by private businesses.
- 1965 The Supreme Court held that Congress could use the **commerce clause** to regulate private businesses.
- which brings us to the Civil Rights Acts of 1957 (gathering information and protected Federal Elections), 1964 (voting, discrimination in public accommodations, equality in employment) and 1968 (Indian Bill of Rights, Open Housing Act, Housing Rights Act, Anti-Riot Act).



Incorporation of the Bill of Rights

- Chicago, Burlington & Quincy Railroad Co. v. City of Chicago (1897) — just compensation required for seizing private property.
- Gitlow v. New York (1825) Freedom of Speech and Freedom of the Press ‘incorporated’. (Freedom to publish a socialist manifesto)
- Everson v. Board of Education (1947) Incorporated the Establishment Clause (5-4 decision).





United States Thirteenth Amendment 1863-65

Secretary's Desk ⓘ



United States Fourteenth Amendment & The Civil Rights Act of 1866 *

Secretary's Desk ⓘ



United States Fifteenth Amendment

Secretary's Desk ⓘ



* under review!

