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# Effecting Moral Change: Lessons from the First Emancipation

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EFFECTING MORAL CHANGE: LESSONS FROM THE FIRST EMANCIPATION

by

Howard Landis

A master's thesis submitted to the Graduate Faculty in Liberal Studies in partial fulfillment of the requirements for the degree of Master of Arts, The City University of New York

2015

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This manuscript has been read and accepted for the  
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## Abstract

### EFFECTING MORAL CHANGE: LESSONS FROM THE FIRST EMANCIPATION

By

Howard Landis

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The First Emancipation was a grassroots movement that resulted in slavery being mostly eliminated in the North by 1830. Without this movement, it is unlikely that slavery would have been banned in the United States by 1865. The First Emancipation is not only a fascinating but little known part of our nation's history, but can also be used as a case study to illustrate how firmly entrenched, but immoral practices can be changed over time. The First Emancipation began with four immigrants stating their opposition to slavery in Germantown, Pennsylvania in 1688. At this time, slavery was well entrenched, and the practice seemed as if it would go on indefinitely. The arguments made against slavery did not change significantly over the next century, but, after much discussion and reflection—first amongst the Quakers and then more broadly— the notion that slavery is wrong gradually took hold of the hearts and minds of much of the public. Finally, this perception became effective in action as principled politicians throughout the North overcame the opposition of slaveholders and enacted measures that gradually eliminated the practice. The First Emancipation movement also reminds us that moral progress cannot be taken for granted. At the time of our nation's founding, many of our Founding Fathers believed that slavery was immoral and that the institution would gradually disappear. Unfortunately, our Founders missed some opportunities to enact measures that would have gradually eliminated slavery. They did outlaw U.S. participation in the international slave trade in 1808, but a vibrant domestic slave trade emerged in its place. Slavery actually strengthened in the South and West, and, as we all know, it took a devastating civil war to finally end slavery.

## ACKNOWLEDGMENTS:

I thoroughly enjoyed the opportunity to participate in the CUNY Graduate Center's Liberal Studies Program. I was able to take challenging and interesting courses in philosophy, history, sociology, English, and political science during the time I was at CUNY. One of my favorite courses was a seminar on the First Emancipation that covered a fascinating and important chapter in our nation's history that most people know little or nothing about—mention the First Emancipation at a cocktail party, and you are likely to be met with a blank stare or a comment such as “was there more one.” My thesis gave me an opportunity to think about and learn even more about this topic, and I would like to thank Dr. Jonathan Sassi, my thesis professor, for introducing me to the First Emancipation and for supervising my thesis. I very much appreciate Professor Sassi's knowledge of the period and his willingness to consider views and interpretations of events that draw on different disciplines and perspectives. I would also like to thank Katherine Koutsis, who has been the assistant program officer for the Liberal Studies Program for the entire time I was here. Kathy always knew the answer to any question I had about the program and its requirements. Finally, I would like to thank Susie for her support and understanding of her husband's studying subjects just because he found them interesting. She never asked me to skip a class, and she tolerated an incredibly messy family room that I commandeered for writing my thesis.

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## OVERVIEW:

NOTHING IS MORE DIFFICULT perhaps than to explain how and why, or why not a new moral perception becomes effective in action. Yet nothing is more urgent if an academical historical exercise is to become a significant investigation of human behavior with direct relevance to the world we now live in.

M. I. Finley<sup>1</sup>

This paper will analyze the First Emancipation movement to address the challenge raised by the Cambridge classicist and former City College instructor Moses Finley. In 1688, the notion that slavery is wrong must have seemed to be a mere moral sentiment that, upon reflection, was absurd. During the First Emancipation, however, the notion that slavery is wrong began as a grassroots movement and, after much discussion and reflection, gradually became “a new moral perception.”<sup>2</sup> With good timing and dedicated and competent

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<sup>1</sup> Quote taken from Christopher Brown, *Moral Capital: Foundations of British Abolitionism*, page preceding introduction.

<sup>2</sup> Philosophers often use moral sentiment and moral perception in similar ways. For many, there is a sense that our “moral thoughts are fundamentally sentimental” or “that emotions are the primary source of moral knowledge.” There are strong arguments that can be made for these positions (there are “many moral sentimentalisms”), but for our purposes, I will consider a moral sentiment to be an emotional feeling or intuition about the rightness or wrongness of a given action or practice. A moral sentiment is something felt by individuals. “A new moral perception,” however is something that develops within a group where most of the members did not originally share the moral conclusion that would seem to be derived from or consistent with the sentiment. Furthermore, it would seem that an individual could have a moral sentiment with respect to a particular practice but also have a moral perception that is not consistent with this sentiment. One, for example, might have a strong

leadership, this new perception became effective in action and resulted in slavery being peacefully eliminated in the northern United States. The movement sputtered, however, in the nineteenth century, so it also provides an example of how “a new moral perception [failed or ceased to become] effective in action.”

Finley reminds us that it is not only understanding what occurred and how it occurred that matters. We need to try to understand why things developed as they did, and, for him, the answer lies in investigating the human behavior that led key characters to do what they did or did not do. What happened, in other words, cannot necessarily be explained just by economic or other structural forces. It is important to understand the human behavior behind the successes and failures of the First Emancipation if our analysis of the movement is to have any “direct relevance to the world we now live in.” Accordingly, we will consider some basic insights from behavioral economics and social psychology to help explain why our Founders allowed the movement to run out of steam.

That slavery is wrong seems obvious today, but it was far from obvious at the end of the seventeenth century. Slavery was deeply rooted. It had existed in the West almost since the days of Columbus, but it had existed throughout the world for thousands of years. Slavery had strong philosophical and theological defenses. Slavery was also profitable for those who participated in it in one way or another. Like some other practices that are wrong, the interests at stake were asymmetrical. One side had little to gain in a material sense from eliminating slavery, and the other side had much to lose if slavery were eliminated. In these cases, one

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negative sentiment about animals being killed and used by humans for food, but not have a moral perception that this is a practice that should be banned. One might expect that a group that shares “a new moral perception” is amenable to legislative actions that advance or are consistent with the new perception. For more on moral sentiment, see Antti Kauppinen, “Moral Sentimentalism.”

might expect that the side with much to lose would fight tooth and nail to protect their interests.<sup>3</sup>

There are at least three factors that contribute to understanding why the First Emancipation succeeded. The first is that the movement was a bottom-up effort that began with four individuals publicly noting that slavery is wrong and should be stopped. The Germantown Four were not the first individuals to speak out against slavery.<sup>4</sup> They deserve recognition not just for declaring that slavery is wrong but for initiating a dialogue that would continue through several generations. Their antislavery message would be articulated and debated again and again in different ways and in different venues by scores of individuals, many of whom were Quakers, over the next century in both the colonies and in Great Britain. This meant that antislavery sentiment was continually being seeded and reseeded, which gave the sentiment a chance to grow into “a new moral perception.” Second, the message was gradually internalized by the general public. That slavery is wrong in concept might be accepted by the public, but that did not mean that the public would support measures to curtail slavery. Over time, the public needed to both feel the injustice of slavery and be convinced that there were actions that could be taken to at least alleviate the injustice. This internalization by the public provided a foundation that made it possible for pragmatic antislavery advocates to

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<sup>3</sup> The slaves themselves, of course, had the most to gain from eliminating slavery, and I am not suggesting that American slaves were passive in dealing with their circumstances, only that they were limited in what they could do. For more on some of the ways in which slaves dealt with their circumstances, see Douglas Egerton, *Death or Liberty: African Americans and Revolutionary America* (New York: Oxford University Press, 2009) and *Gabriel's Rebellion: The Virginia Slave Conspiracies of 1800 and 1802* (Chapel Hill: University of North Carolina Press, 1993).

<sup>4</sup> Christopher Brown provides a short overview of some earlier antislavery sentiment: For example, “some stunned witnesses had wept in 1444 when a shipload of enslaved Africans was deposited in the Portuguese town of Lagos. A Spanish theologian, Tomas de Mercado, condemned the brutality of the Middle Passage in 1569. . . A Jesuit priest in Brazil declared all slaveholders sinners in the 1580's,” p. 39.

champion concrete means to combat slavery. Finally, politicians throughout the North enacted appropriate legislation that eliminated or began to eliminate some or all of the practices now considered to be disreputable if not downright immoral. Those who benefited from slavery fought to retain it, and competent and principled political leadership was necessary in order to complete the process.

By the end of the eighteenth century, the First Emancipation movement had succeeded in peacefully eliminating slavery (either outright or gradually) in most of the North and in obtaining a consensus in most of the United States that the international slave trade was an evil that would be outlawed in 1808. The First Emancipation, by almost any measure, would seem to have been a stunning success.

The First Emancipation, however, was also a failure since the momentum of the eighteenth century did not continue into the nineteenth century. New Jersey was the last state to voluntarily end slavery, and our Founders, for whom I have tremendous respect and admiration, did little on the national level to stop the spread of slavery into western states such as Mississippi, Louisiana, Alabama, Kentucky, and Tennessee. This was not because they believed that slavery was a good practice. Most of our Founders acknowledged that slavery was wrong, and it would not be until after the Missouri Crisis in 1819 and the Missouri Compromise in 1820 that the South developed and refined the notion that slavery was a positive good. As we shall see, timing is important, and it would have been impossible for our Founders to eliminate slavery throughout the new nation in 1789. There seems, however, to have been some good opportunities to at least begin to suppress slavery between 1790 and 1819 that were not acted on by our Founding Fathers. Our Founders might have limited

western expansion of slavery, particularly in the Louisiana Purchase territories, and they might have curtailed the domestic slave trade. This failure to contain and eventually eliminate slavery is often attributed to structural issues or to the moral shortcomings of our Founders.

I will argue that the failure of our Founders to eliminate slavery can be attributed in part to the shortcomings of our evolved human nature. If this is correct, these flaws are just as real for those of us who live in the twenty-first century and, to the extent we fail to account for them in our actions or inactions, we should expect that future generations will question not only the policy decisions we have made but also our intentions and our morality.

There is also however an important structural explanation that helps to explain our Founder's failure to act on slavery or limit the domestic slave trade. Between 1789 and 1819, there was no antislavery group operating at the national level in a way that was comparable to what the Quakers and others were doing throughout the North in the eighteenth century. Hence, during this time, there was no broad base of sentiment being created that would lead to a demand for measures that would end the domestic slave trade or stop the spread of slavery. Politicians pass legislation that ratify and encode new moral perceptions; they do not establish these perceptions. If this is correct, a key takeaway from the First Emancipation is that the solutions to problems that are fundamentally moral in nature will begin to be solved by actions taking place at the grass roots level and not by politicians. We will now begin to look at how attitudes towards slavery changed in the hundred years between 1688 and 1787.

Section I      Who Could Have Imagined: Slavery and Abolition, 1688-1804

We are against the traffik of men-body. . . Now tho they are black we cannot conceive there is more liberty to have them slaves . . . To bring men hither, or to rob and sell them against their will, we stand against.

From the Germantown Protest (1688)  
See Appendix I for entire document

The prevailing view among Europeans was that people in Africa and the western hemisphere weren't entitled to the same rights as they were . . . The colonies needed laborers, and the Africans did a better job than anybody else, perhaps because of their superior resistance to tropical diseases. Businesses counted on the continuation of slavery. Most politicians were all for it. Organized religions supported it. Abolishing slavery seemed unthinkable because so many people would be devastated. Slavery seemed like it could go on forever. Could anybody realistically hope to abolish it?

Jim Powell<sup>5</sup>

“We are against the traffik of men-body.” These words were part of a protest that was carefully, if not articulately, crafted by four individuals—all of whom were probably German immigrants living in Germantown, Pennsylvania—to be presented and discussed at an

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<sup>5</sup> Jim Powell, *Greatest Emancipations: How the West Abolished Slavery*, p. 20-21.

upcoming Quaker meeting. This protest is generally considered to mark the beginning of the First Emancipation Movement that resulted in slavery being eliminated or being placed on the path to being eliminated in all states north of the Mason-Dixon Line except for Delaware by 1804. Without the First Emancipation, it is difficult to imagine that our country could have eliminated slavery entirely by 1865.

Who, however, could have imagined in 1688 “that a few rarely repeated and poorly shared ideas of the 1680s had by the 1750s become widely shared and frequently repeated?”<sup>6</sup> Who could have imagined that within 100 years, these ideas would result in our Founders taking action throughout the North to eliminate slavery and position our nation to outlaw the importation of slaves? Today, we naturally ask how slavery was ever permitted to exist, but, as stated by Jim Powell, slavery was once the norm that was accepted by businesses, politicians, and religious groups. We will begin by considering “the origins of American Slavery” to better understand just how well entrenched slavery was at this time.<sup>7</sup>

I

Most of us know that there was serious, sectional discord within the United States over slavery from the Missouri Compromise in 1820 to the mid-1800s that would eventually result in the United States’ bloodiest war. Many of us learned in middle school history that slavery was something that was practiced in the South, that slaves were black, and that slaveholders were wealthy, white, plantation owners. Slavery seemed like something that was peculiar to the

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<sup>6</sup> Brycchan Carey, *from Peace to Freedom*, p. 70.

<sup>7</sup> Much of the material for the subsequent sub-section is taken from chapter one (“What the Abolitionists Were Up Against”) of David Brion Davis, *The Problem of Slavery in the Age of Revolution 1770-1823*, Philip Morgan, “Origins of American Slavery” and the introduction and Chapter 1 of Jim Powell, *Greatest Emancipations*.

South. Some of us also learned that, at the time of our country's founding, there were slaves throughout our country, North and South, and that most of our Founding Fathers owned or had owned slaves at one time.

Most of us did not learn that circa 1700 "slavery seemed like it could [and should] go on forever" because it had seemingly gone on forever. At this time, slavery was accepted by most politicians, religious authorities, and the general public throughout the world. Slavery was sanctioned in the Bible, the Quran, and even the Hammurabi Code. Slavery was approved by prominent ancient philosophers, such as Aristotle, and by prominent medieval philosophers, such as Aquinas. "The great political theorists of the sixteenth and seventeenth centuries [except for Jean Bodin] all found justifications for chattel slavery."<sup>8</sup> Prominent Enlightenment philosophers such as Kant and Hume would later lend support to the institution by assuming that blacks were an inferior race.<sup>9</sup> Most of us also never learned in middle school that "almost every society in the history of the world has experienced slavery at one time or another."<sup>10</sup>

Europe was no exception, and Philip Morgan notes that Christians had always "committed awful atrocities on each other, but increasingly they avoided enslaving one another [but not others]."<sup>11</sup> The first outside peoples enslaved in a resurgent Western Europe as it began to emerge from the "Dark Ages" were Slavic. The word slave is actually derived from

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<sup>8</sup> Davis, p. 45.

<sup>9</sup> Christopher Browne suggests that Hume, the preeminent English speaking philosopher of all time who lived from 1711 to 1776, and Edward Long, a British historian who lived from 1734 to 1813 and wrote *The History of Jamaica*, "stood out for the lengths they went to degrade the black race" (p. 302). Hume and Long certainly degraded blacks, but they do not appear to stand out from others in this regard.

<sup>10</sup>According to Philip Morgan, "the aborigines of Australia are about the only group that has so far not revealed a past mired in slavery" (p. 50).

<sup>11</sup> *Ibid*, p. 52.

*sclavus*, “the Latin word for people of Slavic descent.” This source of slaves dried up, however, in 1453 with the capture of Constantinople. At that point, Europe, particularly Portugal, turned to sub-Saharan Africa, which had long been a source of slaves for Arabs and their allies in “North Africa, the Mediterranean, and Persian Gulf.”<sup>12</sup>

When European nations began to develop the New World, their first source of forced labor was Native peoples. Indians, however, suffered tremendously from Old World diseases such as smallpox and measles, and, as we know, were virtually wiped out as a result of their contact with Europeans. Indentured servants were an option, “but servants, if they survived, eventually became free” and often “would not travel to the areas where most labor was needed.” The solution was African slavery. These individual were “accustomed to tropical climates, inured to agricultural labor, and reared in a harsh epidemiological environment.” The need for manpower in the West was enormous, and at this point, all of the major European powers participated in the slave trade. England, which was Europe’s preeminent naval power, came to dominate this trade, but it was also pursued by the Spanish, French, Dutch, Portuguese and Scandinavians. The magnitude of the African slave trade is almost unimaginable. All in all, about nine million African slaves “left [their native land] for the New World” between 1500 and 1820. This compares to about 3 million whites.<sup>13</sup>

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<sup>12</sup> *ibid.* According to Philip Morgan, Western Europe was also a source of slaves for the Middle East and Northern Africa. “From 1500 to 1800, Muslims enslaved well over a million Western Europeans” (p. 52). Many of those who were enslaved were later ransomed. Our country’s first foreign war, the Barbary Coast War, took place against the Barbary States in Northern Africa because these states were seizing U.S. ships and enslaving their crews.

<sup>13</sup> *ibid.* Quotations for this paragraph are from pp. 52-53.

Only about five percent of these individuals were sent to what would become the United States.<sup>14</sup> There is a sense in which these slaves who came to North America were incredibly fortunate. Their odds of surviving were much higher in North America than the odds of those who were sent elsewhere. Most African slaves were sent to places such as Barbados, Jamaica, Brazil, and Cuba where they worked on sugar plantations.<sup>15</sup> The conditions and treatment of slaves in these locales were brutal, and, as a result, the continual importation of new slaves was required just to maintain the labor force.<sup>16</sup> North America, by contrast, “became one of the few self-reproducing slave populations in world history” and by 1825, “the United States had about 36 per cent of all the slaves in the Western Hemisphere.”<sup>17</sup>

There was also a sense, however, in which slaves who came to North America were not so fortunate. “Only in North America did the extremely arbitrary concept of ‘Negro’—denoting anyone with allegedly visible African ancestry—assume such a marked stigma.” Accordingly, North America was “much less tolerant of racial intermixture [or at least of acknowledged racial intermixture] than in Latin America or the Caribbean.” It follows at least somewhat from this pervasive racism that “the chances of gaining freedom” were lower in North America than in

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<sup>14</sup> According to Powell, “about 4 percent [of these slaves] were delivered to the United States” (p. 6). Philip Morgan’s estimate is 5 percent (p. 54) and Davis’ is “that over the entire history of the Atlantic slave trade, North America received no more than 6 percent of the Africans imported into the New World” (p. 58).

<sup>15</sup> Davis, *The Problem of Slavery in the Age of Revolution*, refers to Fogel and Engerman, *Time on the Cross: The Economics of American Negro Slavery* as the source for his estimate that “between 60 and 70 percent” of African slaves sent to the New World were “destined for Europe’s sugar colonies” (p. 51).

<sup>16</sup> *ibid*, p. 56. The slave populations of Jamaica and Barbados, for example, “did not become self-perpetuating until after Britain had outlawed the slave trade.”

<sup>17</sup> Philip Morgan, p. 53 and Davis, *The Problem of Slavery in the Age of Revolution*, pp. 58-59.

other places.<sup>18</sup> Relatively few slaves would become free, and those who did would be isolated from the greater community. It would also seem to follow from this “marked stigma” that the opportunities for those few, fortunate, free individuals were limited.

In short, in 1700 a North American slave was typically a black, chattel slave who was viewed as inherently inferior and therefore well suited for slavery. She had little prospects of gaining freedom for herself or for her progeny; even if she or her descendants somehow succeeded in gaining their freedom, they would be marked as inferior so long as they were recognized as having any African ancestry. In 1700, if one were white, there was little reason to challenge this assessment. Slavery was an accepted norm, and the average slave who was uneducated and had been separated from family and friends and transported against her will into an inhospitable environment must have seemed deserving of the “marked stigma.”

Morgan’s essay on the origins of American slavery is excellent; interestingly, however, he dates the start of “the age of emancipation” as “beginning in 1776.”<sup>19</sup> This may mark the beginning of the period in which the new moral perception became effective, the political phase, but, as we will see, it took many years before the moral sentiments of the Germantown protestors became “a new moral perception” for the Quaker community and then for the broader community. Without this new moral perception, there would not have been an age of emancipation in the eighteenth century.

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<sup>18</sup> Philip Morgan, p. 54.

<sup>19</sup> *ibid.*

## II

Brycchan Carey recently wrote a terrific chronicle of Quaker antislavery initiatives from 1657 to 1761.<sup>20</sup> Carey's account begins not in 1688 with the Germantown protest, but in 1657 when the Quaker founder George Fox visited Quakers in Barbados. Fox was troubled by the treatment of slaves on the island and although he did not call for their emancipation, he asked that they be treated well, permitted to enjoy family life, and instructed in the Christian religion. These measures seem mild, but they were enough to upset the island's Anglicans, who made up the majority of the white population. The efforts of Fox and other Quakers prompted the passing of 'An Act to prevent People called Quakers, from bringing Negroes to their Meetings' and "a general ban on all visiting Quakers from preaching on the island." The discussion of and experience with slavery in Barbados might seem irrelevant to later actions in North America, but Carey makes the point that the "Quaker population in Barbados" and the entire Caribbean "declined sharply" in subsequent years as Quakers in this region moved to Philadelphia because they were "driven out by repeated persecutions," increasingly "unhappy with plantation slavery," and "attracted by the prospect" of moving to a colony run by Quakers.<sup>21</sup>

Undoubtedly, this participation in plantation slavery by certain Quakers in the Caribbean, the admonitions they received from Fox and other prominent Quakers, and their unsatisfactory

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<sup>20</sup> Brycchan Carey, *from Peace to Freedom: Quaker Rhetoric and the Birth of American Antislavery, 1657-1761*.

<sup>21</sup> J. William Frost notes that although the Barbadian authorities were at times outraged by the "mild critique" of slavery offered by Quakers, it was Quaker "refusal to swear oaths or bear arms" that led to their persecution ("The Origins of the Quaker Crusade Against Slavery: A Review of Recent Literature", p. 44).

interactions with other slaveholders influenced later Quaker discussions on and attitudes towards slavery in Philadelphia.<sup>22</sup>

This brings us to the Germantown Protest that is often considered the beginning of the First Emancipation. This group may not have been fluent in English, but they were also not just a group of simple farmers.<sup>23</sup> They made some excellent points: Slavery is wrong, and it does not matter that the slave is black. They compared the persecution of those who were oppressed in Europe because of their religious convictions to those who were oppressed because of their color. They suggested that it was not only wrong to enslave people but just as wrong to participate in the buying or selling of individuals who had been enslaved. Slavery is a form of theft and Quakers should not only “avoid to purchase such things as are stolen,” but also “help to stop this robbing and stealing if possible.” We know that the root of most moral judgments is that others should be treated as we would like to be treated, or at least not treated in ways that we would not want to be treated. The Germantown Four asked if there were any “that would be handled at this manner? viz, to be sold or made a slave for all the time of his life?” They further emphasized this point by reminding the group of the fear that Europeans had of being enslaved by the Turks. It is even worse, “for them, which say they are Christians” to do the same thing to others. Finally, they make two practical arguments: First, what would the non-resistant Quakers do if there were a slave rebellion? Second, the acceptance of slavery by the Quakers harmed their reputation and made it less likely that

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<sup>22</sup> *ibid*, chapter 1 entitled “Barbados, 1657-76.” Quotes are from pages 61 and 69.

<sup>23</sup> The leader of the group, Daniel Pastorius was a well-educated lawyer who joined “the so-called Saalhof-Pietists in Frankfort” and later decided to emigrate to Pennsylvania and “lead a quiet, godly & honest life in a howling wilderness.” The group in Frankfort “organized a land company and elected the lawyer as their agent” (Hildegard Binder-Johnson, “The Germantown Protest of 1688 against Negro Slavery,” pp. 147-8).

individuals in Holland and Germany would emigrate to the colony. And finally, they challenged their fellow Friends to tell them if their analysis were incorrect, and that Christians were at liberty to own slaves.

The protest was not formally acted on by the Quaker hierarchy, but it was well discussed in determining not to act on the issue. At the monthly meeting on 30 April 1688, the Friends at Dublin noted that the issues raised to be “so weighty that we think it not expedient for us to meddle with it here,” but noted “ye tenor of it being nearly related to ye truth.” The Protest was passed on to the quarterly meeting in Philadelphia where it was read on 4 June 1688 and deemed “a thing of too great a weight for this meeting to determine.” Finally, it was taken up at the Friend’s yearly meeting in Philadelphia on 5 September 1688 where it was again “adjudged not to be so proper for this Meeting to give a Positive Judgment in the Case.” This time, however, the Friends acknowledged the real problem with the petition. “It have so General a Relation to many other Prts [Parties], and therefore at present they forbear it.”<sup>24</sup> In other words, slavery was too deeply entrenched within the Quaker community for the meeting to concur with the protests. They certainly did not suggest, however, that slavery was something “that Christians have such a liberty to do so.” In one sense, this ended the Germantown Protest. In another sense, however, this was just the beginning.

The debate over slavery within the Quaker community would continue until the Quakers finally made slaveholding a disownable offense at the Philadelphia yearly meeting in 1776. We do not have access to much of what occurred in the years between 1688 and 1776, but we do

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<sup>24</sup> Quotes from the meetings are taken from Katharine Gerbner, “We Are Against the Traffik of Men-Body’: The Germantown Quaker Protest of 1688 and the Origins of American Abolitionism,” pp. 169-170.

know that within a decade of the Germantown Protest, “the Philadelphia Yearly Meeting issued an official ‘warning’ against slave-holding and discouraged its members from importing more slaves.” This was in response to a letter written by Cadwalader Morgan, in which Morgan emphasized the moral corruption of slaves and their propensity to engage in “Loose and Lewd Living” and “Rambling abroad on First Days or other Times.”<sup>25</sup>

The debate would wax and wane—there were periods of time in which slavery does not appear to have been discussed. There were many Quaker heroes in this endeavor. They range from the outlandish Benjamin Lay, who attempted to dramatize the evils of slavery by engineering various stunts, to the more influential John Woolman, whose writings are sometime portrayed as “so tweak[ing] the Quaker conscience that the Society of Friends felt compelled to outlaw slavery,” to the scores of Quaker individuals over the years who voluntarily gave up slavery.<sup>26</sup>

We also know that timing is important in effecting moral action. The 1750s were a challenging time for the Quaker elite, which until then had maintained its political power in the Pennsylvania colony. The French and Indian War that began in the 1750s brought about a demand for military action that the Quakers were unable to satisfy without compromising their moral principles. This led the group to consider what it meant to be a Quaker and reflect on fundamental principles. In addition to continuing to refuse to bear arms, the Quakers also

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<sup>25</sup> Gerbner, p. 151; one can only wonder if it were really surprising that a group of slaves, most of whom were relatively young, cut off from their family and native culture, and without any future to look forward to might engage in “loose and lewd living” or go “rambling” on Sundays and holidays.

<sup>26</sup> Carey, p. 182. Lay’s antics included attending services “dressed in sackcloth, to harangue any slaveholder he saw there” and most famously a stunt in which he thrust a sword into a hollowed out Bible and spattered pokeberry juice, which had been placed in the Bible and looked like blood at first glance, over himself and others at a Philadelphia Yearly Meeting in 1738” (Carey, pp. 164-172).

adopted and formalized what had been a growing stance against slavery.<sup>27</sup> Their moral sentiments on slavery had grown into a firm moral perception that slavery was immoral.

The Quakers, not surprisingly, have both their admirers and critics. On one hand, Carey credits the Quakers for producing “a discourse of antislavery that underpinned and informed all later antislavery discourse, both in America and Europe.”<sup>28</sup> On the other hand, some critics of the Quakers credit economic factors more than the Quakers for creating an environment in which slavery could be ended; others discount the Quaker accomplishments and credit the rise of antislavery sentiment to the Great Awakening or revolutionary fervor. Others ask why it took so long for the Quakers to end slavery;<sup>29</sup> or why it was until 1796 before the Quakers “admitted and opened membership to membership all qualified applicants ‘without distinction of nation or color’.”<sup>30</sup> Even worse, other scholars ignore the Quaker antislavery actions altogether.<sup>31</sup>

What seems clear, however, is that “the history of the early abolitionist movement is essentially the record of Quaker antislavery activities. Although a few non-Quakers firmly denounced slavery the Society of Friends was the only group to advocate emancipation in the

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<sup>27</sup> “The London Yearly Meeting in 1761 banned “dealing in slaves” for “all Friends within the ‘verges of that meeting” (Carey, p. 29). That same year, the Philadelphia Monthly Meeting dissociated themselves from “six Friends who had been ‘dealing in slaves” (p. 208).

<sup>28</sup> *ibid*, p. 3.

<sup>29</sup> For a somewhat dated but still relevant overview of different perspectives, see Frost’s 1978 “review of recent literature” on the Quakers and slavery.

<sup>30</sup> Arthur Zilversmit, *The First Emancipation: The Abolition of Slavery in the North*, p. 25.

<sup>31</sup> Isaiah Berlin’s history of the first 200 years of slavery in North America begins his account of emancipation in the North with the Revolutionary period; his index does not have a single reference to “Quakers, Society of Friends, or Friends.” It is as nothing was done to advocate antislavery initiatives before 1770.

years before the American Revolution.”<sup>32</sup> Along the same lines, as historian J. William Frost has written, “one [also] looks in vain for many Anglicans, Presbyterians, Deists or Germans, Scotch-Irish, and English who publicly espouse antislavery and free their slaves before 1776.”<sup>33</sup> Still, Carey’s claim about Quaker’s producing the “discourse of antislavery that underpinned and informed all later antislavery discourse” seems to be an exaggeration, particularly since Carey also notes that the important *Epistle of 1754* is “remarkably similar in structure and argument to the Germantown Protest” of 1688.

Maybe the reason for this exaggeration is that the Germantown Protest, simple as it was, captured the essence of why slavery was wrong for both moral and pragmatic reasons. There was no need to develop and refine this discourse in any significant way; even if there had been, it should not have taken sixty years to develop. What was necessary was the repeated dissemination of the discourse and the continuation of the discussion. This gradually led to a new moral perception on the part of the Quakers, but for it to become a more generally accepted moral perception, the Quakers needed to disseminate their message more broadly. We will take a brief look at how they were able to do this and spread antislavery sentiment through the larger community not only in the colonies, but also in England.

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<sup>32</sup> Zilversmit, p. 55.

<sup>33</sup> Frost, pp. 46-7. Gary Nash and Jean Soderlund support this conclusion noting: “In the period to 1763, then, abolitionism in Pennsylvania remained a Quaker initiative. Except for the early Keithian movement [an offshoot from the Quakers], just a few Anglicans and other non-Quakers freed slaves in scattered years,” and “they often emancipated only one or two of their slaves, leaving the rest in bondage” (*Freedom by Degrees: Emancipation in Pennsylvania and its Aftermath*, pp. 69-70). Even the distinguished Great Awakening evangelist George Whitefield “had purchased some 75 slaves to work the plantations of the Orphan House in Savannah;” maybe not surprisingly, he and other “ministers of his day” were chastised by Benezet (Roger Bruns, “A Quaker’s Antislavery Crusade: Anthony Benezet,” p. 86).

### III

Christopher Brown observed that “the British antislavery movement seemed to emerge from nowhere in 1787-1788.”<sup>34</sup> Slavery in Great Britain itself had arguably been outlawed in the famous Somerset case, but the decision did not outlaw British participation in the slave trade or outlaw slavery in British possessions.<sup>35</sup> The antislavery movement sought to outlaw the slave trade, and, for Brown, the best explanation for the sudden emergence of the movement is that a number of individuals, for a variety of motives, worked diligently to advance the antislavery cause. Brown acknowledges the importance of the Quakers to the emergence of this movement, noting “the critical importance of Quaker networks and Quaker money during the first crucial months of the national campaign.”<sup>36</sup>

Brown is not suggesting that the movement arose *ex nihilo*. He recognizes that there were crucial factors that made it possible for the antislavery movement of 1787-88 to emerge. For one, the public was fully behind the initiative.<sup>37</sup> The British public had internalized a new moral perception about slavery, and this could be attributed to earlier antislavery initiatives:

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<sup>34</sup> Brown, pp. 22-23. Note that the term “antislavery” at this time often meant being opposed to the slave trade. One could be antislavery and not be an abolitionist.

<sup>35</sup> Somerset was a slave whose master had brought him to England. Somerset had escaped and been recaptured and imprisoned on a ship. His master, Charles Stewart, planned to sell him to a plantation in Jamaica. Undoubtedly, this was to be the punishment for Somerset’s having escaped and, given the death rates of slaves in Caribbean, might even be viewed as a quasi-death sentence. The judge freed Somerset, but ruled narrowly: “So high an act of dominion’—detention and deportation—‘must be [explicitly] recognized by the law of the country where it is used.” In other words, Stewart’s plans were not sanctioned by British common law. (Daniel Hulsebosch, “Nothing but Liberty: ‘Somerset’s Case’ and the British Empire,” p. 651). See also Brown, pp. 96-98 and Powell, pp. 68-72. The ruling did not explicitly end slavery in England, although it is often understood as doing so, particularly since there is also no support for slavery in British common law.

<sup>36</sup> Brown, p. 24.

<sup>37</sup> “The breadth of its public support in those first heady months [of 1787-1788] had few precedents in late-eighteenth-century British political history. Public opposition to the abolitionists was negligible. If the question could have been decided by public opinion, the slave trade would have been abolished at once” (Brown, p. 23).

“After 1750, the deepening tributaries of antislavery thought, swelled by the contributions of activists like Anthony Benezet and Granville Sharp, spilled into the narrow streams of moral commitment.” Brown also recognizes the importance of timing—had the movement “coalesced in May 1791, instead of May 1787, [it] would have been associated with revolution in France and insurrection in Saint Dominique,” and the antislavery movement might have been set back “for decades to come.”<sup>38</sup> Finally, Brown lauds the work of an American Quaker, Anthony Benezet. Although he had died in 1784 before the 1787 movement even began, Benezet had “acted as the leading propagandist for slave trade abolition and [was] its chief instigator.”<sup>39</sup>

Brown, by focusing a good bit of his attention on individuals such as Granville Sharp, Anthony Benezet, Thomas Clarkson, William Wilberforce and others is emphasizing the importance of leadership in making a “new moral perception become effective in action.” It may have been necessary for the public to be convinced that the slave trade was immoral in order for it to be outlawed, but that was not enough to end the slave trade, which would continue until it was actually outlawed. Not surprisingly, there were vested interests that sought to maintain the status quo. As Jim Powell notes, “many an Englishman [and, we might add, more than a few Americans] made a fortune in the slave trade during the eighteenth century,”<sup>40</sup> and they were not going to just give it up. Outlawing the slave trade required

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<sup>38</sup> *ibid*, p. 461.

<sup>39</sup> *ibid*, p. 397. For a sense of Brown’s appreciation of the role that Benezet played in ending the British slave trade, one can look at *Moral Capital’s* index. The only individual who is featured more in the book is Granville Sharp, the British social activist who lived from 1735-1813.

<sup>40</sup> Jim Powell, p. 67. Powell goes on: “In London, Bristol, Liverpool, and other English ports, merchants thrived by selling the trinkets, cloth and guns that West African chiefs wanted in exchange for slaves, as well as the customary

patience, persistence, and political savvy. It would actually take twenty years for the British to end their slave trade, and then an additional thirty years before the British would end slavery in their colonies.

There were many capable leaders throughout the second half of the eighteenth century and the first part of the nineteenth, but there was probably none who had a greater impact on antislavery thought and action in a number of venues—within the Quaker community; within the colonies; and internationally—than Anthony Benezet, who was a prolific writer and relentless antislavery activist. Benezet was a French born, Philadelphia Quaker who began by “establish[ing] himself with the [Philadelphia] Society of Friends” and then began disseminating “his antislavery synthesis” more broadly.<sup>41</sup>

As discussed earlier, the antislavery message is straightforward and seems to have been captured in the Germantown Protest of 1688. Benezet wrote extensively, but his brilliance was not in articulating antislavery sentiments that had not been noted before, but in his ability “to strike where he thought they [his publications] would have the most effect” and to write “each of his antislavery publications with a particular audience in mind.”<sup>42</sup> Benezet’s writing was influential in its own right,<sup>43</sup> but Benezet was also an effective networker who assiduously

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ship’s supplies and slaving gear such as whips, branding irons and neck braces.” The same observation could apply to American ports in cities such as Newport.

<sup>41</sup> Jonathan Sassi, “With a Little Help from the Friends: The Quaker and Tactical Contexts of Anthony Benezet’s Abolitionist Publishing,” p. 36.

<sup>42</sup> *ibid*, pp. 36 and 42. For example, Benezet “turned the political controversies of the mid 1760s to his advantage by linking the abolitionist cause to the libertarian language of the Stamp Act crisis that was then in the air” (p. 47).

<sup>43</sup> For example, Thomas Clarkson considered *Some Historical Account of Guinea* to be ‘instrumental beyond any other book ever before published, in disseminating a proper knowledge and detestation of this [slave] trade’ (Sassi, p. 36. Quote taken from Clarkson’s 1808 history of the abolition of the slave trade).

developed and utilized scores of contacts amongst both Quakers and non-Quakers.<sup>44</sup> By using his contacts, Benezet was able to disseminate his writings and other antislavery discourse throughout the colonies and in England.<sup>45</sup> Furthermore, Benezet proved to be an effective lobbyist who persuaded English Friends to take the antislavery cause to the King and Parliament. He also learned “how to influence colonial legislation through collaboration with leading Friends [and others] and through orchestrating petitions drives that were supported closely by pamphlets aimed at the specific situation.”<sup>46</sup>

#### IV

Before the sudden emergence of the antislavery movement in England, there was a wave of successful antislavery initiatives in the colonies that would make up the first thirteen states. The ideology justifying the Revolutionary War was at odds with slavery and made this an excellent time to consider ending slavery. Maybe surprisingly, or maybe not surprisingly, it was Pennsylvania in 1780 that first enacted a law that would gradually eliminate slavery.<sup>47</sup> On the one hand, the debate over slavery had been going on here for almost a century, so it might

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<sup>44</sup> For example, Benezet cultivated a relationship with Benjamin Rush, a prominent Pennsylvania Presbyterian, and, in 1773, he requested that Rush write a pamphlet in support of legislation “to double the tariff on imported slaves in order to throttle the slave trade” (J. Earl Thompson, “Slavery and Presbyterianism in the Revolutionary Era.” *Journal of Presbyterian History*, Spring 1976, p. 126).

<sup>45</sup> “It was a rare achievement for the writings of an American Quaker to be published in England, but Benezet succeeded on account of the contacts and know-how that he had been accumulating for two decades” (Sassi, p. 48).

<sup>46</sup> *ibid*, p. 59.

<sup>47</sup> Although Vermont, which was an independent entity at this time and would become our nation’s fourteenth state, eliminated slavery in 1777.

seem logical that Pennsylvania would be the first colony to end slavery.<sup>48</sup> On the other hand, Pennsylvania was a Mid-Atlantic colony that was in many ways much like New York and New Jersey, which would not end slavery for another twenty years; furthermore, at this time the Quakers had little political capital. Their belief in non-violence made them suspect in the eyes of many Patriots, and they were certainly not positioned to lead any antislavery initiatives at this time—the Revolutionary War would not end for a few more years.<sup>49</sup>

The perception that slavery was wrong had spread well beyond the Quaker community, however, and George Bryan, a Presbyterian and prominent Philadelphia politician, would successfully guide a gradual emancipation bill through the Pennsylvania legislature in 1780. “The Pennsylvania Constitution of 1776 sidestepped the issue of slavery,” but by 1778, Bryan was pressing “the idea of an abolition bill on the legislature.” Not surprisingly, there was resistance to the bill, but Bryan persisted, and in March 1780, the legislature passed a gradual emancipation scheme. The Quakers provided background support for the effort. For example, “William Lewis, a Quaker lawyer in Philadelphia, was known during his lifetime as the draftsman of the abolition law,” and the bill’s “poignant preamble contained language suggesting that Anthony Benezet was also involved in an advisory capacity.”<sup>50</sup> The resolute Benezet supposedly

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<sup>48</sup> Note that I am categorizing the enacting of a gradual emancipation scheme as ending slavery. As Zilversmit notes: “The gradual abolition act of 1780 was a cautious document that protected the property rights of slaveholders and freed no slaves. But by prohibiting all slave importation and consigning children to servitude rather than perpetual slavery, the law and its amendments mandated that the institution would cease to expand and eventually expire” (p. 137). There were still quite a few slaves for quite a few years in states that had enacted gradual emancipation laws.

<sup>49</sup> “War brought so many problems for the Society of Friends—compulsory military service, confiscations, and even deportation—that members of the society were forced to devote themselves to self-preservation” (Zilversmit, p. 125).

<sup>50</sup> Nash and Soderlund, pp. 102-3.

even “interviewed all the members of the [Pennsylvania] assembly in an effort to obtain votes for the measure.”<sup>51</sup>

The Pennsylvania measure did much more than provide for the gradual abolition of slavery in Pennsylvania. It cemented antislavery sentiment in the state—according to Rush, by 1783, “the man who dares say a word in favor of reducing our black brethren to slavery is listened to with horror, and his company avoided by everybody.”<sup>52</sup> It also provided a template that other could follow. Within a few years, slavery was eliminated or on the path to being eliminated in all of the Northern states except for New York, New Jersey, and Delaware.<sup>53</sup> Massachusetts would eliminate slavery in 1783 through a judicial decision in the Quok Walker case.<sup>54</sup> Connecticut and Rhode Island would enact gradual emancipation schemes in 1784.<sup>55</sup> It would take quite a bit longer for New York and New Jersey to pass their own emancipation legislation and end slavery in the North.<sup>56</sup>

There seems to have been strong antislavery sentiment in New York well before 1799 when New York actually passed a gradual emancipation act. Unfortunately, the support was

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<sup>51</sup> Zilversmit, p. 131.

<sup>52</sup> Nash and Soderlund, pp. 113. Quote is taken from John Woods, ed., “The Correspondence of Benjamin Rush and Granville Sharp, 1773-1809,” *Journal of American Studies* 1 (1967).

<sup>53</sup> Although it is not clear how and when slavery was eliminated in New Hampshire. Zilversmit quotes Jeremy Belknap, a clergyman and historian, as maintaining in 1788 that the Negroes in New Hampshire ‘are all free’ (p. 117). However, the 1790 census reported 158 slaves in New Hampshire.

<sup>54</sup> Slavery was judged to be inconsistent with the state’s constitution.

<sup>55</sup> The Quakers and particularly Moses Brown were active in the Rhode Island initiative and worked diligently “to create a ground swell of public opinion.” Brown “emerged as a resourceful leader of the abolitionists. He feverishly produced antislavery articles for the *Providence Gazette* and distributed countless pamphlets against slavery and the slave trade” (Zilversmit, p. 120).

<sup>56</sup> Except, of course, for Delaware where slavery stubbornly persisted until after the Civil War.

“broad but shallow.”<sup>57</sup> In 1785, it looked as if New York might follow the example of Pennsylvania, Rhode Island, and Connecticut and enact a gradual emancipation law. There was at this time also a strong desire to limit the civil rights of blacks, in particular the right of suffrage. The New York Assembly recognized “that racial disenfranchisement was dangerous and undesirable; nevertheless, they refused to vote for emancipation without disenfranchisement. . . In the final analysis, emancipation was blocked by an Assembly which feared Negro suffrage more than it desired emancipation.”<sup>58</sup>

It would be another fifteen years before New York would enact legislation that would begin to end slavery. The Quakers, who had little political capital in post-Revolutionary War New York, could play only a limited role in this effort in part because they were “a much more marginal group in New York than Pennsylvania,” and in part because slavery’s defenders were able to identify abolitionism with Quakers and undercut the movement’s effectiveness.<sup>59</sup> Others would have to assume leadership roles in New York just as they had in Pennsylvania, and John Jay led the charge. Jay wrote the following after the 1785 emancipation legislation was defeated: “All the best men can do is, to persevere in doing their duty . . . leave the consequences to Him who made it their duty; being neither elated by success . . . nor discouraged by disappointments however frequent and mortifying.”<sup>60</sup>

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<sup>57</sup> David Gellman, *Emancipating New York: The Politics of Slavery and Freedom 1777-1827*, p. 46.

<sup>58</sup> Edgar McManus, “Antislavery Legislation in New York,” p. 210.

<sup>59</sup> Gellman, pp. 4 and 97. According to Zilversmit: “The Quakers, aware of the lingering legacy of hatred resulting from their failure to support the Revolution, were careful to play down their own roles in the abolitionist movement” (p. 166).

<sup>60</sup> Gellman, p. 59.

Jay and many others would persevere, sometimes at a great personal cost. John Jay's opposition to slavery cost him the 1792 New York governor's race, but he persisted, and New York finally passed a gradual emancipation scheme in 1799. New Jersey would follow with similar legislation five years later, and at this point slavery was on the path to extinction in most of the North.<sup>61</sup>

Zilversmit's excellent account of the First Emancipation ends with New Jersey's gradual abolition act of 1804, and this might be a reasonable place to bring our analysis of the First Emancipation to a conclusion. The Germantown Protest of 1688 had culminated in amazing changes throughout the North in little over a century. Just about all of these changes took place at the state level. Unfortunately, the movement stagnated. For it to have continued would have required a concerted national effort that was not forthcoming on the part of our Founders.

Our Founders, most of whom opposed slavery at least in concept, however, could not have known in 1804 that New Jersey would be the last state in the Union to voluntarily end slavery. They certainly understood that slavery was more entrenched in the South than in the North. They should have known, at least by the time of the 1800 census, that slavery was not dying out as many of them had hoped. They may or may not have appreciated that "the contagion of liberty" that highlighted the contradiction of slavery and liberty and had provided an impetus for First Emancipation successes had begun to dissipate by the end of the

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<sup>61</sup> By 1830, "only 2780 Negroes remained in bondage in the northern states, and the free Negro population [had] increased rapidly from just over 27,000 in 1790 to well over 122,000 by 1830." Note that, at this time, there were more than two million slaves in the United States, so less than one half of one percent of the nation's slaves were in the North. (Zilversmit, p. 222).

nineteenth century.<sup>62</sup> Many of them likely did not appreciate that ending the international slave trade would not end slavery because it would be replaced by a vibrant and insidious domestic slave trade. Finally, they could not have imagined that their failure to end the expansion of slavery would result in a bloody Civil War that would take 750,000 lives. We will now take a look at how our Founders dealt with slavery.

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<sup>62</sup> The expression, “the contagion of liberty” is taken from the title of Chapter VI of Bernard Bailyn’s Pulitzer prize-winning *The Ideological Origins of the American Revolution* (Cambridge, Mass: Harvard University Press, 1967).

## SECTION II

## Our Founding Fathers and Slavery

No feature of America's Revolution has disturbed the contemporary generation of historians more than the failure of the Founding Fathers to abolish slavery.

Howard Ohline<sup>63</sup>

The first part of this paper focused on the successes and lessons of the First Emancipation. An analysis of the First Emancipation helps us understand the need for patience and persistence in highlighting and combatting an injustice that is accepted by the larger community; to recognize the essential role of non-governmental groups in changing moral perceptions; and to appreciate the importance of principled political leadership in eliminating a practice that is now recognized as unjust by much of the larger community.

Unfortunately, the momentum of the First Emancipation slowed considerably during the first thirty years of our republic's history. In many ways, things went backwards with respect to slavery. In 1790, slavery was legal in eight states, but in 1820, slavery was legal in eleven states and would soon be legal in a twelfth. In 1790, there were about 700,000 slaves, but in 1820,

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<sup>63</sup>"Slavery, Economics, and Congressional Politics, 1790," p. 335.

there were more than 1.5 million slaves. The importation of slaves was outlawed in 1808, but it was replaced by a vibrant domestic slave trade.

This section of the paper will focus on our nation’s national leadership with respect to slavery. How should we assess the leadership of our Founding Fathers with respect to slavery? It seems there are actions that, even in the context of the times, could have been taken that might have gradually eliminated slavery and avoided not only the Civil War, but also ameliorated the difficulties with race that remain with us to this day. My inclination, nonetheless, is to be charitable in evaluating our Founders.<sup>64</sup> This is not because slavery was an insolvable problem or because our Founders should not have done better. Rather, I am uncomfortable that those of us who live in a society that cannot solve moral issues that should be much easier to overcome than slavery was—i.e., solving our chronic budget deficits or effectively educating our youth— too often find it too easy to be critical of those who somehow succeeded in bringing our nation into existence.<sup>65</sup>

I will now review national leadership on slavery from 1787, when our Founding Fathers painstakingly forged and then presented the Constitution to the states for ratification, to 1820, when the Missouri Compromise was adopted. All of our nation’s presidents and many other national leaders who served during this period can be considered Founding Fathers. This was an incredibly challenging period that saw our nation agree on a constitution, establish financial

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<sup>64</sup> I will use the term “Founders” and “Founding Fathers” loosely throughout this portion of the essay. In 1790, most of our nation’s important leaders were Founding Fathers. Obviously, as time went on, fewer and fewer of our national leaders fit that description.

<sup>65</sup> The examples I am giving may not seem to be moral issues, but we have absolutely no right to burden future generations with a horrific debt burden or to tolerate an educational system that leaves too many children so hopelessly behind that they will almost certainly never be equipped to deal with the challenges of the twenty-first century. These are not just policy failures; they are also moral failures.

credibility, define the role of the Supreme Court, double in size with the acquisition of the Louisiana Purchase, populate the western territories, and increase to almost ten million people by 1820 from less than four million in 1790. Our nation also survived difficulties such as those presented by the Alien and Sedition Acts, by Aaron Burr, and by the War of 1812.

Unfortunately, our Founders did not take actions that might have weakened and gradually eliminated slavery. By 1800, it was becoming obvious that slavery was not going to disappear as many of the Founders had expected. There were opportunities between 1800 and 1820 when slavery might have been reined in, but they were overlooked or ignored. Our Founder's inaction on slavery can be explained, but not excused, by recognizing some common flaws in human nature such as our tendencies to procrastinate, to become distracted, and to latch onto "solutions" that justify one's inactions on important problems.

I

When our Founding Fathers met in Philadelphia during the summer of 1787 to produce the Constitution, slavery existed in most of what would become the original thirteen states.<sup>66</sup> Slavery was problematic since its continued existence was clearly at odds with our Declaration of Independence, which justified the American Revolution and declared "all men are created equal" and have certain natural and "unalienable rights," including "Life, Liberty and the pursuit of Happiness." A majority of the Founders, including many of those who were slave-owners, were troubled by slavery and would have preferred that it had never existed. Slavery, in 1787,

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<sup>66</sup> At the time of our nation's founding, slavery was legal in every state except Massachusetts. According to the 1790 census, the number of slaves in the other twelve states ranged from 158 in New Hampshire (not counting any of the 16 slaves in Vermont, which was not a state until 1791 and whose land was claimed by both New York and New Hampshire) to 292,627 in Virginia. The census figures are available from the "Schedule of the whole number of Persons within the several Districts of the United States" (available at the United States Census Bureau website, census.gov).

however, was too well established, and the Founders had no practical way of eliminating it at that time. Slaves were men, of course, but they were also property, and property rights were an important right to our Founders and their intellectual forebears.<sup>67</sup> Race was also an important factor since some of the Founders believed that blacks were inherently inferior to whites. The document that our Founders produced never specifically mentioned slavery, but clearly allowed slavery to continue and also specified that the slave trade would remain legal until at least 1808. Furthermore, an important concession to the South provided it with disproportionate representation by counting slaves as three-fifths of a person in determining house seats and electoral votes. This, coupled with the South's tendency to vote as a bloc, gave the South much more political power than it would have had otherwise; maybe not surprisingly, four of our first five presidents were southern slaveholders.<sup>68</sup> Our Founders also agreed to a fugitive slave provision that protected the ownership of slaves even if the enslaved individuals managed to escape to a free state. These features led later abolitionists such as William Lloyd Garrison to proclaim that the Constitution was a "pact with the devil." Many current observers agree with Garrison and conclude that the Constitution is an immoral document that is not worthy of the reverence that many of us feel for it.<sup>69</sup> The historian David Waldstreicher even suggests that our Civil War was the inevitable result of our Constitution noting in his conclusion

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<sup>67</sup> For example, "no one ought to harm another in his life, health, liberty, or possessions" (John Locke, *Two Treatises*, Chapter 2, Section 6).

<sup>68</sup> This trend continued until the time of the Civil War. Most of our first fifteen presidents were southerners; others, such as James Buchanan and Franklin Pierce, were proslavery northerners.

<sup>69</sup> For example, Constitutional law professor Louis Seidman characterizes the Constitution as having "archaic, idiosyncratic and downright evil provisions." He blames the document for our broken system of government and considers it bizarre that we pay attention to a document formulated by "a group of white propertied men" who "thought it was fine to own slaves" ("Let's Give Up on the Constitution," *New York Times*, 30 December 2012).

to *Slavery's Constitution*: "Slavery did not itself cause the Civil War. Slavery's Constitution did."<sup>70</sup>

Collectively, these sentiments present quite an indictment of our Founding Fathers. Their Constitution was an immoral document that tolerated the enslavement of millions of Americans and caused the death of 750,000 Americans and a great deal of hardship for millions of other Americans three quarters of a century later.<sup>71</sup> Is it really fair, however, to conclude that the Constitution is an immoral document that caused the Civil War? Did our Founders mess up so badly? Clearly their Constitution could have been improved. It might, for example, have banned slavery and given women the right to vote. A Constitution with those provisions would not have been approved by nine states, and even Waldstreicher acknowledges that it is "accurate enough to say that the federal republic could not have been created in 1787-88 had not slavery been left alone."<sup>72</sup>

The question, accordingly, is not whether we would have been better off with a constitution that outlawed slavery but whether we would have been better off without a constitution, in which case slavery would still have been permitted in most states— an important difference being that these independent states could easily have been manipulated and exploited by foreign powers.

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<sup>70</sup> David Waldstreicher, *Slavery's Constitution: From Revolution to Ratification*, p. 157.

<sup>71</sup> Civil War deaths are based updated estimates from David Hacker. I am using the term "their Constitution" as opposed to "our Constitution" since the thirteenth and subsequent amendments were not part of their Constitution, but are part of ours.

<sup>72</sup> Waldstreicher, p. 101.

There are certainly cases in which one should not accept a compromise even if not accepting the compromise leads to a sub-optimal outcome in some important sense—certain principles should never be compromised—but Waldstreicher does not conclude that our Founders should have refused to propose a constitution that sanctioned slavery.<sup>73</sup> He does not dispute George Washington’s claim “that there could be ‘no greater evil than disunion,’” and he even praises the actions of New York’s Antifederalists during the ratification process, noting, “That they reached an accommodation with the federalists does not make them hypocrites or insincere about slavery; it makes them good politicians.”<sup>74</sup>

The understanding of the Constitution as pro-slavery also seems simplistic. It is true and probably not surprising that many Antifederalists opposed the Constitution because it sanctioned slavery. There is a difference, however, between temporarily tolerating a practice that already exists and promoting that practice. Importantly, many opponents of the Constitution objected on grounds that the document insufficiently protected slavery.

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<sup>73</sup> One could write an entire paper on this topic, but in an essay entitled “The Problem of Dirty Hands,” (*Stamford Encyclopedia of Philosophy*, (2014), C.A.J. Coady quotes Neil Levy who observed that politicians “must make deals [and] compromise with interests they abhor” (p. 4/23). Coady also notes the problem of extrication, which seems particularly relevant to slavery: “Politicians, and others, often find themselves in situations where they have inherited, or are otherwise constrained by, the decisions and policies of others (or even their previous selves) that they now judge unwise or even gravely immoral.” In these situations, “the best extrication strategy” might require a temporary continuation of the practice (p. 14/23). There needed to be an accommodation with slavery if we were to have a nation in 1789 and not several nations or even thirteen independent states that foreign powers could play off against each other. Furthermore, the Constitution provided an explicit mechanism to halt the slave trade in 1808, which was about the time that Great Britain halted its slave trade; this was also before the invention of the cotton gin and before the Haitian Revolution and Louisiana Purchase, which helped to make American, slave grown sugar a profitable enterprise, so there was good reason to believe that slavery was on the way to extinction. Our Founder’s accommodation with slavery was certainly defensible in 1787 and, even with the benefit of hindsight, their actions at the Constitutional Convention seem defensible today. One can take an absolutist position—never compromise a moral principle—but, probably not surprisingly, even moral absolutists, such as Aquinas or Kant, generally viewed slavery and race through the prism of their time. Aquinas justified slavery, and Kant viewed Africans as an inferior people.

<sup>74</sup> Waldstreicher, pp. 104 & 149.

Individuals such as George Mason and Patrick Henry believed that the Constitution could be used in ways that could end slavery.<sup>75</sup> Finally, none other than Frederick Douglass viewed the Constitution as an antislavery document. In an important 1852 speech, he challenged his audience to find “a single pro-slavery clause in it” and noted that its “principles and purposes [are] entirely hostile to the existence of slavery.”<sup>76</sup> Douglass might have been overstating the case, but it seems reasonable to conclude that the Constitution was neither pro-slavery nor anti-slavery.<sup>77</sup> It could not be otherwise. The document needed to be vague enough to satisfy different constituencies and to be ratified by at least 9 of the 13 first states. In a majority of these independent states, slavery existed and was not on the path to gradual emancipation.<sup>78</sup> There was also a sense, or at least a hope, amongst many of our Founders that slavery may have seen its heyday; most likely, it would start to gradually fade away, and the process of ending slavery could speed up in 1808 when the importation of slaves would be stopped. Our Founders simply could not have anticipated the industrial revolution and the demand for cotton that it would spawn, or have imagined that within fifteen years of our founding the nation would double in size with the acquisition of the Louisiana Territory, or have foreseen that slavery would, within a relatively short period of time, flourish in our nation’s capital.

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<sup>75</sup> Mason and Henry were correct: “The text [of the Constitution] could be interpreted to mean that Congress might regulate slavery or that only the states could control domestic slavery, or even that the national government was obliged to protect slavery. All of these interpretations were in fact expounded during the ratification debates” (Ohline, p. 337).

<sup>76</sup> Frederick Douglass, “What to the Slave Is the Fourth of July?” 5 July 1852 speech.

<sup>77</sup> Douglas was undoubtedly addressing those who viewed the Constitution as pro-slavery, a view that was adopted by the Taney Court in later decisions.

<sup>78</sup> In eight of the thirteen states slavery was both legal and not proceeding towards gradual emancipation at the time of the Constitutional Convention. These states were Delaware, Georgia, Maryland, New Jersey, New York, North Carolina, South Carolina, and Virginia.

Probably not surprisingly, historians understand the Constitution differently with respect to slavery and opinions range from Waldstreicher's, to those who view the Constitution as consistent with the principles of the Declaration of Independence, to those, such as Don Fehrenbacher, who understand the Constitution as much more nuanced with respect to slavery.<sup>79</sup> According to Fehrenbacher, the Constitution was neither pro-slavery nor anti-slavery, and the Constitution was carefully crafted so that it did not sanction slavery at the national level but instead permitted the individual states to continue to do so. It was what occurred later that led to actions that ultimately culminated in a Civil War. With this interpretation, there is a plausible set of events that might have occurred after the Constitution was ratified that would have led to our nation abolishing slavery without a Civil War.<sup>80</sup>

This interpretation does not give our Founders a pass with respect to slavery. We need to understand what happened after 1789. Many of our Founding Fathers would assume important leadership positions in our republic's early years. One might reasonably credit our Founders with crafting an amazing Constitution which has guided our nation for over two hundred years and still criticize their subsequent actions or inactions on slavery.

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<sup>79</sup> Waldstreicher's book includes an excellent "note on sources" that provides an overview of different understandings of the Constitution with respect to slavery (pp. 161-68).

<sup>80</sup> Waldstreicher understands Fehrenbacher as arguing "for the Constitution's neutrality and ambiguity; the proslavery aspects . . . mushroomed as a result of later events and implementations" (p. 163). This seems correct: Fehrenbacher, for example, notes: "The framers of the Constitution, dealing with slavery as an incidental but troublesome circumstance, ended by extending it a kind of shamefaced recognition that included a measure of protection, but they contributed little to defining its national status" (Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery*, p. 10). "The understood intent of the Constitution was shaped by [later] federal practice" (Fehrenbacher, p. 13).

## II

Interestingly, slavery became an issue almost immediately after the Constitution was ratified. The Quakers presented petitions to Congress with respect to slavery and the slave trade in 1790. The timing of these petitions was unfortunate in three respects. First, it might have been better if our fledgling republic had been a little better established before revisiting the slavery issue.<sup>81</sup> Second, these petitions reached Congress at about the same time as Hamilton's Report on Public Credit, which called for the federal government to assume the Revolutionary War debts of the various states. This proposal, which provided not only for the assumption of state debts but also for the redemption of government debt at face values was divisive, but its approval was an important first step in putting our nation on a sound financial footing and was particularly important to northern commercial interests.<sup>82</sup> Third, it would have been much better if some group other than the Quakers had been identified with the petition.<sup>83</sup>

Howard Ohline concludes that the slavery "issue in 1790 was ultimately determined by political priorities."<sup>84</sup> Essentially, northern congressmen who were opposed to slavery and believed that the Constitution did not preclude federal antislavery initiatives accepted the view,

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<sup>81</sup> A sentiment captured by Nathaniel Gorham who "was annoyed that the antislavery petitions were 'so zealously pushed in the infancy of the government and at a time when . . . they ought to have avoided everything that would tend to irritate,'" (Ohline, p. 356).

<sup>82</sup> The expression "not worth a Continental" illustrates how little financial credibility our nation had in 1790. It had defaulted on its debts and the nation was still struggling to recover from the inflation and other economic dislocations of the Revolutionary War.

<sup>83</sup> "Ostracizing Quakers from public discourse was a central priority of the proslavery counterattack. Southern speeches repeatedly disparaged Friends . . . Although Quaker energy was crucial to the gradual abolition cause in New York and elsewhere, identifying the cause with Quakers undermined its effectiveness" (Gellman, p. 97). There simply was not a Benezet available who would have found an indirect way to effectively advance the antislavery cause.

<sup>84</sup> Ohline, p. 359.

at least for the time being, that “only the states could abolish or in any way regulate slavery within their jurisdictions” in return for southern support of Hamilton’s initiatives.<sup>85</sup> This set a precedent and, accordingly, the “tendency of the national government to ignore slavery continued until a later generation of northerners [circa 1820] constructed their own antislavery view of the Constitution.”<sup>86</sup>

Ohline’s interpretation of events supports the notion that the Constitution was not proslavery. Ohline believes it was clear to many legislators at the time that Congress had the constitutional right to rein in slavery. The problem was not that they could not touch slavery but that they chose not to. As a result, they missed an opportunity “to establish the ideal that the new government did not approve of slavery and had some responsibility to end it, if not immediately, at least in the future.”<sup>87</sup> Accordingly, for the next thirty years little was done at the national level to end slavery.

One might excuse the Founders for prioritizing the credibility of the national government and the maintaining of cohesion amongst the different states in the earliest days of our Republic. Without cohesion and credibility, everything could have come apart. Furthermore, at this time, no one could have known that a precedent might have been established that would limit the national government’s ability not only to rein in slavery in general, but also the ability to limit the expansion of slavery for more than thirty years. This

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<sup>85</sup> *ibid.* Ohline’s interpretation of the 1790 antislavery debate is reasonable and has precedent. Fehrenbacher, for example, noted that the slave-trade clause in the Constitution has been viewed by some historians “as part of a broader compromise in which the New Englanders made concessions on slavery to secure southern concessions on commerce” (Fehrenbacher, p. 35).

<sup>86</sup> *Ohline*, p. 360.

<sup>87</sup> *ibid.*, 336

hardly exonerates the Founders, however; just a few years later, in 1793, they enacted a fugitive slave law favorable to slaveholding interests. This act permitted owners to forcibly retrieve slaves who had escaped into northern states and also put free blacks in these states at a greater risk of being seized and sold into slavery in the South on the grounds that they were escaped slaves. This had the effect, according to one historian, of transforming “the free territory [of the North] into one vast hunting ground.”<sup>88</sup> There was also, in 1793, no “economic [or other] quid pro quo from the South, as there had been in 1790.” Even worse, this legislation passed despite northerners dominating both houses of Congress. Granted, there was a fugitive slave provision in the Constitution and there was certainly a need for Congress to attempt to clarify how this provision might work in practice, but the North’s reluctance to insist on a more balanced law demonstrated, at least to some observers, that, by 1793, there was a “federal consensus” in place—“the national government [would] not interfere with slavery in the states and that support for slavery was part of the national compact necessary to keep the union together”—and that “a majority of northerners were not overly concerned about slavery even though they opposed the institution.”<sup>89</sup>

One might still defend the Founders as reasonably believing that slavery in the United States was on the gradual road to extinction. The cotton gin was not invented until 1793, and it

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<sup>88</sup> C. W. A. David, p. 22. David’s point seems like an exaggeration, however. Non-slave states and citizens of non-slave states were able to ignore or impede the Fugitive Slave Law of 1793 with few consequences.

<sup>89</sup> Quotes are taken from Paul Finkleman, “The Kidnapping of John Davis and the Adoption of the Fugitive Slave law of 1793,” p. 421. Finkleman attributes the term “federal consensus” to William Wiecek. The above analysis does not discuss some important nuances surrounding the debate. For example, the immediate impetus behind the Fugitive Slave Law was the kidnapping of John Davis, who was considered free by Pennsylvania law but a slave by Virginia law. This was after Pennsylvania’s governor Mifflin had appealed to President Washington for help after his attempts to have the kidnappers extradited to Pennsylvania failed. Davis’s kidnapping also shows that the seizure of free blacks was an issue before the 1793 Act.

might have seemed that slaveholding would become less and less attractive as time went by. The Founders also could not have foreseen the possibilities for slavery that would arise as a result of the Louisiana Purchase, which would eventually bring states such as Louisiana, Arkansas, and Missouri into the union. Any optimism about slavery's decline, however, should have begun to evaporate when the 1800 census was released. This census showed that there were about 900,000 slaves, an increase of 200,000 from the 1790 census. Slaves as a percent of the overall population declined slightly, but slavery clearly was not fading away.<sup>90</sup>

So it seems that our Founders, at least by 1800, either knew or should have known that their policies towards slavery were not going to gradually end slavery. Yet it seems that they continued on their course, which basically ignored slavery at the national level. We should not forget, however, that our country had shallow roots in 1800. The United States might easily have come apart at this time. Today's toxic political environment pales in comparison to that of 1800. The Federalists had passed the undemocratic Alien and Sedition Acts in 1798 and used them to intimidate and imprison those who opposed their policies. The Acts were unconstitutional, but how was that to be determined? At this point in our history, the notion of such acts being subject to judicial review by the Supreme Court had not been established and would not be until the *Marbury v Madison* case that would be decided several years later. Future presidents Jefferson and Madison responded by crafting the Kentucky and Virginia

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<sup>90</sup> Slaves as a percent of the population decreased slightly, from about 18 percent in 1790 to 17 percent in 1800. One might assume this was because the population of the North grew more rapidly than the population of the South. That is not the case, however. The North, excluding Delaware, had slightly more than half of the nation's population in both 1790 and 1800. The reason for the decrease in the percentage of the population that was slave was primarily due to the increase in free blacks. Undoubtedly, much of this increase came about as a result of manumissions. The number of "all other free persons" increased from 59,000 in 1790 to 104,000 in 1800. The number of individuals in this category increased in all states except for Rhode Island during this period.

Resolutions, suggesting that the states had the right to determine what was constitutional and ignore laws that they deemed to be such. This notion would continue to haunt our country until the Civil War. We were also in the midst of a “quasi-war” with France, and the federal government’s raising of two million in taxes led to a minor rebellion in Pennsylvania (Fries Rebellion). Finally the ruling Federalist Party was not only opposed by the Republicans, but had also split into its own factions, and George Washington was no longer around to remind the country of the evils of disunion. Needless to say, at this time the country was a mess and slavery was not near the top of the national agenda.

International moral opprobrium, at this point, was also typically not directed towards slavery, but towards the slave trade. As noted earlier, the term antislavery often did not mean opposition to slavery but instead referred to opposition to the slave trade. The Somerset decision might have ended slavery in England, but slavery would continue in the British colonies for several more decades. The same was true for French, Dutch, and Spanish colonies and for nations such as Venezuela, Peru, and Ecuador, which succeeded in becoming independent early in the nineteenth century. Slavery, in fact, would continue to legally exist in the Western hemisphere until 1888 when it was finally outlawed in Brazil. The pervasiveness of slavery does not justify the practice, but it does help us to better understand the view that slavery was a local issue.

Many northerners seemed content to have eliminated slavery in their own states.<sup>91</sup> Slavery was wrong, but it was a wrong that was up to Virginia, and South Carolina, and Georgia, and all of the other slave states to deal with or not deal with in a similar way that northern states, such as New York had done in 1799 and New Jersey would do in 1804. It might even have seemed reasonable at this time to believe that states such as Delaware, Maryland, and maybe even Virginia would follow a similar course over the next decade or two. Meanwhile, the states of Kentucky, in 1792, and Tennessee, in 1796, entered the Union as slave states and, even worse, antislavery sentiment was gradually weakening as memories of and appreciation for revolutionary ideology began to fade.<sup>92</sup>

So far, I have defended our Founders' actions towards slavery as understandable. Even if one absolutely despised slavery, one might justify national inaction on slavery on the basis that slavery would eventually disappear; or that it made sense to focus on more pressing issues; or that the Constitution left policies on slavery up to the individual states; or that the union was much too fragile to address the issue head on; or that there was no national or international consensus on slavery, which was still legal almost everywhere in the Western hemisphere.

### III

The United States, however, literally doubled in size in 1803 with the purchase of the Louisiana territory. Furthermore, this purchase was orchestrated by Thomas Jefferson, who advocated a limited role for the national government; Jefferson's understanding of the

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<sup>91</sup> Or, to be more accurate, many northerners were content to have taken steps that would gradually eliminate slavery in their own states.

<sup>92</sup> In 1800, there were 16 states, nine of which were slave states—legal slavery still existed in the North, but, for these purposes, states such as New York are considered non-slave states. The slave states at this time were Delaware, New Jersey, Georgia, Maryland, Virginia, North Carolina, South Carolina, Kentucky, and Tennessee.

Constitution did not seem to sanction such a purchase, but Jefferson recognized the importance of moving quickly—as opposed to waiting for an amendment to the Constitution—to take advantage of the extraordinary opportunity that came about because Napoleon needed to raise money to continue his struggle for European supremacy. Importantly, this purchase would seem to have created an opportunity for the national government to regulate or outlaw slavery in the Louisiana territory. After all, if it were constitutional for the national government to buy the territory, it would seem to be constitutional for the national government to govern the territory in a manner that was consistent with the nation’s founding principles.

To their credit, this is what our Founders attempted to do. John Craig Hammond notes that in 1804, Congress prohibited “both the international and domestic slave trades to the Louisiana Purchase territories.”<sup>93</sup> This law, however, was bitterly opposed by white Louisianans, many of whom were accustomed to having had no restrictions placed on their ability to own slaves and most of whom had no real loyalty to the United States. Hammond emphasizes that “the territorial expansion of slavery in the early republic has to be understood within a context of a weak but extended republic, trying to establish its place on a North American continent still contested by hostile European empires.”<sup>94</sup> Hammond goes on to suggest that Western settlers “exploited the federal government’s weaknesses . . . by demanding that legal sanction for slavery was the price of union.”<sup>95</sup>

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<sup>93</sup> Hammond, “They Are Very Much Interested in Obtaining an Unlimited Slavery.’ Rethinking the Expansion of Slavery in the Louisiana Purchase Territories, 1803-1805,” p. 354. Note that the Louisiana Purchase territories were huge and include not only all of what is today Arkansas, Missouri, Iowa, Kansas, and Nebraska, but also most of North and South Dakota and parts of several other states.

<sup>94</sup> *ibid*, p. 379.

<sup>95</sup> *ibid*.

Hammond's analysis seems accurate. New Orleans is about a thousand miles from Washington, DC—or about a three to four week trip in 1800—and it was not going to have a distant government dictate what it could and could not do with respect to slavery, particularly given the opportunity to grow sugar after the successful revolution in Haiti. From the national government's perspective, it did not make sense to push what is today Louisiana into the arms of a foreign power. In 1804, our republic had been in existence for only about fifteen years and had expanded rapidly during this time, despite its fragility. The tenuousness of our government at this time is difficult to imagine from the perspective of the twenty-first century, but it is also hard to fathom that, at this time, a Republican vice president of the United States fatally shot a prominent Federalist Founding Father in an illegal duel, or that there was a politically motivated impeachment proceeding against a Supreme Court justice, or that, in a few years, then former vice president and deadly duelist Aaron Burr would conspire to take control of much of the West. The focus of our Founders seems to have been on keeping the union together, and it is difficult to conclude that they were wrong. Congress did, however, continue to ban the international slave trade in Louisiana despite "warnings that the prohibition might well provoke a rebellion."<sup>96</sup> Finally, Congress considered but rejected a graduated emancipation scheme for Louisiana.<sup>97</sup>

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<sup>96</sup> Hammond, 361. Congress also prohibited foreigners from the Caribbean from emigrating with their slaves in Louisiana because they were concerned about another form of rebellion—one led by the slaves.

<sup>97</sup> This was opposed not only by southerners, but also by northerners such as John Quincy Adams, then a Federalist senator from Massachusetts. Adam's opposition to the measure may have reflected his concern about union or it may show how attitudes against slavery evolved in the North in the years leading up to the Civil war.

At this point, it becomes more difficult to justify our Founder's actions as reasonable. The 1804 ban on the domestic slave trade in the Louisiana territory demonstrates that our national leaders were aware of the barbarity not only of the foreign slave trade, which would be outlawed in just a few years, but also of the inhumanity and implications of the domestic slave trade. Their actions also demonstrated that our Founders believed that the national government had the right to set policies on slavery and on other issues in the Louisiana territory.<sup>98</sup> In other words, there was a reasonable basis to differentiate the purchased territory from the Mississippi territory, which later became the states of Alabama and Mississippi and was ceded to the United States by Georgia; or the Southwest territory, which later became the state of Tennessee and was ceded to the United States by North Carolina; or Kentucky, which had been part of Virginia. There was also a natural geographic differentiation between the Louisiana Purchase, almost all of which was west of the Mississippi River and the Mississippi and Southwest territories, which were east of the Mississippi River. It may not have been advisable to rein in slavery in the most southern part of the Louisiana territory—making laws that cannot be enforced would only weaken an already weak government—but this did not apply to most of the Louisiana purchase, much of which was unsettled in the early 1800s. There might have been antislavery initiatives that would have been acceptable for those who favored union, recognized our government's practical limitations, and did not want Louisiana to

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<sup>98</sup> For example, it was determined that English would be the official language of the territory. An 1803 Act of Congress determined how the Louisiana Purchase territories would be governed and stated: "all the military, civil and judicial powers, exercised by the officers of the existing government . . . shall be vested in such manner, as the President of the United States shall direct for maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property, and religion" (Elizabeth Brown, "Law and Government in the 'Louisiana Purchase' 1803-1804," p. 175). Certainly, slaves within the territory might have been considered property, but, our Founders believed that they had the right to prohibit new slaves from being brought into the territory.

fall under the influence of Spain or another European power. There might even have been a graduated emancipation scheme that would have been tolerated—even if it did not start for twenty years. This also would have been a great time to begin to pay attention to the domestic slave trade and look for ways to regulate and eventually eliminate this trade.

Donald Fehrenbacher suggests that our Founders might have been much better politicians in this case. He finds it “incredible that no one made an attempt to exclude slavery from the northern part of the Louisiana Purchase [north of what is today Louisiana] as an offset to allowing it in the southern part.”<sup>99</sup> Our Founders acted not as the good politicians in the sense that they had been in 1787-1789 when they somehow found a way to form a United States. Rather, they acted as “good politicians” in the sense that they found a way not to deal with the expansion of slavery, a problem that was serious and was only going to get worse.

#### IV

To summarize: At this point in the nineteenth century, it is increasingly difficult to justify our Founder’s inaction on slavery as being in the best interest of our country; indeed, our Founder’s lack of action even seems irresponsible, as Fehrenbacher suggests. Our Founders should have used the Louisiana Purchase as an opportunity to restrict slavery. Maybe, the best we can do is to explain their inaction in terms of human nature. The discipline of behavioral economics has provided many examples that illustrate how human behavior is irrational. We are hard-wired as a species and as individuals to do many things that are not right or not in our

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<sup>99</sup> Fehrenbacher, p. 261.

best long-term interests. The world we live in is simply not the one that we evolved for. One of our foibles is that we tend to procrastinate.<sup>100</sup>

Politicians also procrastinate and, in our age, this propensity can explain dynamics such as “underinvest[ing] in public infrastructure,” or the reluctance to “reduce the government deficit,” or the unwillingness to reform an unsustainable but popular social security program. This is not to suggest that today’s failures are morally equivalent to failing to extinguish slavery. I am only suggesting that politicians find it extremely difficult to take actions that require costs now and yield benefits later when they may not even be in office. To some economists, this is particularly the case “under a two-party system, [where] the ruling party becomes present-biased and time-inconsistent” [which just means that they are focused more on the present than the future]. Politicians tend to value present benefits and avoid present costs because they put “more weight on the flow of net social benefit resulting from the policy when it [their party] is in office than when it is out of office.”<sup>101</sup> In short, and not surprisingly, politicians “often procrastinate about implementing socially beneficial policies that carry upfront costs but yield long-term benefits.” Tackling something as controversial as slavery offered little in terms of present benefits.<sup>102</sup>

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<sup>100</sup> For most of our species’ existence, life was “nasty, brutish, and short.” Planning years ahead would have been silly for most of our forebears. It’s hardly surprising that we reach for the tasty desert despite our desire to lose weight or that we wait much too long to fund our retirement.

<sup>101</sup> One might expect that individuals qua politicians would be prone to procrastinate even more than individuals acting on their own behalf. If I choose to sacrifice now, presumably I or someone or something that I personally care about will benefit in the future. That same incentive, weak as it may be at times for individuals, is not nearly as strong for a politician.

<sup>102</sup> Quotes are from Taiji Furusawa and Edwin Lai, “A Theory of Government Procrastination,” pp. 1-2.

Thomas Jefferson, of all the Founders, is probably the most harshly criticized because his less-than-benign slave owning practices and his inaction on slavery were at such odds with the principles he espoused in the Declaration of Independence.<sup>103</sup> Paul Finkleman, for example, excoriates Jefferson in a chapter entitled “Treason Against the hope of the World: Thomas Jefferson and Slavery.” According to Finkleman, Jefferson may have opposed slavery in concept, but for him, “any cost [whether it be political or an extravagant lifestyle] of ending slavery, however low, was too high.”<sup>104</sup>

Those who procrastinate generally have little trouble justifying their inaction, and southerners who were troubled by slavery justified their inaction in different ways. Some, such as Jefferson, viewed slavery as akin to having hold of a wolf by the ear.<sup>105</sup> It probably was not a good idea to have grabbed hold of the wolf, but there was little choice since it was the English who brought the beast to America. In any event, it was an even worse idea to let go of the wolf, at least at this time; furthermore, I suppose that if you have a wolf by the ears there is also no reason to be particularly gentle with the creature. Jefferson remained confident that

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<sup>103</sup> Or his words that were deleted from the Declaration: “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 & 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 & sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or 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 on whom he has 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” (From [blackpast.org](http://blackpast.org), “The Deleted Passage of the Declaration of Independence,” 1776).

<sup>104</sup> Paul Finkleman, *Slavery and the Founders*, p. 131.

<sup>105</sup> Although Jefferson apparently did not actually use this term until about 1820.

the “hour of emancipation is advancing in the march of time” but believed the slavery problem was something for younger generations to solve.<sup>106</sup> Others, such as Madison, differentiated between the domestic slave trade and slave ownership. Slave ownership was a burden to be discharged responsibly.<sup>107</sup> Finally, there were still others, such as James Monroe, who latched onto unrealistic solutions: Why not send African Americans back to Africa? The attitudes and actions of these Founders can be contrasted to George Washington’s.<sup>108</sup> Washington viewed slavery as an individual matter, but he would actually free his slaves after his and his wife’s deaths and treat them well until that time.<sup>109</sup> It would have been terrific for the nation had Washington used his political and moral capital to push for a gradual end to slavery throughout the country, but Washington was not the type to aggressively push for any particular policy.<sup>110</sup>

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<sup>106</sup> This was in response to a letter from Edward Coles in which Coles “entreat[ed] and beseech[ed]” Jefferson to exert his “knowledge and influence in devising and getting into operation some plan for the general emancipation of slavery.” Jefferson responded: “This enterprise [of ending slavery] is for the young, for those who can follow it up and bear it through to its consummation. It shall have all my prayers, and these are the only weapons of an old man.” Coles responded by noting that Franklin fought to rid Pennsylvania of slavery at a time when he was older than Jefferson. (Kurt Leichtle and Bruce Carveth, *Crusade Against Slavery: Edward Coles, Pioneer of Freedom*, pp. 45-8: Letters were exchanged in July, August, and September, 1814).

<sup>107</sup> *ibid*, p. 43.

<sup>108</sup> Madison also supported the ACS. It should also be noted that Jefferson, Madison, and Monroe were never financially comfortable. Part of this is because they focused on politics; part of it is because each of them tried to maintain a lifestyle they could not afford; but part of it is also because the Virginia plantation system simply was not financially lucrative for many of its participants.

<sup>109</sup> Voluntary manumissions should not be discounted. They help account for the free black population being a rapidly growing category in the United States between 1790 and 1800 (see footnote 25).

<sup>110</sup> Much of Washington’s greatness is because of what he did not do. He was not a great battlefield general, for example, but he was a terrific commander in chief because he realized that the Revolution would not end so long as he could keep a viable Continental Army in the field; he learned not to confront the British head on after the Revolution almost ended in New York in 1776. He may not have been the greatest president in the sense of being a dynamic, hands on leader, but he was terrific in the sense that he voluntarily left office after two terms and that he avoided entangling alliances with foreign powers.

Kenneth Morgan offers a different explanation for Washington’s inaction on slavery. For Morgan, it is not Washington’s temperament but “because he was committed to the unity of the new nation and realized all too

Furthermore, Washington died in 1799, and at that time, it may have still been reasonable to believe that slavery was slowly dying. There is an argument that our Founders were not so naïve as to believe that slavery was disappearing; the problem was that they did not know what to do about it.<sup>111</sup> This interpretation can be squared with my view that there were times, such as in the 1790s, when the Founders probably could not do much about slavery. There was also no time before 1820 when it seems that slavery could have been eliminated. My point is that there were at least a couple of times—particularly after the Louisiana Purchase and when the international slave trade was banned—that the Founders might have taken actions that would have curtailed the spread of slavery. This would have made it much easier to ultimately eliminate slavery.

There are, however, other ways of framing the slavery issue. Maybe we are asking the wrong questions.

V

William Freehling suggests that we focus not on the actions that our Founding Fathers did not take to end slavery, but rather focus on the actions they took that impeded the spread of slavery and ultimately helped to end slavery. Freehling observes that the abolitionist process proceeded slowly from 1776 to 1860 “because of what Jefferson and his contemporaries did not do.”<sup>112</sup> At the same time, according to Freehling, it proceeded “inexorably in part because

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well how Federal interference with slavery would tear the nation apart.” Furthermore, Washington “genuinely did not know what to do about the problem of slavery” (Morgan, p. 299).

<sup>111</sup> Donald Robinson argues that many of the Founders “knew perfectly well that slavery was not dying.” The problem was “that slavery was ungovernable” (Donald Robinson, *Slavery in the Structure of American Politics 1765-1820*, p. 3-4).

<sup>112</sup> William Freehling, “The Founding Fathers and Slavery,” p. 82.

of what they did.” Freehling wishes to emphasize what our Founders did, not what they did not do. Freehling’s approach makes sense: It is almost always too easy to discount the achievements of accomplished individuals by focusing on what they did not do or what they might have done better rather than recognize their successes. Our Founders’ accomplishments with respect to slavery included not only the successes of the first emancipation, but also the enacting of federal legislation that prohibited slavery in the Northwest Territories; the maintaining of the prohibition in these territories; the ending of the slave trade in 1808; and the encouraging of individual manumissions, which had the effect of continually “pushing slavery south.”<sup>113</sup>

Accordingly, to suggest that the Founders in general and Thomas Jefferson in particular did nothing to help end slavery dramatically overstates the case. There is a sense in which both Freehling and our Founders’ critics are correct. Without the anti-slavery successes that Freehling highlights, it is unlikely that the United States would have eliminated slavery by 1865.

Those who wish to criticize the Founders, however, can not only chastise the Founders for what they did not do but can also downplay their accomplishments. For example, the prohibition of slavery in the Northwest Territories was not vigorously enforced: There was slavery in the Northwest Territories well past 1787 despite the clause in the Northwest Ordinance that prohibited slavery. The successes of the First Emancipation, admirable as they

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<sup>113</sup> *ibid*, p. 91. The Northwest Ordinance was passed by the Continental Congress in 1787 prior to the creation of the United States but reaffirmed in the first session of Congress. Furthermore, “in 1784 Jefferson drafted a congressional ordinance declaring slavery illegal in all Western territories after 1800” (Freehling, p. 87). This proposal would have become law—but for the absence a legislator from New Jersey who was sick the day of the vote—and had this legislation passed, slavery would possibly (although there would undoubtedly been initiatives to overturn this provision, and these initiatives might very well have succeeded) have been prohibited in states such as Alabama and Mississippi. On the other hand, as we will see, slavery could have been established in states such as Indiana and Illinois despite the Northwest Ordinance.

may be, took place in the North, which had much less slavery than in the South. The international slave trade, horrible as it was, may have been outlawed, but by 1808 there was no need to import additional slaves from Africa. Furthermore, the ending of this trade only made the slaves owned by powerful Virginians, such as Jefferson, more valuable than they would have been had the slave trade continued.

There is, however, also a sense in which both the detractors and Freehling are wrong: The detractors can be criticized for not acknowledging the incredible antislavery accomplishments of our Founders. Freehling, on the other hand, might be criticized for not recognizing that the accomplishments of our Founders with respect to slavery, for the most part, took place before the United States existed as a country. Our Founders did little on the national level to eliminate slavery after 1790.

This observation might seem obviously incorrect at first glance. On one hand, slavery was clearly a contentious issue from the time of our nation's founding until the Civil War, and our Founders anti-slavery efforts did not stop circa 1800. Legislation that outlawed the slave trade was overwhelmingly passed in 1807 and became effective in January 1808; manumissions occurred for as long as slavery was legal; and the battle over slavery in the Northwest Territory continued into the 1820s. On the other hand, the outlawing of the slave trade in 1808 was a non-issue that easily passed Congress. Part of the reason for this is that there was, in a real sense, a commitment made on the part of the Founders in 1787 to outlaw the foreign slave trade. Most of them would have preferred to have done this in 1787, but they reluctantly agreed to delay outlawing the international slave trade for twenty years at the insistence of South Carolina and Georgia. The outlawing of the slave trade in 1808 should not be viewed as a

new initiative, but as the carrying through of a pre-commitment that the Founders had made to themselves and their new nation in the late 1780s.<sup>114</sup> The battle against slavery in Indiana and Illinois was won, as we will see, not because of nineteenth-century actions on the part of the Founders, but because of the efforts of local anti-slavery advocates. Finally, the pushing south of slavery had more to do with the expansion of slavery into the South and West and with the domestic slave trade than it did with manumissions. There were, for example, many more slaves in Virginia in 1820 than there were in 1790.<sup>115</sup> We will now examine slavery in the lands covered by the Northwest Ordinance and then take a look at the slave trade.

## VI

The Louisiana territory was not the only western territory at this time that was agitating for the expansion of slavery. Similar initiatives were taking place and generally succeeding throughout the west.<sup>116</sup> The Indiana territory was no different in this respect.<sup>117</sup> This territory

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<sup>114</sup> Pre-commitment is a powerful psychological tool that helps individuals and institutions do what they should and what they wish to do but might otherwise not do and has applications in many spheres. An individual who likes to gamble, for example, might pre-commit to losing not more than say \$100 by limiting the cash he/she brings into a casino. A central bank might pre-commit to keeping inflation within a certain range, and a general, such as William Sherman, might pre-commit his troops to living off the land by ignoring supply lines when he marched from Atlanta to Savannah. Pre-commitment does not always work as our nation found out when it faced the “fiscal cliff” in 2012. There is a great deal of literature on this topic (e.g. “Precommitment by central bank independence,” *Open Economies Review*, 1991, Volume 2, Issue 2, pp. 95-112; Dan Ariely and Klaus Wertenbroch, “Procrastination, Deadlines, and Performance: Self-control by Precommitment,” *Psychological Science*, May, 2002, pp. 219-224).

<sup>115</sup> There were about 300,000 slaves in Virginia in 1790; by 1820, there were about 425,000 slaves, and by 1850, there were about 450,000 slaves (Source is United States Census Bureau, *A Century of Population Growth, From the First Census of the United States to the Twelfth, 1790-1900*, Table 60, p. 133).

<sup>116</sup> “Between 1787 and 1821 only three western free states (Ohio, Indiana, and Illinois) entered the union, while six western slave states (Kentucky, Tennessee, Louisiana, Mississippi, Alabama, and Missouri) were admitted” (Finkleman, “Evading the Ordinance: The Persistence of Bondage in Indiana and Illinois,” p. 44, footnote 68).

<sup>117</sup> The Indiana territory originally included what are now the states of Illinois, Wisconsin, and Indiana and also included much of what is today Michigan.

was subject to the Northwest Ordinance and, accordingly, slavery was nominally illegal here. That did not mean, however, that there were not slaves in this region or that slavery might not have become legal in some of the states that were later carved out of this territory. As in Louisiana, slavery had existed here for years, and the Ordinance was never understood as requiring existing slaveholders in the territory to free their slaves.<sup>118</sup> The territory was sparsely populated, and the real issue was how rapidly slavery would expand in the region. Residents of the territory repeatedly, from 1787 through 1807, petitioned Congress “to modify or amend Article VI [of the Northwest Ordinance]”. They argued that their amendment, if approved would “keep slaveowners from moving to the Spanish side of the Mississippi,” facilitate the development of the region, and help diffuse “slaves throughout the West.”<sup>119</sup> Congress resisted these changes—again there was, at least to some extent, a pre-commitment on their part— but territorial governors Arthur St. Clair and William Henry Harrison interpreted the ordinance in ways that were favorable to slaveholders.<sup>120</sup> It became legal for a slaveholder to bring a slave into the territory and have him or her sign a lengthy indenture agreement for as much as ninety-nine years. This law “produced an unfree labor force that differed little from slavery in name and probably not all in application.”<sup>121</sup> The reality was that slavery not only

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<sup>118</sup> At least since the early 1700s according to both Edstrom, “A Mighty Contest” and Dolinar, *The Negro in Illinois*. According to Dolinar, p. 6, Illinois was also part of the province of Louisiana in the early 1700s.

<sup>119</sup> Finkleman, “Evading the Ordinance,” pp. 22-25.

<sup>120</sup> Individuals were permitted to maintain the ownership of slaves that they brought into the state; indentured servitude laws were enacted that had the same effect as making someone a slave.

<sup>121</sup> Donovan Weight, “Begging for an Irremediable Evil: Slavery, Petitioning, and Territorial Advancement in the Indiana Territory. 1787-1807,” pp. 319-320. In theory, the slave could refuse to sign the contract if she knew what she was signing and had the courage to resist her master’s instructions, but that would not result in her freedom. “The slaveholder [then] had sixty days to take the slave back to slave territory and sell him or her.”

existed, but also expanded in Indiana and Illinois although it never became as entrenched as it did in places such as Louisiana and Mississippi. This was not because of any actions taken by the national government to prevent slavery from becoming better established. Rather, credit belongs to local anti-slavery advocates whose efforts ensured that the push for slavery never quite garnered enough support.

Edward Coles, a Virginian whom we mentioned earlier, played a significant role in keeping slavery out of Illinois where it had the best chance of becoming entrenched. Coles was not a Founding Father, but was a Virginian who served as a secretary to James Madison during Madison's presidency. Coles detested slavery and was thoroughly disgusted with the lack of antislavery initiatives on the part of some of our nation's Founding Fathers such as Madison, Monroe, and Jefferson. When Coles inherited slaves that could not legally be manumitted per Virginia law, he took his slaves to Illinois and emancipated them.<sup>122</sup> He later became the second governor of the state and led a courageous antislavery effort that kept Illinois from becoming a slave state. A second important Virginian was James Lemen who arrived in the territory in the 1780s and relentlessly opposed pro-slavery movements. There is an account that claims that Jefferson sponsored and supported Lemen's antislavery efforts but it is not accepted by most historians or supported by strong evidence.<sup>123</sup> Coles and Lemen are certainly

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<sup>122</sup> One can only speculate about how the laws of Virginia and other southern states that were intended to discourage manumission and antislavery activism had the unintended effect of keeping slavery from spreading into what would become the states of Indiana and Illinois. Antislavery Virginians such as Coles and Lemen emigrated to Indiana and Illinois because slavery was at least nominally illegal there, and their determined opposition to slavery helped to make slavery both *de jure* and *de facto* illegal. Had manumission been legal in Virginia, Coles probably would not have emigrated to Illinois and our country's history, could have been very different.

<sup>123</sup> Chapter 2 of *The Negro in Illinois: The WPA Papers* suggests that Jefferson both sponsored Lemen's move to the Indiana territory in the 1780s to combat slavery and privately supported him thereafter. This chapter entitled "slavery" was written during the WPA era by Arna Bontemps. James Edstrom "A Mighty Contest: The Jefferson-Lemen Compact Reevaluated" meticulously discredits this account. Edstrom concludes his paper by noting that

not the only heroes in the fight against slavery in this region, but they did provide some of the leadership that was critical to stopping slavery.

Slavery, nonetheless, was only narrowly defeated in Illinois, and we can only speculate about how different our nation's history would have been had slavery actually been legalized there. When Illinois became a state in 1818, Article VI of its constitution read: "Neither slavery nor involuntary servitude shall *hereafter* [my emphasis; this certainly suggests that slavery and involuntary servitude not only existed but was also sanctioned at the time] be introduced into this state . . ." <sup>124</sup>

Illinois would not have admitted as a state in 1818 had its constitution permitted slavery, but there was nothing that precluded the amending of a state's constitution after its admission to the union. <sup>125</sup> After Illinois was admitted as a state, there was a call for a constitutional convention to allow slavery in Illinois, and this attempt was defeated by an 1824 vote of 6,640 to 4,972. Credit for this goes not only to Coles and other antislavery leaders but also to demographics. The population of Illinois exploded between 1818 and 1824 and many of the newcomers were "non-slaveholding southerners, Yankees from the New England and the East," and others who had "little sentiment for slavery." <sup>126</sup> Our Founding Fathers might be credited with outlawing slavery in the Northwest Ordinance—had they not done so, it is likely

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the Lemen family's "service in the antislavery cause is documented and unimpeachable. . . However, the story of the Jefferson-Lemen Compact must ultimately be consigned to the realm of myth" (p. 211).

<sup>124</sup> Taken from Chapter 2, p. 10 of *The Negro in Illinois*, edited by Brian Dolinar.

<sup>125</sup> A point made by James Tallmadge whom we will discuss later.

<sup>126</sup> Robert Sutton, "Edward Coles and the Constitutional Crisis in Illinois, 1822-1824," p. 45. Sutton also notes that the slavery problem did not go away, and it would be twenty more years "before the courts would find the entire indenture system illegal."

that Illinois and maybe Indiana would have become slave states—but there is little that they did thereafter to ensure that slavery stayed illegal in this part of our country.

Our Founders did, however, act decisively to end the international slave trade.

Domestic and foreign antislavery advocates had, for years, lobbied against the particularly cruel African slave trade that forcibly took millions of Africans on a horrendous and often deadly trip to the west where those who survived would be enslaved for life, and by 1808 this trade would be outlawed by both the United States and Great Britain.

## VII

I have suggested that the 1808 prohibition on the importation of slaves should be seen as the carrying through of a 1787 pre-commitment on the part of our Founders and not as something that just occurred in 1807 and 1808. This does not minimize the importance of the actions that our Founders took in 1807. Freehling is absolutely correct in asserting that the prohibition of this trade facilitated the ending of slavery in the United States. This is true even though the prohibition was not enforced as vigorously as it should have been. Steven Goldfarb, for example, concludes that “very likely the abolition of the external slave trade was more important than any of these [other] three factors [manumission, the Northwest Ordinance, and the First Abolition] in the eventual abolition of slavery.”<sup>127</sup> According to Goldfarb, there may have been fifty or sixty thousand slaves illegally brought into the United States after 1808, but that number is insignificant compared to the million plus slaves imported into Brazil and the six

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<sup>127</sup> Stephen Goldfarb, “An Inquiry into the Politics of the Prohibition of the International Slave Trade,” p. 33.

hundred thousand plus slaves brought into Cuba and much lower than it would have been had the importation of slaves remained legal.<sup>128</sup>

We also should not conclude that this trade was ended because it was no longer “necessary.” We know now that slavery was able to expand without bringing in slaves from Africa, but Adam Rothman observes “it was not at all clear [in 1808] that the biological reproduction of the slave population would keep pace with the demand for slaves.”<sup>129</sup>

Thomas Jefferson, “in contrast to his record on slavery in general, proved effective and decisive in his opposition to the international slave trade.” Specifically, Jefferson pushed Congress to pass a bill that outlawed the slave trade at the earliest possible date it could be outlawed, January 1, 1808.<sup>130</sup> The Founders overwhelmingly agreed that the international slave trade should be ended: They disagreed on some important details, and, as usual, these were resolved in favor of the South, but, as of January 1, 1808, slaves could no longer be legally imported into the United States.<sup>131</sup>

Nonetheless, our Founders can be fairly criticized for not doing something to curtail the domestic slave trade.<sup>132</sup> Proponents of this practice often justified it on the basis of diffusion,

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<sup>128</sup> *ibid*, p. 32. Goldfarb is correct, but note that even if we assume that 2 million slaves were brought to the Americas between 1808 and 1860, the number brought to the United States was still about 3 percent of the total (60 thousand divided by 2 million), which compares to the 5 percent that came to North America between 1500 and 1820 (See footnote 15).

<sup>129</sup> Adam Rothman, “The Domestication of the Slave Trade in the United States.” Chapter 2 of Walter Johnson, ed., *The Chattel Principle: Internal Slave Trades in the Americas*, p. 35.

<sup>130</sup> Matthew Mason: “Slavery overshadowed.” *Journal of the Early Republic*, pp. 63-64.

<sup>131</sup> For example, what was the appropriate punishment for those who violated the ban? What happens to those individuals who were illegally brought into the country; and who enforces the ban?

<sup>132</sup> Our Founders concluded that they had no constitutional right to outlaw or regulate this trade. It is well beyond the scope of this essay to assess this position in any depth, but it seems that this position cannot be justified on

but it stretches the imagination to understand how the ability to move slaves to distant locales would somehow lead to the gradual end of slavery. The number of slaves who were sold dwarfed the number of those who were brought into the country from Africa.<sup>133</sup> The domestic slave trade may not have been as deadly or as cruel as the international slave trade, but it was still incredibly dehumanizing. Slaves were literally bred so that their offspring might be sold; families were ripped apart and slaves, many of whom had deep roots in a given locale, were often forced to move hundreds of miles away. The journey was not easy and slaves, who were typically chained together, often died from disease or exhaustion in making the journey.

Not surprisingly, there is a defense—I will call it the 1790s defense—that can be made for our Founder’s inaction on the domestic slave trade. Matthew Mason suggests that our Founders cared a good deal about slavery at this time. There were, however, more pressing issues that captured their focus. Aaron Burr’s conspiracy and the Napoleonic conflicts were playing out and might “thus be seen as two heads of the same hydra that many Americans saw threatening their Republic.”<sup>134</sup> Many Americans saw ‘foreign manipulation of the “clashing jurisdictions and jarring interests” of widely dispersed and doubtfully loyal frontier settlements’

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grounds of original intent, a careful reading of the Constitution, or precedent. In 1787, no one could have imagined how important the domestic slave trade would become (“It never entered the minds of most southerners that the Constitution gave Congress the authority to outlaw the domestic slave trade . . . slaveholders had no inkling of how it would burgeon in the next century” because of the cotton gin and the territorial acquisitions (Lightner, “The Founders and the Interstate Slave Trade, p. 48) so the issue really was not considered. Accordingly, there was no original intent on the part of the Founders with respect to the domestic slave trade: The text of the Constitution certainly provides the means with which the interstate slave trade could be regulated and curtailed: Finally, Congress’ initial vote on stopping the domestic slave trade in Louisiana would indicate that they thought that they had a right to do so; the fact that the ban was quickly overturned probably indicates that they also thought they needed an excuse not to face the issue going forward.

<sup>133</sup> As noted earlier, about 5 percent of the ten million Africans who were sent to the Americas came to North America. That is about five hundred thousand individuals. This compares to the million sent south between 1790 and 1860.

<sup>134</sup> Mason, “Slavery Overshadowed,” p. 80.

as a major threat.<sup>135</sup> “It was only in a second generation [at about the time of the Missouri controversy] that slavery [itself] became the prime threat to the federal union.”<sup>136</sup>

Mason’s point is well taken. The threats that he highlights were real. However, there is an important difference between our Founder’s reluctance to tackle slavery in the 1790s when there were also concern about union and when there were also more pressing issues, and their reluctance to rein in the domestic slave trade in 1807. Our Founders might have been justified in the 1790s in assuming that slavery was gradually disappearing, but that assumption was certainly no longer valid in 1807. Granted, the ideology that made our revolution possible was fading, but there was still common ground between North and South on the slave trade and analogies between the domestic and international slave trades could have been made.

We noted earlier that our Founders and antislavery advocates differentiated between slave owning and slave trading. Those who engaged in the international slave trade were not well regarded.<sup>137</sup> This distinction provided a wedge with which slavery could be attacked. Eliminating the international slave trade may not have eliminated slavery in the west, particularly since the practice was not outlawed by the Spanish or Portuguese, but it was an important step towards eliminating slavery.

Those who engaged in the domestic slave trade were also not well regarded. “Traders [even in the South] were often referred to [in pejorative terms such] as ‘Soul Drivers,’ ‘Southern

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<sup>135</sup> *ibid.* Quote is from Peter Onuf.

<sup>136</sup> *ibid.*

<sup>137</sup> Or at least those who directly engaged in the slave trade were not well regarded. Those who participated indirectly by financing or supplying slave trade ventures were generally not viewed negatively.

Yankee.’ ‘Southern Shylock’ or ‘Negro Jockey.’<sup>138</sup> Generally in the South, social status correlated to economic status except for two groups: Slave traders and overseers. These individuals were necessary in order for slavery to continue to exist, but they were also “a constant reminder of the moral conflict inherent in the system, between the demands of the market and the dicta of sacredness of the family and of individual personality.”<sup>139</sup>

It seems that our Founders might have emphasized the distinction between slave ownership and domestic slave trading and used this distinction to regulate or eliminate the domestic slave trade. I do not blame the Founders for not making such a distinction in 1787 when it was the international slave trade, and not the domestic slave trade, that was an issue, but they might have focused on the domestic slave trade during the first decade of the nineteenth century when they recognized its significance. When John Randolph threatened secession and asserted his objection to any measure that would restrict the domestic slave trade, he justified his position because it would forbid slaveholders from “going to one State to another.” There is quite a difference, however, between allowing a South Carolina or Virginia slaveholder to move to Mississippi or Louisiana with his slaves and allowing a slave trader or absentee owner to move slaves from Virginia to a western state. It seems that with some

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<sup>138</sup> Tomoko Yagyu, “Slave Traders and Planters in the Expanding South,” p. 95.

<sup>139</sup> Wilbert Moore and Robin Williams, “Stratification in the Ante-Bellum South,” *American Sociological Review*, June 1942, pp. 343-351. Although the reality was more nuanced. According to Yagyu, there was a distinction between ‘slave traders’ and slave dealers.’ A wealthy plantation owner might dabble or deal in the slave trade without losing status (Yagyu, p. 90). Undoubtedly, the same ability to profit from the slave trade without losing status would apply to those who were on the periphery of the trade: i.e. those who financed or otherwise facilitated it.

effort, our Founders might have taken actions that would have curtailed and then eliminated the domestic slave trade at some future time.<sup>140</sup>

As it was, the domestic slave trade became the lifeblood of the southern slave system. Without this trade, slavery could not have survived and expanded in the way that it did. Steven Deyle notes the importance of this traffic: “Between 1790 and 1860 Americans transported more than one million African American slaves from the Upper South to the Lower South; [importantly] approximately two-thirds of these slaves arrived there as a result of sale.”<sup>141</sup> Deyle goes on to note that without this trade, “the institution [of slavery] would have ceased to exist.”<sup>142</sup> David Waldstreicher may have exaggerated quite a bit when he suggested that “slavery’s constitution” caused the Civil War, but David Lightner seems to be on much more solid ground when he suggests that “the interstate slave trade led to the Civil War.”<sup>143</sup> At this point, I will digress briefly and note that there is still a sensible defense that is consistent with the account I have given that can be made on behalf of our Founders.

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<sup>140</sup> Randolph, for example, was hardly the “defend any and all aspects of slavery” Southern politician who flourished after 1820. He advocated “state’s rights” on principle, not because it provided a way to defend slavery. Randolph fought to end the slave trade in Washington D.C. and manumitted his slaves when he died. According to Robert Forbes, he also “denounced the domestic slave trade on the floor of Congress and called for a federal investigation” after the kidnapping of a free black family from Delaware who had been kidnapped “came to the attention of the Washington public” (*The Missouri Compromise and its Aftermath*, p. 33). There might have been a way for antislavery politicians to work with individuals like Randolph. For example, could one have permitted slaveholders to send their slaves west so long as they moved with their slaves and banned the movement of slaves in other cases.

<sup>141</sup> Steven Deyle, “The Domestic Slave Trade in America: The Lifeblood of the Southern Slave System,” p. 93. Chapter 5 of Johnson, ed., *The Chattel Principle*.

<sup>142</sup> *ibid.* It also seems reasonable to conclude that this trade had more to do with Freehling’s “whitening of the upper south” than manumissions did.

<sup>143</sup> The actual title of Lightner’s book is *Slavery and the Commerce Power: How the Struggle Against the Interstate Slave Trade Led to the Civil War*.

Matthew Mason considers 1808 “the end of the Revolutionary phase of antislavery.” He observes that no one “was eager to appear as the slave trade’s defender, as the vote of 113 to 5 in favor of the ban also suggested.”<sup>144</sup> Mason also notes that “optimism was another hallmark of the Revolutionary and early national antislavery movement.” It might seem that, given the incredible progress made by antislavery advocates since 1775, our Founders were justified in hoping that progress would continue. Couple this with my loose definition of “Founders”—many of the important politicians in the first decade of the nineteenth century were hardly Founders, and one might conclude that it is not quite fair to criticize our Founders in the way that I have. Maybe, it was not unreasonable to suggest that it was up to the next generation to deal with the challenge of ending slavery. This would be a fair point if my criticism were intended to apply to each of the Founders: I do not think, for example, that one can fairly criticize individuals such as Benjamin Franklin, John Jay, or George Washington for not having done enough to end slavery. On the other hand, presidents three, four, and five were Jefferson, the drafter of the Declaration; Madison, the father of our Constitution; and Monroe, our last Founding Father to serve as President. For this reason alone, it seems more than reasonable to assert that our Founders collectively could have done better had they made the most of the opportunities available to them in 1803 and 1807.

## VIII

Unfortunately, much too little was done between 1808 and 1820 to rein in slavery. In our Founders’ defense, there continued to be more pressing issues, such as the War of 1812, which resulted in the White House being ransacked and burned by the British. There were also

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<sup>144</sup> Mason, *Slavery and Politics in the Early American Republic*, pp. 15-16.

no opportunities to curtail slavery as significant as those that had been presented by the Louisiana Purchase or the ending of the international slave trade.

The Federalist Party, which struggled to remain relevant after their 1800 election debacle, is sometimes thought of as an antislavery party. This assessment of the party is true in certain states but was not true at the national level. In New York, for example, it was the Federalist Party that drove the effort to end slavery, but in New Jersey, “the abolition of slavery was not a party issue.”<sup>145</sup>

In the early 1800s, there was not yet a strong sectional divide between the North and South, and the Federalists actually ran Charles Cotesworth Pinckney, a South Carolinian slaveholder, for president in both 1804 and 1808. Pinckney’s status as a slaveholder did not make him a de facto advocate of slavery—we need to remember that individuals such as George Washington, John Jay, and Benjamin Franklin had also owned slaves—but Pinckney was an unabashed slaveholder “who spoke forcefully at the Constitutional Convention in favor of both slavery and the slave trade.”<sup>146</sup> He was soundly defeated in both 1804 and 1808.

Thereafter, particularly during the War of 1812 that was unpopular in New England, some members of the Federalist Party engaged in a good deal of divisive and unproductive anti-slavery rhetoric that only hardened the positions of slavery’s defenders. “Slavery [seems to have] served mostly as a tool in sectional attacks against southern Republicans and as a way of

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<sup>145</sup> Zilversmit, p. 194. New Jersey had a Republican majority, and “a majority of the members of both parties in the legislature supported the bill—fifteen Federalists and twenty-nine Republicans voted for it, whereas four Federalists and one Republican opposed it” (p. 194). All other graduated emancipation initiatives were passed before there were Federalists or Republicans.

<sup>146</sup> Goldfarb, p. 29.

reassuring New Englanders of their moral superiority.”<sup>147</sup> Finally, after the Hartford Convention, the Federalists probably had as little political and moral capital in the view of the South and in the view of many Northern Republicans as the Quakers had after the Revolutionary War. The Federalists may have talked about slavery at the national level, but they seem to have been not only unable, but also disinclined to do much about it.

John Craig Hammond makes a strong case suggesting that throughout the period leading up to the Missouri Crisis, many anti-slavery initiatives were made by Northern Republicans and that these efforts were often frustrated by both southerners and Northern Federalists. Hammond believes “between the 1790s and 1818, it was a core group of northern Republicans—not New England Federalists—who stood at the vanguard of antislavery politics.” Hammond concludes that historians, at the very least, “must dispense with a simple dichotomy that pits generally anti-slavery Federalists against generally pro-slavery and anti-black Republicans.”<sup>148</sup>

## IX

One standard interpretation of the Missouri Controversy is that, so long as the Federalist Party was a threat to take control of the government from the Democratic Republicans, northern Republicans did not aggressively challenge slavery because they wished

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<sup>147</sup> Mason, “Slavery and Politics, pp. 58-59.

<sup>148</sup> John Craig Hammond, “Race, Slavery, and Party during the First Party System in the North,” pp. 1 & 6. Hammond offers many examples to support this conclusion. For example, it was “northern Republican’s unwillingness to go along with their southern colleagues [that] insured that Congress would not suspend Article VI” of the Northwest Ordinance, p. 2. “In 1805, New Jersey Republican James Sloan proposed a gradual abolition bill for Washington D.C. By a vote of 65 to 47 the motion failed to make it to the House floor for debate. While only six of eighteen northern Federalists voted for debate on Sloan’s motion, northern Republicans voted twenty-five to fifteen in favor, with the rest abstaining,” p. 5).

to maintain party unity. At the time Missouri applied for admission to the Union, the Federalist Party, for practical purposes, had ceased to exist. This allowed northern Republicans to challenge slavery without risking party unity. This sounds reasonable, but there are problems with this understanding. The Federalists had not posed a realistic threat to take power in years.<sup>149</sup> The party performed abysmally in every national election from 1804 through 1816 when it last fielded a candidate. This included 1808 when Jefferson's embargo helped throw the country into a terrible economic panic. Furthermore, as we noted earlier, Hammond makes a strong case that for years Northern Republicans did at least as good a job as Northern Federalists in challenging slavery.

Another interpretation credits James Tallmadge for his principled and pragmatic objections to admitting Missouri to the Union as a slave state. That also sounds reasonable, but it is not as if Tallmadge was the first individual to oppose the admission of a slave state.<sup>150</sup> Why did Tallmadge's effort resonate in 1818?

Yet another understanding is that the Missouri Controversy arose when the North realized that outlawing the slave trade would not end slavery.<sup>151</sup> One is hard pressed to

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<sup>149</sup> But, if I am going to invoke behavioral economics to help explain the behavior of our founders, I should note people tend to overestimate threats that have a low probability of occurring but are devastating if they do occur. People overestimate the likelihood of threats ranging from things such as terrorist actions to shark attacks. What matters for this account is not the actual probability of the Federalists winning the presidency after 1804, but the concern that Republicans had for this event.

<sup>150</sup> "To be sure, there were flurries of opposition to new slave states and territory before the Missouri debates. In the period surrounding the War of 1812, many northern Federalists raised such objections. Federalists in Congress pushed vigorously against not only admitting Louisiana as a state, but also President Madison's 1812 request to seize West Florida" (Mason, *Slavery and Politics*, p. 146)

<sup>151</sup> "The recognition of slavery in Missouri pounded the final nail into the coffin of the Revolutionary generation's faith that cutting off the [international] slave trade would lead to American slavery's natural death. It also revealed slaveholders' intransigent commitment to slavery." (Mason, *Slavery and Politics*, p. 228).

understand, however, why it took until 1819 for this realization to register. This understanding makes more sense if it is rephrased as the North realizing that outlawing the international slave trade would not end the expansion of slavery to the West.

Each of these explanations is defensible, and each of them can be fairly challenged. Most likely, the factors highlighted in all of these accounts played a role in waking the North and its politicians to the reality that slavery was rapidly expanding. Slavery, instead of being confined to the South, might become the norm in every part of the United States except the North. Even here, the barbarity of slavery would be continually on display as free blacks continued to be kidnapped and sent south with few consequences and as the slave trade flourished in our nation's capital.

Causation is difficult not only philosophically but also practically, and it seems reasonable to suggest that there might be other events that led to the Missouri controversy. One factor that has not been generally been credited with having a positive role in bringing about the Missouri controversy is the American Colonization Society ("ACS" or "The Society"). There are good reasons for historians to be uncomfortable with the Society, but the ACS certainly highlighted the slavery issue to much of the American public and highlights the growing racism that occurred in the 1800s; in our next section, we will briefly examine the ACS and consider how its formation might have contributed to the Missouri Crisis.

### SECTION III

### The American Colonization Society

Undesired effects are not always undesirable effects.

Robert Merton<sup>152</sup>

The congregation discovered after more than 20 years that  
Lemuel Haynes was a colored man.<sup>153</sup>

The first section of this paper focused on the successes and lessons of the First Emancipation. The success in gradually eliminating slavery in the North by 1804 was an amazing accomplishment that would have seemed highly unlikely at the end of the seventeenth century. The second section reviewed the actions and inactions of our Founding Fathers with respect to slavery from 1787 when they agreed on a Constitution to 1819 when the Missouri

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<sup>152</sup> Robert Merton, "The Unanticipated Consequences of Purposive Social Action," p. 895.

<sup>153</sup> Joanne Pope Melish, *Disowning Slavery*, p. 244. This illustrates the growing racism that took place in the North in the early part of the nineteenth century. Lemuel Haynes was a Revolutionary War veteran and pastor who had received an honorary M.A. degree from Middlebury College and had served a white congregation in Vermont for more than twenty years. His race apparently was not a problem in 1800, but was an issue by the 1820s and accounted, at least in part, for Haynes' being removed from his position. By 1820, it was becoming increasingly difficult for even the most talented African Americans to be accepted as equal citizens.

controversy erupted and slavery became the overriding national issue for the next four decades.

We know that slavery thrived during the early part of the eighteenth century and that little was done on the national level to limit its expansion. The section on national leadership did not discuss any national non-governmental organizations that were opposed to slavery and for good reason. There were no such organizations, or at least there were none that functioned effectively at the national level. We will now briefly consider the American Colonization Society, the first truly national antislavery organization, which was formed in 1816, and speculate about what role it might have played in bringing slavery to the forefront of the national agenda.<sup>154</sup>

We previously noted the importance of grassroots activism and non-governmental organizations, such as the Quakers, in bringing about new moral perceptions. It was the change in how slavery was viewed that made it possible to gradually end slavery in the North. Of course, it was politicians who enacted the legislation that actually ended slavery, but these actions came after slavery was generally considered to be a moral wrong. At the state and local levels, there were scores of antislavery organizations in both the North and the South and some of these, such as the Pennsylvania Abolition Society, worked effectively and tirelessly on behalf of slaves and free blacks. None of these organizations, however, seems to have had a national presence or significant national influence. Furthermore, some of these organizations were

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<sup>154</sup> 1817 is sometimes given as the date the ACS was formed. According to Horace Greeley, the ACS was organized in December of 1816 but not “formally constituted” until 1817 (*The American Conflict*, p. 68).

hampered by their ties to the Quakers, and many of them focused on improving the lot of those who had been freed.

Moral perceptions are never frozen in time. They continue to evolve or devolve for better or for worse, and the attitudes of whites towards blacks hardened during the first two decades of the eighteenth century. The North became increasingly racist between 1800 and 1820. There are different explanations for why this occurred, but Eva Sheppard Wolf has observed that, in the latter part of the eighteenth century, “environmental’ views of race” prevailed, but this view increasingly gave way to the view that Africans were inherently inferior.<sup>155</sup> This may have occurred, at least in part, because free African Americans, circa 1800, were generally ill prepared to function as citizens in nineteenth century America. This is hardly surprising, given, as David Brion Davis has noted, they had been treated like animals for a long time.<sup>156</sup> Nonetheless, this general unpreparedness most likely contributed substantially to the perception that Africans were biologically inferior and could be treated as such. Joanne Melish concludes that “the hardening ideology of ‘race’—innate, permanent difference, located within the body as part of each person’s essential nature—effectively contained and managed people of color, as had the old institution of slavery.”<sup>157</sup> The notion of inherent inferiority, of course,

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<sup>155</sup> Eva Sheppard Wolf, *Race and Liberty in the New Nation*, p. xiv.

<sup>156</sup> Davis, *The Problem of Slavery in the Age of Emancipation*, Introduction and Chapter 1 entitled “Some Meanings of Slavery and Emancipation: Dehumanization, Animalization, and Free Soil,” pp. 3-44. Davis emphasizes that people thought about and interacted with animals differently in the eighteenth and nineteenth century than they do today. The “animalization of blacks,” had them dominated and treated not as second class humans but literally placed in the same category as “horses, oxen, donkeys, mules, cows, goats, pigs,” p. 22.

<sup>157</sup> Melish, p. 164.

was not a new one and helped to justify slavery in the first place.<sup>158</sup> This view would later be buttressed by “scientific racism” that relied on insights from Darwin and would continue into the twentieth century.<sup>159</sup>

The ACS was a national antislavery organization formed in December 1816 with the support of prominent individuals in both the North and South. The Society did not evolve as a result of any sort of bottom-up effort. Rather, it was a top-down solution to the slavery problem that offered something to both the North and South. Northerners who opposed slavery but did not want inferior blacks in their back yard, so to speak, could embrace colonization as a humane cause that would put African Americans in an environment where they might thrive, and southerners, whether they supported slavery or not, could support colonization as a solution to the problem of free blacks in their midst.<sup>160</sup>

There are good reasons other than the Society’s racism for not wishing to credit the ACS with having had a meaningful impact on national policy with respect to slavery. By emphasizing the relocation of free blacks, the ACS deflected attention away from some of slavery’s worst

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<sup>158</sup> There was also a notion at this time, which I will not explore, that blacks were not so much inferior as they were irremediably degraded, or that blacks were both inferior and degraded. They might be able to function effectively in Africa, but they could never do so in the United States. For more on this, see Chapter 6 of *The Problem of Slavery in the Age of Emancipation*, pp. 144-66 and James Brewer Stewart, “The Emergence of Racial Modernity and the Rise of the White North, 1790-1840.” Stewart observes that in the early part of the eighteenth century whites were increasingly “coming to regard northern blacks as an innately ‘turbulent’ and ‘degraded’ race,” p. 189.

<sup>159</sup> The situation for black northerners would continue to worsen. Stewart observes that by 1838, after a period of “unrelenting mob terrorism against immediate abolitionists and African-American communities that swept the North between 1831 and 1838 . . . the North was rapidly evolving into a modern white supremacist political culture as people in the free states found themselves insolubly divided by pigmentation,” pp. 181-2.

<sup>160</sup> I appreciate Professor Sassi pointing out to me that many southerners perceived the ACS as a threat to slavery because of the role its agenda required of the federal government. Forbes noted that the success of the ACS would have required more cost “than anything the nation had undertaken before,” and would have required “a massive expansion of the scale and dynamism of federal power,” p. 32. The ACS, therefore, may have led to southerners being much more defensive about the Tallmadge amendment than they would have been otherwise.

features such as the domestic slave trade.<sup>161</sup> The organization also championed one more effort to find a too easy solution to a difficult problem. Colonization, like diffusion or like simply asserting that slavery would eventually disappear, seems to have been just another way to feel good about and to justify doing little at the present time in the hope that things would improve long term.<sup>162</sup> Finally, the organization showed an appalling indifference to the well-being of those who were colonized. According to one observer, “Liberian colonists apparently suffered ‘the highest rate of mortality ever reliably recorded.’”<sup>163</sup> This was something that the Society was willing to blithely explain away by blaming “the deceased for their own misfortune.”<sup>164</sup> The ACS, in short, can be fairly criticized in any number of ways.

There are reasonable defenses that can be made of the ACS. Arguably, the Society viewed slavery as immoral and sought to eliminate it; its proposed “solution” to the problem was not one that, at the time or even decades later, was viewed as unrealistic by sensible

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<sup>161</sup> Davis notes: “Ironically, and not accidentally, the focus on race as the major obstacle to emancipation diverted attention from the economy’s parasitic dependence on an immensely profitable labor system,” (*The Problem of Slavery in the Age of Emancipation*, p. 145).

<sup>162</sup> William Freehling challenges the notion that large scale colonization was impractical, and he may be right: “To most mainstream Americans in all parts of the country in the 1817-1860 period, the American Colonization Society was the best hope to secure an altogether liberated (and lily-white) American populace” (p. 25). This does not mean that the colonization scheme was practical, but Freehling goes on to suggest that it may not have been as impractical as we tend to think today. He notes that between 1830 and 1850, forty thousand slaves were taken from Africa to Brazil and Cuba each year so “the worldwide maritime fleet clearly could remove forty thousand American blacks yearly,” and probably many more given that “2 million Irishmen” arrived over a thirty year period (pp. 154-55). Freehling blames South Carolina, “the only significant southern opponent of the society,” and its threats of secession if Congress continued to consider the colonization scheme for shutting down consideration of the subject (p. 25).

<sup>163</sup> Eric Burin, *Slavery and the Peculiar Solution: A History of the American Colonization Society*, p. 148. Burin quotes demographer Antonio McDaniel and his source is *Swing Low, Sweet Chariot*, p. 104.

<sup>164</sup> *ibid*, 147.

people;<sup>165</sup> its racism, as we have seen, reflected the views of most white Americans in 1820; and the organization had some early antislavery successes, such as in returning individuals who had been illegally brought to the Americas to Africa and in strengthening the punishment for those participating in the international slave trade.

My interest in the ACS, however, is not in debating whether the organization was fundamentally proslavery or antislavery but in determining whether the organization might have helped in the fight against slavery. It would seem not. Even if one believes that the ACS was fundamentally antislavery, the organization did almost nothing to halt the growth of slavery and succeeded in sending less than 11,000 individuals to Liberia between 1820 and 1860.<sup>166</sup> It is difficult to make a case that the ACS fulfilled its mission in any meaningful way.

The Society's ineffectiveness is hardly surprising: The ACS may have developed local chapters throughout the country, but it was not a grassroots effort that took hold of the hearts and minds of people and sought to change moral perceptions about slavery or about certain aspects of slavery. It might better be thought of as a quasi-governmental organization, which sought to offend almost no one and succeeded mostly in obtaining publicity and governmental funding. The ACS actually held its first annual meeting on January 1, 1818 in the House chamber. The organization's ability to obtain federal government funding in the 1820s was an amazing accomplishment given the times, but this was a political feat that produced few benefits and was certainly not a moral victory.

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<sup>165</sup> According to Burin, "colonization played a vital role in the Civil War" as "President Lincoln repeatedly peddled emancipation and expatriation schemes to the loyal Border States" (p. 160). The ACS appears to have had a limited role in this effort, which went nowhere in any event.

<sup>166</sup> Burin, Table 2, p. 170.

If the ACS played a role in reining in slavery it would seem that this must have occurred early in the Society's existence when it was formed amid much fanfare and with the support of many prominent individuals. The timing between the ACS's formation in December of 1816 and the eruption of the Missouri controversy in February of 1818 at least suggests that there might be a connection between the two events. There is not a "smoking gun," however, that ties the two events together, and even asserting that such a connection is likely is quite speculative. There are many events in which there is a temporal but not a causal connection, and something as complex as the Missouri controversy is likely to have multiple causes.

How might we make such a connection? Social psychologists have demonstrated that our reactions to injustice do not always work as consistently as we might believe. We previously noted how behavioral economists have successfully challenged the notion that human behavior is fundamentally rational, and that this notion makes sense when one thinks about it. Something similar occurs in the ethical domain. John Doris and Stephen Stich note that "social psychologists have repeatedly found that the difference between good conduct and bad appears to reside in the situation more than the person."<sup>167</sup> Some of this is intuitive. It is hardly surprising, for example that a "passerby not in a hurry" is significantly more likely to help out someone who is in "significant distress than a passerby in a hurry."<sup>168</sup> Similarly, it is hardly surprising that our sense of moral revulsion is heightened the more we can see or feel a particular wrong. Benjamin Lay, for example, developed his hatred of slavery because of what he personally witnessed in Barbados. John Woolman's revulsion at having to write out a bill of

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<sup>167</sup> John Doris and Stephen Stich, "Moral Psychology: Empirical Approaches," p. 11/38.

<sup>168</sup> *ibid*, p. 10.

sale for a slave being sold by his employer was instrumental in turning him into an antislavery activist.

Some of the findings of social psychologists, however, are less intuitive: For example, how is it that “subjects were 5 times more likely to help an apparently injured man who had dropped some books when ambient noise was at normal levels than when a power lawnmower was running nearby.” We do not know for sure but it seems to make sense that noise, whether literal or figurative, distracts us from what we should be doing.<sup>169</sup>

As we noted earlier, there was quite a bit of background noise during our republic’s early years. Fortunately, in 1818, there was little noise—there were no wars or threats of war (other than the First Seminole War in Florida) and the animosity between the Federalists and the Republicans had abated to the extent that this period was inaptly dubbed the “era of good feelings” by the Federalist Benjamin Russell following President Monroe’s good will tour. There is also a good deal of truth to the expression that any publicity is good publicity. The ACS generated a great deal of publicity in its early years and it would have been almost impossible for almost any lawmaker not to have been more focused on slavery than he would have been otherwise.

Combine a low noise environment with a heightened sensitivity to slavery, and it does not seem so surprising that James Tallmadge’s well thought out objection to the admission of Missouri to the Union as a slave state resonated with many northerners. This was certainly not the intent of the ACS—many of its founders would have been horrified at the notion the Society

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<sup>169</sup> Two of the explanations offered are “that high levels of ambient noise produce attenuation of attention to peripheral cues, that is, those not related to central, ongoing activities and concerns” or stress. In other words, noise can lead us to focus on central concerns or cause stress that limits our effectiveness (Kenneth Matthews and Lance Canon, “Environmental Noise Level as a Determinant of Helping Behavior,” p. 575).

might have helped to bring about the Missouri Controversy—and it is not the conclusion of most scholars who have studied the ACS, but it seems at least worthy of consideration.<sup>170</sup>

Jim Powell reminds us that no constitution can continue to persist “among people of ‘fundamentally differing views.’” It is not only the text of a constitution but also the commitment to “shared principles” that makes it work. In 1787, there appeared to be at least a consensus that slavery was inconsistent with our nation’s fundamental values—the values that led to a successful revolution and are espoused in the Declaration of Independence. There may not have been a consensus on how and when to extricate ourselves from slavery, but there was at least an acknowledgement amongst many of our founders that slavery was wrong. By 1820, there may have been a general agreement amongst whites that blacks were inferior and could be treated as such, but, for the North, this did not justify either slavery or the spread of slavery. Congressman James Tallmadge may or may not have been a racist, but he captured the view of the North when he suggested that slavery “in the abstract” was indefensible. He also struck a nerve in both the North and the South when he observed that if slavery’s extension were unchecked, “the evil can never be contracted.” By this time, many in the South had no desire to ever contract slavery. The 1780s’ consensus that slavery was immoral and needed to be ended at some point was rapidly breaking down.

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<sup>170</sup> Burin’s history of the ACS, for example, has one brief reference to the “Missouri Compromise” (If Kansas joined the Union without slavery, thought [Missouri Senator] Atchison, bondage would surely perish in Missouri. Unfortunately for Atchison, the Missouri Compromise of 1820 had banned slavery in the Louisiana Territory north of 36°30’ latitude. Nevertheless, Atchison and his southern allies persuaded Illinois Democratic senator Stephen Douglas to sponsor a bill that would repeal the long-standing agreement,” p. 31) and one to the “Missouri Crisis” (The ACS’s joy at securing federal support was short-lived, for the Missouri Crisis of 1819-21 changed the terrain of antislavery politics,” p. 15).

We know that our Founders' failure to contain slavery led to the Civil War. One cannot say with any certainty that, by 1820, it was inevitable that there would eventually be a civil war. For example, had a surprisingly strong antislavery effort in Virginia in 1831-32, succeeded, our nation might have been able to avoid war.<sup>171</sup> Of course, things would only get more difficult with respect to slavery. We know that the Missouri Crisis was resolved, at least for an extended period of time, with the Missouri Compromise that followed a year later, but the underlying issue of containing slavery would fester for years and only be resolved through a devastating civil war.

This seems like a good time to bring our consideration of the First Emancipation to a close. We might have ended our review of the First Emancipation in 1804 when New Jersey became the last state in the North to enact legislation that gradually banned slavery, or we might have extended our review into the early 1830s when the antislavery initiative in Virginia failed. The First Emancipation, in any event, is still a work in progress.

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<sup>171</sup> See Wolf, Chapter 6 entitled "The 'most momentous subject of public interest:' The Public Debate over Slavery and Emancipation, 1831-1832." Interestingly, Wolf concludes that it was during this period, and not during the Revolutionary War era that "antislavery sentiment in Virginia reached it maximum," (p. 234).

## CONCLUSION:

Howard Ohline's observation with which we opened section II might be restated as follows: "No feature of America's Revolution [should disturb] the contemporary generation of historians more than the failure of the Founding Fathers to" [limit the spread of slavery thereby assuring its ultimate elimination].

Why did our Founding Fathers not do more to limit the spread of slavery? One answer to the question is that our Founders, like all of us, were flawed beings. They procrastinated; they latched on to unrealistic solutions to difficult problems; and they were distracted by more pressing problems. Another answer is that too many of the ingredients that made it possible to eliminate slavery in the North were missing at the national level between 1787 and 1819. There were no grassroots initiatives that would lead to the perception that it was immoral to export slavery into the Louisiana Purchase territory or that the domestic slave trade should be eliminated as the international slave trade had been. There were no Anthony Benezets relentlessly and effectively agitating for antislavery legislation.

There are many commonsense lessons that can be drawn from and many more questions that that can be asked about this fascinating period in our history.<sup>172</sup> The key takeaways of the First Emancipation, for me, is that moral change, particularly as it applies to well-established practices, often begins at the grassroots level and progresses unevenly until it is internalized by much of the public. At some point, this change in perception is acted upon by politicians, and, at that time, "a new moral perception becomes effective in action."

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<sup>172</sup> I have included some of these lessons and questions in appendices II and III.

Moses Finley, whose observation on new moral perceptions becoming effective in action opened this thesis, also challenges us to make our “academical historical exercise[s]” relevant “to the world we now live in,” and I will close by considering two current challenges our society faces. Earlier, I mentioned our failure to properly educate so many of our youth as an issue that is typically viewed as a policy failure but might also be considered a moral failure. Does the First Emancipation tell us anything about this kind of challenge? I think it might tell us that at least some of the solution to the problem will begin at the grassroots level: Everyone is in favor of education, but the top down solutions will be in the form of initiatives, such as “race to the top,” and “no child left behind,” that sound good, are undoubtedly well intended, and are unlikely to succeed. On the other hand, the idea that it is immoral to allow any student to be taught by a teacher who is known to be incompetent or should be known to be incompetent is just starting to emerge and might become a moral perception that can at least start to make a difference.

Another significant issue that is directly related to the First Emancipation is the state of African Americans in the United States. Many of the statistics for African Americans are appalling—for example, one in three African American males will spend time in prison; an African American male’s chance of being murdered during his lifetime is much higher than for Whites or Hispanics; and African American educational achievements lag far behind those of whites.<sup>173</sup> On one hand, the reality may be better than the numbers suggest. Randall Kennedy, an African American law professor who focuses his research on “the interaction of race and

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<sup>173</sup> These statistics are well known and are readily available from many sources by googling “African American Statistics.” An interested reader might wish to read “The African American Population” that is available at [blackdemographics.com](http://blackdemographics.com) or “8 Important Statistics that Black America Needs to Recognize Now” that is available at [madamemoire.com](http://madamemoire.com)

legal institutions” strongly believes that “the trajectory of black Americans is an extraordinary trajectory.” He notes that it was only 150 years ago that “the great majority of black Americans were illiterate slaves” [and, we might add, only 50 years since the Civil Rights legislation of the 1960’s].

Kennedy doesn’t “want to be a Pollyanna”—he is quite familiar with the appalling statistics and observes that his “last book was called *The Persistence of the Color Line*”—but, nonetheless concludes that “African Americans have been coming on in an extraordinary way.”<sup>174</sup> Statistics can be misleading, and let us hope that Kennedy is correct. On the other hand, the First Emancipation should remind us that we cannot take racial progress or moral progress for granted. One does not need to be a social psychologist to recognize that “certain universal psychological processes build in an inherently human potentiality for prejudice.”<sup>175</sup> In other words, individuals and societies do not necessarily choose to be prejudiced. That occurs all too easily. Instead, individuals and groups, black as well as white, need to choose not to be prejudiced. That can be difficult, but we all need to stay focused on the issue and continue to search for pragmatic solutions. Finally, it is likely that any new moral perceptions that will assist in bringing the First Emancipation to a successful conclusion will originate at the grassroots level.

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<sup>174</sup> Quotes are from Craig Lambert, “Black, White, and Many Shades of Gray.”

<sup>175</sup> John Duckitt, *The Social Psychology of Prejudice*, p. 246. Duckitt concludes that although prejudice is “depressingly common” today “it is only the potential for prejudice that is inherently human, and this potential is realized only under particular social circumstances” (p. 262).

## The Germantown Protest (1688)<sup>176</sup>

On February 18, 1688, in response to fellow Quaker families in Germantown, Pennsylvania, who had decided to practice slavery, members of the Society drafted this first protest against slavery in the new world.

This is to ye monthly meeting held at Richard Worrell's.

These are the reasons why we are against the traffik of men-body, as followeth. Is there any that would be done or handled at this manner? viz., to be sold or made a slave for all the time of his life? How fearful and faint-hearted are many on sea when they see a strange vessel — being afraid it should be a Turk, and they should be taken, and sold for slaves into Turkey. Now what is this better done, as Turks doe? Yea, rather is it worse for them which say they are Christians, for we hear that ye most part of such negers are brought hitherto against their will and consent and that many of them are stolen. Now tho they are black we cannot conceive there is more liberty to have them slaves, as it is to have other white ones. There is a saying that we shall doe to all men like as we will be done ourselves; making no difference of what generation, descent or colour they are. And those who steal or rob men, and those who buy or purchase them, are they not alike? Here is liberty of conscience wch is right and reasonable; here ought to be likewise liberty of ye body, except of evil-doers, wch is an other case. But to bring men hither, or to rob and sell them against their will, we stand against. In Europe there are many oppressed for conscience sake; and here there are those oppossed who are of a black colour. And we who know that men must not commit adultery — some do commit adultery, in others, separating wives from their husbands and giving them to others; and some sell the children of these poor creatures to other men. Ah! doe consider well this thing, you who doe it, if you would be done at this manner? and if it is done according to Christianity? You surpass Holland and Germany in this thing. This makes an ill report in all those countries of Europe, where they hear off, that ye Quakers doe here handel men as they handle there ye cattle. And for that reason some have no mind or inclination to come hither. And who shall maintain this your cause, or pleid for it? Truly we can not do so, except you shall inform us better hereof, viz., that Christians have liberty to practise these things. Pray, what thing in the world can be done worse towards us, than if men should rob or steal us away, and sell us for slaves to strange countries; separating housbands from their wives and children. Being now this is not done in the manner we would be done at therefore we contradict and are against this traffic of men-body. And we who profess that it is not lawful to steal, must, likewise, avoid to purchase such things as are stolen, but rather help to stop this robbing and stealing if possible. And such men ought to be delivered out of ye hands of ye robbers, and set free as well as in Europe. Then is Pennsylvania to have a good report, instead it hath now a bad one for this sake in other countries. Especially whereas ye Europeans are desirous to know in what manner ye Quakers doe rule in their province — and most of them doe look upon us with an envious eye. But if this is done well, what shall we say is done evil?

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<sup>176</sup> This text was downloaded from Yale.edu.

If once these slaves (wch they say are so wicked and stubborn men) should joint themselves — fight for their freedom, — and handel their masters and mastrisses as they did handel them before; will these masters and mastrisses take the sword at hand and warr against these poor slaves, licke, we are able to believe, some will not refuse to doe; or have these negers not as much right to fight for their freedom, as you have to keep them slaves?

Now consider well this thing, if it is good or bad? And in case you find it to be good to handel these blacks at that manner, we desire and require you hereby lovingly that you may inform us herein, which at this time never was done, viz., that Christians have such a liberty to do so. To the end we shall be satisfied in this point, and satisfie likewise our good friends and acquaintances in our natif country, to whose it is a terror, or fairful thing that men should be handeld so in Pennsylvania.

This is from our meeting at Germantown, held ye 18 of the 2 month, 1688, to be delivered to the Monthly Meeting at Richard Worrell's.

Garret hendericks  
derick up de graeff  
Francis daniell Pastorius  
Abraham up Den graef

Appendix II: Some of the other Lessons of the First Emancipation (limited to two pages)

1. Major problems generally do not somehow just get resolved. Will Durant is correct in suggesting: “One of the lessons of history is that nothing is often a good thing” — many times, with a bit of reflection, it is clear that doing nothing would have been the right thing to do, but that is generally because the “problem” was not really a problem worth worrying about. Slavery, by contrast, was a significant moral problem and a significant policy issue for a long time; the practice was not going to just disappear on its own.
2. Even worse, major unresolved problems can only become much more acute. It was not the Constitution, but our Founder’s inability or unwillingness to restrict the domestic slave trade and stop the spread of slavery that led to the Civil War.
3. People procrastinate, and politicians are people.
4. Pie in the sky themes such as diffusion and colonization are at least as tempting as procrastination, in part, because one feels that he or she is actually doing something.
5. Framing Matters: There was a time when, at least to many individuals, being opposed to slavery meant being opposed to the international slave trade. Had the emerging domestic slave trade been effectively linked to the discredited international slave trade, the U.S. might have been able to eliminate slavery without a civil war.
6. Emotions play an important role in bringing about new moral perceptions. We might expect that social media, omnipresent video recordings and the like will speed up our acceptance of new moral perceptions.
7. Those who benefit from a particular immoral practice will find a way to justify it in their own minds. Nothing illustrates this better than the perception of slavery transitioning from a moral stain to a positive good in the minds of many southerners over a fifty year period.
8. Those who benefit from a particular immoral practice also have the advantage, at least for a period of time, in maintaining the practice. For example, it took Great Britain almost twenty years to outlaw the international slave trade despite overwhelming public support and it took New York until 1799 to enact gradual emancipation despite public support for the measure.
9. Single issue voters who vote as a bloc can inhibit moral progress. The South and South Carolina in particular wielded much more power than they should have because slavery was their primary issue.

10. A common argument used to impede a new moral perception from becoming effective in action is that there is no alternative to the present practice: For example, during the 1831-1832 debate over slavery in Virginia, John Thompson Brown commented: "Of what avail is it to demonstrate that slavery is an evil, unless it can be shown that it is possible to get rid of" (Eva Sheppard Wolf, *Race and Liberty in the New Nation*, p. 196).
11. Gradualism can be an effective tool in dealing with such arguments. It certainly worked in the North and could have been used to stop the expansion of slavery.
12. Assumptions need to be revisited but it is human nature not to question our assumptions, but to see our assumptions as confirmed even when the evidence should suggest otherwise. For too long, our Founders were able to convince themselves that the slavery issue was being resolved.
13. We tend to think of moral progress as being the natural state of affairs, but this should not be taken for granted. There was moral regress in the South between 1787 and 1860 on slavery and moral regress on racism in the North during the same period.
14. Well thought pre-commitments can be incredibly effective: Our Founder's 1787 pre-commitment to end slavery made it easy to follow through on this in 1807 and outlaw the practice in 1808.
15. Leadership matters a great deal: Unfortunately, there are never enough leaders like John Jay or Anthony Benezet.
16. There is a reason that *ad hominem* arguments such as those used against the Quakers are considered logical fallacies. There is also a reason that they are used so often—they are effective, particularly for those who wish to stop moral perceptions from becoming effective in action.
17. It is generally a good idea to negotiate an expiration date when one agrees to a compromise that is not quite fair in order to reach agreement. Things might have turned out differently had our Founding Fathers had a twenty or thirty year timetable on the three-fifths clause.
18. Finally, Churchill supposedly noted: "You can always count on the Americans to do the right thing, after they have tried everything else." His observation seems to be spot on with respect to the national actions our nation took on slavery.

The issue of slavery and emancipation in our country's early period raises a number of interesting questions that I do not have a satisfactory answer for, and below are just a few of them. I would appreciate any thoughts a reader might have or sources that they might refer me to (hclandis@gmail.com).

1. There appears to have been antislavery sentiment amongst Germans in what is now Germany circa 1700. The Germantown Protest mentions that allowing slavery in the Pennsylvania Colony damaged the Quaker reputation amongst both Dutch and Germans and made emigrating to Pennsylvania less attractive for these peoples. Is this accurate? If so, was this a sentiment of Dutch and Germans generally; or just of certain pietist sects that were more likely to settle in Pennsylvania because of its religious toleration? If it were true of Dutch and Germans generally, what is the source of their antislavery sentiment? Germans were not participants in the slave trade, but the Dutch certainly were.
2. James Tallmadge is a fascinating but elusive figure. What prompted him as a one term congressman from New York to so forcibly oppose the admission of Missouri as a slave state? Tallmadge, like many other individuals, abhorred slavery, but he helped to change history by challenging Missouri's admission to the union so long as it insisted on being a slave state. Is there a good biography on Tallmadge? Was Tallmadge influenced by the American Colonization Society? Why did Tallmadge choose not seek a second term? He was only forty-two years old in 1820 and would live for another thirty-three years.
3. Similarly, George Bryan, who, to the surprise of the Quakers, successfully spearheaded the gradual emancipation legislation in Pennsylvania that passed 1780, is also an elusive figure. Is there a good biography or other source of information on Bryan?
4. How in the world was Charles Cotesworth Pinckney able to become the Federalist candidate for president in both 1804 and 1808?
5. Before Missouri, was there a serious effort to not admit Louisiana or any other state to the Union because it permitted slavery? Mason suggests that there was (p. footnote,) but a reading of "The Admission of Louisiana into the Union" and "How Louisiana Became a State" does not confirm this. In fact, according to Lillie Richardson, a condition of Louisiana's becoming a state was the restricting of suffrage to white males. There was a concern that otherwise it was "highly probable

- that [given the demographics of Louisiana] a ‘person of color’ might be elected to Congress” (Richardson, p. 7/22).
6. Were there any credible attempts to form a national antislavery organization before 1816?
  7. How many of the Founders or prominent members of the ACS that were slaveholders manumitted their slaves and sent them to Africa during the first decade of the ACS’s existence?
  8. The New York Manumission Society worked effectively on behalf of African Americans. Yet, according to Gellman: “Historian Shane White calculated that over half of the signatories to the 1786 petition to the legislature, including society president Jay, owned slaves as of the 1790 census. Indeed, the disproportionately elite society membership owned on average 2.9 slaves in 1790, which is especially striking given that the average slaveholder in New York City in 1790 owned only two slaves” (Gellman, p. 59). It seems much too easy to just dismiss these members as hypocrites. John “Jay [the society’s first president] actually bought slaves with the stated intention of freeing them after they had worked off the value of their purchase price” (Gellman, p. 58). I would be interested in knowing more about how the Society members reconciled their practices with their antislavery convictions.
  9. “It is natural to ask, therefore, what was peculiar about both Quakers and the Delaware Valley that antislavery discourse might cohere there before it did anywhere else” (Brown, p. 25). One of the factors that Brown mentions is the Quaker “internal structure” (p. 28). This seems right: If the Quakers were less hierarchical, the voices of the Germantown protestors and others like them may never have gone beyond the local meetinghouse. If they were more hierarchical, the voices of the protestors may not have been heard at all. There must be papers that discuss this in more detail, and I would be interested in any recommendations.
  10. I would be interested in knowing more about how the slave trade was financed.

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