

Vindicating the Founders

RACE, SEX, CLASS, AND JUSTICE
IN THE ORIGINS OF AMERICA

Thomas G. West

ROWMAN & LITTLEFIELD PUBLISHERS, INC.
Lanham • Boulder • New York • Oxford

1997

1

Slavery

*T*he Declaration of Independence announces that “all men are created equal.” Yet by the end of the founding era, writes historian Peter Kolchin, “slavery in the Southern states emerged . . . largely unscathed. Indeed, . . . the slave population of the new nation in 1810 was more than twice what it had been in 1770.”

How should we understand the fact that America’s founding generation failed to abolish slavery? Does it mean, as Kolchin says, that America’s origins were “unfree”? If so, Abraham Lincoln was wrong to say in the Gettysburg Address that America was “conceived in liberty, and dedicated to the proposition that all men are created equal.” Was the Founders’ “sense of justice” flawed, as Thurgood Marshall, the first black appointed to the Supreme Court, complained? Was the founding a failure?¹

There are three leading charges against the Founders in the dominant scholarship of our time, and in the textbooks that follow that scholarship. This chapter will show that all three are false.

The first charge is that the Founders never really believed that all men are created equal. Scholars who promote this view admit that the Founders spoke the language of equal rights. They deny that the Founders meant what they said. In a widely publicized 1987 speech, Justice Thurgood Marshall said that in spite of their occasional noble words, the “prevailing opinion of the framers” was that blacks were “so far inferior, that they had no rights which the white man was bound to respect . . . and that the Negro might justly and lawfully be reduced to slavery for his benefit.” Conor Cruise O’Brien’s 1996 book on Jefferson agrees:

It is accepted that the words “all men are created equal” do not, in their literal meaning, apply to women, and were not intended by the Founding Fathers (collectively) to apply to slaves. Yet it is also accepted that the expectations aroused by this formula have been a force which eventually changed the meaning of the formula, to include women and people of all races.

Some conservative admirers of the founding agree that the Founders' view of equality did not condemn slavery. Historian Forrest McDonald writes, "The words equal and equality, as used in the eighteenth century, did not necessarily imply a conflict with the institution of slavery."²

The second charge is that the Founders believed that all men are created equal, but they did not know what that meant. In this view, it is conceded that the Founders believed in human equality. But they are said to have remained largely ignorant of what equality means. Historian Richard Bushman writes, "The significance of the Declaration's fundamental principles came to be understood only as American history unfolded."³ In other words, the Founders' words were more radical than they knew. They condemned slavery (and other forms of inequality) without quite intending to.

Current scholarship's third contention is that the Founders believed that all men are created equal, and they understood very well what that meant; they then betrayed their own principles, with open eyes. According to this accusation, they knew that slavery was wrong but refused to do much about it. In a leading high-school textbook, Edmund S. Morgan of Yale writes: "No great imagination was needed to see wider implications in Jefferson's axiomatic statement of human equality. Its relevance to black slavery was inescapable. . . . But Americans were not yet ready to face up to the racial meaning of their egalitarian creed. No Southern state provided for the legal abolition of slavery. Jefferson himself continued to hold slaves throughout his lifetime." In an even harsher critique, historian Paul Finkelman concludes that Jefferson committed "treason against the hopes of the world" because he was unable "to transcend his economic interests and his sectional background to implement the ideals he articulated."⁴

Did the Founders Believe Blacks Are "Created Equal"?

The first two of the three views just mentioned are the easiest to refute. The evidence against them is overwhelming.

All the Founders, even those who defended slavery, knew well that blacks are human beings. Hardly anyone claimed that slavery is right in principle. Each of the leading Founders acknowledged its wrongness.

Let us begin with the words of Harvard historian Samuel Eliot Morison, from his *Oxford History of the American People*, which has sold many thousands of copies since it was first published in 1965. He asked, "Did Jefferson think of blacks when he wrote, 'all men are created equal'? His subsequent career indicates that he did not; that in his view blacks were not

'men.'" Morison's formulation is evasive. He does not actually say that Jefferson believed blacks were not men. Morison was a competent historian. He knew very well that at the very moment Jefferson was writing the Declaration, he was not only "thinking of blacks" but writing that blacks *were* men. This passage appeared in Jefferson's first draft:

He [the king of Britain] has waged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere. . . . Determined to keep open a market where MEN should be bought and sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce.

Morison's procedure is typical of many critics of the founding. By intentionally omitting a crucial piece of evidence (Jefferson said that blacks were men), they cause the reader to imagine something that the historian hints at but never actually says (Jefferson believed blacks were not men).⁵

Morison says that Jefferson's "subsequent career indicates that he did not" believe slaves to be human beings. Let us see. In 1779, Jefferson proposed a law that would have provided for gradual emancipation in Virginia. In Congress in 1784 he proposed a law, which came within one vote of adoption, that would have banned slavery from the entire Western territory of the United States. In 1787 he published his widely read *Notes on the State of Virginia*, which contained in Query 18 the most eloquent denunciation of slavery written by anyone in the founding era. In 1807 President Jefferson publicly supported the abolition of the slave trade, urging Congress to "withdraw the citizens of the United States from all further participation in those violations of human rights which have been so long continued on the unoffending inhabitants of Africa." Throughout his life, Jefferson expressed his opposition to slavery in numerous private letters. In light of this "subsequent career," one can only wonder what depths of hostility (to Jefferson in particular or the Founders in general) would lead a capable historian like Samuel Eliot Morison to leave his readers with such a false impression about the author of the Declaration of Independence.⁶

In the years since 1965, Morison's hint has become orthodox doctrine among many scholars. Gordon Wood, widely regarded as the leading historian of the political thought of the American founding, asks: "What was radical about the Declaration in 1776? We know it did not mean that blacks and women were created equal to white men (although it would in time be used to justify those equalities too). It was radical in 1776 because it meant that all white men were equal."⁷ Surprisingly, Wood was actually

trying to *defend* the Founders with this statement. He was saying that the Revolution at least included poor white males. Wood's critics would not grant the Founders even this much. For them, the Revolution was not only antiwomen and antiblack but also antipoor. Both Wood and his critics take it as a given that blacks and women were excluded from the Declaration. Such is the state of the debate within the historians' guild.

Historian Jack Greene argues that the Founders really believed in liberty only for those who had the capacity to have dependents. Since slaves obviously lacked this capacity, Greene concludes, "The philosophy of civil rights championed by the American Revolutionaries was thus not . . . betrayed but fulfilled by their failures to abolish slavery and adopt a more inclusive definition of citizenship." Greene is unable to reconcile his odd opinion with the Founders' constant assertion that liberty is a natural right, a gift of God that *all* human beings are born with and of which *no one* may rightfully be deprived—whether he has the capacity to have dependents or not.⁸

Views like Wood's and Greene's are popularized in textbooks like John Garraty's *The Story of America*, written for eighth-graders: "By the first of his self-evident truths in the Declaration of Independence, . . . Jefferson certainly meant that *only free men were created equal*. Jefferson believed that for free men there were certain inalienable rights, God-given rights that no just government could take away for any reason. How could he, a slaveholder, claim that liberty was a God-given right of 'all men'?" Garraty, like Morison and Wood, is regarded by many as a leading historian. Yet in his telling, the Declaration becomes nearly incoherent. That is because Garraty confuses unalienable rights (possessed by everyone, whether or not the law acknowledges it) with legal rights (possessed only by those favored by the law). Garraty's Declaration says that only those recognized as free by the law deserve to be free ("only free men were created equal"). If Garraty were right, then the Declaration not only excludes black slaves; it justifies every form of government that has ever existed, however tyrannical. When Stalin ruled the Soviet Union, his subjects had fewer legal rights than Southern slaves. Only Stalin was free. If only free men are created equal, as Garraty's version of the Declaration has it, then no one in the Soviet Union except Stalin had an unalienable right to liberty! Like Morison, Garraty never mentions any of the massive evidence contradicting his assertion that Jefferson and the Founders excluded slaves from "all men."⁹

Contrary to what one would expect from these quotations, all the leading Founders affirmed on many occasions that blacks are created equal to whites and that slavery is wrong. Here are a few examples:

- George Washington: "There is not a man living who wishes more sincerely than I do, to see a plan adopted for the abolition of it."
- John Adams: "Every measure of prudence, therefore, ought to be assumed for the eventual total extirpation of slavery from the United States. . . . I have, through my whole life, held the practice of slavery in . . . abhorrence."
- Benjamin Franklin: "Slavery is . . . an atrocious debasement of human nature."
- Alexander Hamilton: "The laws of certain states . . . give an ownership in the service of Negroes as personal property. . . . But being men, by the laws of God and nature, they were capable of acquiring liberty—and when the captor in war . . . thought fit to give them liberty, the gift was not only valid, but irrevocable."
- James Madison: "We have seen the mere distinction of color made in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man."¹⁰

How Americans Came to See That Slavery Is Wrong

We have shown that the leading Founders said that blacks were human beings and that they said that enslavement was unjust because it denied blacks their natural human right to liberty. But did they really know what they were saying?

Earlier we quoted Richard Bushman: "The significance of the Declaration's fundamental principles came to be understood only as American history unfolded."¹¹ Bushman implies that the Founders did not understand their own principles. This view allows us to think well of them—up to a point. From our later eminence of enlightened wisdom, we graciously excuse them for a bigotry they could not help. After all, we assume, their minds were hopelessly imprisoned by their time.

This assumption is one of *our* typical prejudices. It discourages us from trying to understand the Founders on their own terms, as they understood themselves. As we will see, we distort the past when we impose on it our easy assumption that slavery would have been abolished immediately if the Founders had understood the full meaning of the right to liberty.

A glance at the years leading up to 1776 and independence will show that the Founders were not merely mouthing the equality doctrine.

Regarding the slavery question, we may call this period "the opening of the American mind."

John Jay was an early governor of New York and the first chief justice of the Supreme Court. He summarizes the change of opinion in America during the founding era:

Prior to the great Revolution, . . . our people had been so long accustomed to the practice and convenience of having slaves, that very few among them even doubted the propriety and rectitude of it. Some liberal and conscientious men had indeed, by their conduct and writings, drawn the lawfulness of slavery into question. . . . Their doctrines prevailed by almost insensible degrees, and was like the little lump of leaven which was put into three measures of meal.¹²

The whole Revolution was an antislavery movement—for the colonists. The political logic of the Revolution pointed inexorably to the eventual abolition of slavery for the blacks as well.

"Those who are taxed," wrote John Dickinson in 1768, "without their own consent, expressed by themselves or their representatives, are slaves. We are taxed without our own consent, expressed by ourselves or our representatives. We are therefore—SLAVES." Britain had denied the right of the colony legislatures to rule. That was the nub of the quarrel. The Americans said there must be no taxation (and no laws) without representation. In 1775 the Continental Congress declared that Americans "find nothing so dreadful as voluntary slavery" and are therefore resolved "to die freemen, rather than to live slaves."¹³

Why was slavery such a bad thing? Eleven years before independence the Massachusetts Assembly had resolved, "That there are certain essential rights of the British constitution of government, which are founded in the law of God and nature, and are the common rights of mankind . . . and that no law of society can, consistent with the law of God and nature, divest them of those rights." One such right is that "no man can justly take the property of another without his consent."¹⁴ When Britain refused to listen to the appeal to the British constitution, the colonists were compelled to turn entirely to "the law of God and nature" and "the common rights of mankind," universal principles inherent in human nature.

Bushman is right to this extent: Americans did come to understand the meaning of their principles more fully as the Revolution proceeded. But with respect to slavery, they knew by the end of the founding era exactly what their principles meant. The more they based their arguments on the natural rights of *all* men, and not just the rights of Englishmen, the more the Americans noticed, by the same logic, that enslavement of blacks was

also unjust. For slavery by definition "takes the property of another without his consent."

Some Americans had spoken out against slavery from the start of the quarrel between Britain and the colonies. In a 1764 publication endorsed by the Massachusetts legislature, James Otis said, "The colonists are by the law of nature freeborn, as indeed all men are, white or black." John Jay stated the problem vividly: "That men should pray and fight for their own freedom and yet keep others in slavery is certainly acting a very inconsistent as well as unjust and perhaps impious part." In 1776 the house of representatives of New York, a slave state, formally resolved that slavery is "utterly inconsistent with the avowed principles in which this and other states have carried on their struggle for liberty."¹⁵

Even in the South the idea began to take hold. In 1775, residents of Darien, Georgia, went against the grain of the rest of their state by declaring slavery an "unnatural practice . . . founded in injustice and cruelty, and highly dangerous to our liberty (as well as our lives), debasing part of our fellow creatures below men, and corrupting the virtue and morals of the rest, and is laying the basis of the liberty we contend for . . . upon a very wrong foundation." In 1787 two Virginia counties asked the state legislature to abolish slavery, saying, "The glorious and ever memorable Revolution can be justified on no other principles but what doth plead with greater force for the emancipation of our slaves, in proportion as the oppression exercised over them exceeds the oppression formerly exercised by Great Britain over these states."¹⁶

The slaves themselves appealed to the natural rights argument. In our time, the principles of the Revolution have been denounced as "white" or "Eurocentric." It is true that a tiny minority of European philosophers, who opposed the convictions of most whites of their day, first published those principles to the world. But whoever may have discovered them, American whites and blacks alike came to believe that the rights of mankind, like the laws of gravity discovered by Newton, were not some ethnocentric ideology but God's own truth. In a 1774 petition to the government of Massachusetts, one group of slaves said:

[W]e have in common with all other men a natural right to our freedoms without being deprived of them by our fellow men, as we are a freeborn people and have never forfeited this blessing by any compact or agreement whatever. . . . But we were unjustly dragged by the cruel hand of power from our dearest friends, and some of us stolen from the bosoms of our tender parents. . . . We therefore beg . . . that we may obtain our natural right, our freedoms, and our children be set at liberty at the year of twenty-one.

Men of all races had held slaves throughout human history, and slaves had often revolted for their freedom. But even the slaves had not doubted the right of some men to enslave others. They just did not want to be slaves themselves. The American slaves' protests of the 1770s were the first in history to condemn slavery as an inherently unjust institution on the ground that all human beings are born free.¹⁷

Were the Founders Prejudiced against Blacks?

John Garraty writes, in his textbook *The Story of America*, "Nearly every European person in America of the 1770s was in some ways prejudiced against Africans by today's standards."¹⁸

Two things must be said in response to this claim. First, it is at least an exaggeration. Many people, some of them prominent, believed that blacks have the same natural abilities as whites. Second, the leading Founders understood that the blacks' right to liberty does not depend on whether people believe them to be inferior to whites, or even whether they actually are inferior as a group.

Franklin and Hamilton held views that are close to our own. After a visit to a school for black children, Franklin wrote: "[I] have conceived a higher opinion of the natural capacities of the black race than I had ever before entertained. Their apprehension seems as quick, their memory as strong, and their docility in every respect equal to that of white children." Hamilton's judgment was the same: "Their natural faculties are probably as good as ours. . . . The contempt we have been taught to entertain for the blacks, makes us fancy many things that are founded neither in reason nor experience."¹⁹

More important, in his *Notes on the State of Virginia* Jefferson makes clear that the inferiority question is irrelevant to natural rights. Based on his observations of slaves, he argues, "as a suspicion only," that blacks "are inferior in the faculties of reason and imagination." He admits that this opinion "must be hazarded with great diffidence," for Jefferson knows that "their condition of life," not their nature, is at least partly responsible for their lesser accomplishments. In spite of his "suspicion," Jefferson was able to write on the subject of slavery, later in the same book, "I tremble for my country when I reflect that God is just: that his justice cannot sleep forever."

In a letter written some years later, Jefferson explained why his doubts about the mental abilities of blacks did not affect his view of their rights as human beings:

Be assured that no person living wishes more sincerely than I do, to see a complete refutation of the doubts I have myself entertained and expressed on the grade of understanding allotted to them by nature, and to find that in this respect they are on a par with ourselves. . . . [B]ut whatever may be the degree of talent it is no measure of their rights. Because Sir Isaac Newton was superior to others in understanding, he was not therefore lord of the person or property of others.

The decisive point here is italicized. Blacks are human. That is enough to secure them equal human rights. Greater intelligence does not give a more intelligent man (Newton) a right to enslave others. Nor does it give a more intelligent race (if one exists) a right to enslave a less intelligent race. The inferiority of one race to another has no bearing on their natural rights as human beings.

Benjamin Rush, a Pennsylvania signer of the Declaration of Independence, once responded to a slavery advocate in the same way: "But supposing our author had proved the Africans to be inferior . . . : will his cause derive any strength from it? Would it avail a man to plead in a court of justice that he defrauded his neighbor, because he was inferior to him in genius or knowledge?"²⁰

Of course prejudice against blacks was not always accompanied by an enlightened sense of their just rights. The widespread belief in black inferiority no doubt helped to reconcile many to the continued existence of slavery. Edmund Randolph, a prominent politician of the founding era, penned this bitter passage in his 1810 *History of Virginia* (discussing the beginnings of slavery in the 1600s):

Nor yet were they [blacks] suspected, as in the arrogant and impious philosophy of this day, to be in the lowest grade of human existence. The . . . violent heats of summer, and the overwhelming indolence of white men, most of whom came hither with the allurements of amassing gold without toil, beget a suspicion that those circumstances were [the real reason] the inhabitants purchased these Negroes as slaves and spread over the character of our country colors more indelible than the sable skin which served as a pretext for their unnatural debasement. The poison from this small event will be seen to diffuse itself in a variety of destructive shapes [over the later history of Virginia].

The belief in racial inferiority was an important "pretext" for slavery. Further, as Yale historian Edmund Morgan rightly argues, the degradation of blacks also promoted a sense of equality among Virginia whites, rich and poor alike. From this truth Morgan infers an untruth: that Virginians' "belief in republican equality . . . rest[ed] on slavery." Morgan admits that

the Founders “had the decency to be disturbed by the apparent inconsistency of what they were doing.” In spite of this admission, Morgan insists that Virginians professed “an unbounded love of liberty and of democracy *in consequence of the mass* of the people, who in other countries might become mobs, being there nearly altogether composed of their own Negro slaves” (my emphasis). Nowhere does Morgan address the fact that the leading Virginia politicians not only “had the decency to be disturbed” by slavery but also condemned it in the strongest terms. Nor does Morgan address the fact that no leading Virginia politician justified slavery as a necessary condition of freedom. That argument was indeed made later, by John C. Calhoun and other pre-Civil War Southerners. But during the founding era, Virginians like Washington, Jefferson, Madison, and Randolph refused to flinch before the stark contradiction between slavery and the principles of their country.²¹

Actions against Slavery

We have answered two of the three charges commonly made against the Founders. We can say with confidence, first, that the Founders believed that blacks are fully human; and, second, that they knew well what this meant: slavery in every form violates the right to liberty.

The third charge against the Founders is harder to meet. Did they, in the words of historian Paul Finkelman, commit “treason against the hopes of the world” when they failed to abolish slavery?

We will answer this charge in several stages. The first is to see what actions against slavery actually were taken by the founding generation. We will show that for large numbers of blacks, the Revolution did lead to freedom. We will then turn to the factors that slowed and eventually stopped the abolition movement of the founding era.

To repeat: at the beginning of the Revolution, slavery existed in each of the thirteen original states, and the slave trade with Africa was carried on without constraint. Official actions aiming at the abolition of slavery began in 1774, before independence was declared, and this movement achieved substantial victories over the next thirty-five years.

The growth of slavery was quickly limited by reducing or abolishing the slave trade. Delegates to the first Continental Congress in 1774 pledged to stop the importation of slaves into America. By 1798 every state had outlawed slave importation. South Carolina renewed the slave trade in 1803, but Congress abolished the trade altogether in 1808.²²

During the founding era, eight states proceeded to abolish slavery, either

gradually or immediately. (Like almost all public policy, slavery was then regulated by state governments.) Abolition came quickly only in states where few slaves were held. The first to forbid slavery in its constitution was Vermont in 1777. Court cases and the actions of town governments ended slavery in Massachusetts and New Hampshire in the 1780s. In the other Northern states, abolition came harder. Pennsylvania passed the first law for gradual emancipation in 1780. Rhode Island and Connecticut followed in 1783 and 1784. After long struggles, New York and New Jersey finally did the same in 1799 and 1804. Abolition began so late in New Jersey that eighteen slaves still living were counted in the census of 1860, on the eve of the Civil War.²³

New York’s gradual abolition law, writes historian Arthur Zilversmit, “implicitly recognized the connection between abolition and the principles of the Declaration of Independence,” as “evidenced by the fact that the act would take effect on July 4, 1799.” The preamble to Pennsylvania’s emancipation law made the tie explicit:

We conceive that it is our duty . . . to extend a portion of that freedom to others, which hath been extended to us, and release them from that thralldom, to which we ourselves were tyrannically doomed. . . . It is not for us to inquire why, in the creation of mankind, the inhabitants of the several parts of the earth were distinguished by a difference in feature or complexion. It is sufficient to know that all are the work of the Almighty hand.²⁴

Textbooks are virtually silent on the substantial abolition movement undertaken by individuals in the South, where slavery remained legal. Delaware, Maryland, Virginia, and North Carolina changed their laws to make it easier for owners to emancipate slaves. In 1776 the number of free blacks in America was very small. The first census, taken in 1790, counted 27,000 free blacks in the North and 32,000 in the South. Because of the much larger slave populations in the South, by 1810 more Southern blacks had won their freedom through individual manumissions than northern blacks had through manumissions and abolition combined. In that year the census reported 78,000 free blacks (and 27,500 slaves) in the North, but 108,000 free blacks (and 1.2 million slaves) in the South. Delaware owners freed their slaves in such large numbers that it amounted to a near abolition. By 1810, 76 percent of Delaware blacks were free; in Maryland, free blacks numbered a substantial 23 percent.

In spite of these numbers, historians today often disparage the importance of private manumissions. Paul Finkelman admits that “thousands” of slaves won their freedom in this way (in fact, many thousands of manumissions must have contributed to the 108,000 free Southern blacks in 1810),

but he goes on to say, improbably, that "very few large slaveholders" were "willing to sacrifice [their] personal wealth for the principles of the Revolution." Who then, we must ask, were the owners of these thousands?

Some states also freed slaves who fought in the Revolutionary War. About five thousand slaves from every part of America except South Carolina and Georgia won their freedom in this way. This process began slowly, but it naturally accelerated in response to the British promise (motivated by a desire to weaken America) of freedom for slaves who became Tories, as many eventually did.²⁵

Alexander Hamilton unsuccessfully proposed an emancipation plan of this kind for South Carolina when he served on General Washington's staff during the war. He wrote to John Jay, at that time president of Congress: "An essential part of the plan is to give them their freedom with their muskets. . . . [F]or the dictates of humanity and true policy equally interest me in favor of this unfortunate class of men."²⁶

At the federal level, Congress passed the Northwest Ordinance in 1787, forbidding slavery in the territory where the future states of Ohio, Indiana, Michigan, Illinois, and Wisconsin would be formed. This law proved to be of crucial importance to the end of slavery in America. Lincoln mentioned it frequently in the 1850s as a sign that the Founders opposed the expansion of slavery. In the 1860s these states, along with the original Northeast, formed the core of the coalition that elected Lincoln president, fought the Civil War, and abolished slavery nationwide.

Congress did permit slavery in the Southwestern Territory (the future states of Kentucky, Tennessee, Alabama, and Mississippi). This region had been claimed by seaboard slaveholding states and was ceded to the national government with the expectation that slavery would continue. North Carolina had made it an explicit condition of its cession that "no regulations made or to be made by Congress shall tend to emancipate slaves." This was generally regarded not as an endorsement of slavery expansion but an acceptance of it where it already existed.²⁷

Although no Southern state abolished slavery, there was broad agreement that slavery was wrong. Proposals for abolition were presented to the Virginia legislature in 1778 (Jefferson authored it) and again in 1796 and to the Kentucky constitutional convention of 1792. Societies for abolition were established in Delaware and Maryland, whose legislatures debated abolition in 1785 and 1786.

Southern courts of law before the 1840s generally took the position that slavery violates the natural rights of the blacks. Slavery may be legal, the courts held, but that does not make it just. For example, the Mississippi Supreme Court held in 1818: "Slavery is condemned by reason and the

laws of nature. It exists and can only exist, through municipal regulations, and in matters of doubt, . . . courts must lean *in favorem vitae et libertatis* [in favor of life and liberty]." In 1820 the same court said that the slave "is still a human being, and possesses all those rights, of which he is not deprived by the positive provisions of the law." In the early years of the nineteenth century, most courts of other Southern states where records exist agreed with this presumption of freedom. Slaves whose masters took them to free states or territories were sometimes able to win their freedom in Southern courts in this way.²⁸

Even where slavery remained legal, the doctrines of the Revolution led to reforms that recognized the slaves' humanity. Historian Lawrence Friedman reports:

In North Carolina, in 1774, the punishment for killing a slave "willfully and maliciously" was a year's imprisonment; and the murderer was required to pay the owner the value of the slave. In 1791, the state's legislature denounced this law as "disgraceful to humanity and degrading in the highest degree to the laws and principles of a free, Christian, and enlightened country" because it drew a "distinction of criminality between the murder of a white person and of one who is *equally an human creature, but merely of a different complexion*." Thereupon, by law, it was murder to kill a slave willfully and maliciously.²⁹

An observation made by John Jay in the letter quoted earlier deserves emphasis. Prior to the Revolution, political opposition to slavery was slight. Therefore, abolition in the founding era was mostly a consequence of the logic of Revolution principles, which many felt a conscientious duty to fulfill. After all, the same proslavery interests existed before and after the founding. Yet it was only afterward that the limitation and abolition of slavery occurred.

John Adams was not altogether wrong when he said that opposition to slavery in Massachusetts came from "the multiplication of laboring white people, who would no longer suffer the rich to employ these sable rivals so much to their injury." Self-interest is always at work in politics. But there are some times when higher motives overcome low ones. Adams's cynical remark does not explain why the movement toward emancipating slaves and restricting the growth of slavery took hold all over America just when Americans began to articulate with increasing clarity the principle that all men are created equal in the fundamental right to liberty. The main inspiration for opposition to slavery in Massachusetts came not from workers fearing black competition but from the moral convictions of politicians and their constituents who were persuaded that the

principles of the Massachusetts bill of rights—the principles of the Declaration—apply to all human beings. Here was one of those outstanding moments in politics when self-interest is to some degree overcome by moral conviction in the formation of public policy.³⁰

The third charge against the Founders was that they failed to abolish slavery. Our answer, to this point, has been: they limited and eventually outlawed the importation of slaves from abroad; they abolished slavery in a majority of the original states; they forbade the expansion of slavery into areas where it had not been previously permitted; they made laws regulating slavery more humane; individual owners in most states freed slaves in large numbers. In light of all this, it is a gross exaggeration to speak, as Kolchin does, of “the unfree origins of the United States.”³¹ Freedom was secured for the large majority of Americans, and important actions were undertaken in the service of freedom for the rest.

Slavery in the Constitution

Critics of the Founders often target the Constitution of 1787 as a document indifferent to, or even favoring, slavery.

The Constitution’s compromises with the slave interests are sometimes said to be so wicked that the Constitution deserves little or no respect. Historians like Paul Finkelman, echoing the most extreme abolitionists before the Civil War, condemn the Constitution as “a covenant with death.” In a 1987 bicentennial address, former Supreme Court Justice Thurgood Marshall said, “Nor do I find the wisdom, foresight, and sense of justice exhibited by the framers particularly profound. To the contrary, the government they devised was defective from the start.”³²

These are powerful accusations. If they are true, Americans’ admiration for the Framers of the Constitution—celebrated in patriotic songs and speeches throughout American history—must be tainted with racism. If they are false, as will be argued here, today’s critics have unfairly slandered a noble achievement.

Most of the Constitution’s Framers knew, and many said, that slavery was wrong. For example, at the Convention, Gouverneur Morris said that the African slave trade, “in defiance of the most sacred laws of humanity, tears away his fellow creatures from their dearest connections and damns them to the most cruel bondages.”³³

However, powerful interests supported slavery, especially in the deep South. Representing those interests, some delegates to the Convention demanded major concessions to slavery. To some extent they got them.

How are we to understand this unhappy fact?

The slavery question was the most divisive at the Convention. Madison correctly noted that “the real difference of interests lay, not between the large and small, but between the Northern and Southern states. The institution of slavery and its consequences formed the line of discrimination.” There was little that opponents of slavery could have done about slavery at the Convention unless they were willing to risk breaking up the union. That is what some Southern delegates threatened if their demands on behalf of the slave interest were not met. Among other things, these delegates held hostage one of the most important powers of the federal government, the power to regulate commerce. In the best defense I have seen of the view that the Constitution was a pro-slavery “covenant with death,” Finkelman is compelled to admit that “sectional interests caused by slavery” were “a major threat to the Union” at the Convention. He shows how doggedly certain Southern delegates to the Convention insisted on protections to slavery. Finkelman thinks the Southern states would have approved the Constitution without its concessions to slavery. But his own evidence shows that the Southerners did not view their concern as a small matter. It is clear that the Southern delegates, and the Southern states, were not likely to have approved the new Constitution unless they were convinced that the free states would leave the solution to the slavery problem to each state to decide for itself. The compromises gave them that confidence.³⁴

In the short term, slavery was bound to continue, with the Constitution or without. If liberty *for anyone* was to have a future in America, the indispensable first step was a stronger national government on a democratic basis. Even the Anti-Federalist opponents of the Constitution admitted this much. Abolition would have to wait.

The problem with Finkelman’s analysis is that it does not properly consider the context of the writing of the Constitution of 1787. To understand why the delegates acted as they did, it is necessary to remember that it was not the problem of Negro slavery that led to the calling of the Convention, but a threat to the liberty of all the citizens.

After the British recognition of American independence in 1783, it was by no means clear that the basic rights of even the white population were going to be secured under the governments then in place. Surveying the growing political disarray of the “present crisis,” Washington feared for the future of self-government. “[I]t is yet to be decided,” he said, “whether the Revolution must ultimately be considered as a blessing or a curse: a blessing or a curse, not to the present age alone, for with our fate will the destiny of unborn millions be involved.” These fears were echoed by leading Americans, North and South. The near-collapse of the national gov-

ernment, with the national humiliation, weakness, and injustices that followed, is analyzed in the first twenty-two papers of *The Federalist*.³⁵

In light of this sense of urgency, felt by all leading Americans in the 1780s, the plight of the blacks understandably receded into the background as a national issue. Besides, if the union had collapsed, as it was on the verge of doing by 1787, it is probable, as *Federalist* No. 5 argues, that the Southern states would eventually have formed their own confederacy. In that case the growth of a movement that could legitimately do anything about slavery—such as the Republican Party of the 1850s—would have been impossible.

Frederick Douglass, the leading black spokesman against slavery during the Civil War era, favored continuation of the union, even with slavery, for the same reason. “My argument against the dissolution of the American Union is this: It would place the slave system more exclusively under the control of the slaveholding states, and withdraw it from the power in the Northern states which is opposed to slavery. . . . I am, therefore, for drawing the bond of the union more closely, and bringing the Slave States more completely under the power of the Free States.”³⁶

The Constitution’s Framers compromised on the slavery question, in three main provisions. But even these provisions are by no means as proslavery as they have often been said to be.

First, the Constitution counted three-fifths of the slaves toward the population that determined representation in Congress and electoral votes for presidential elections. This was a significant concession to the slave states because it gave voters in those states greater weight in the federal government than they would have had if slaves had not been counted at all. This provision is widely misunderstood today. Here is how UCLA law professor Kenneth Karst, a severe critic of the Founders, understands it: “Each slave was to count as three-fifths of a person. . . . The problem of race relations in America has always revolved around the question whether nonwhites are or are not to be treated as complete persons, as the equals of whites.” Karst’s remark contains two errors. He uses “nonwhites” as if it were the equivalent of “slaves”; yet even in 1790 many blacks (sixty thousand, or 8 percent of the total) were free, and they were therefore counted as whole persons, the same as whites. Second, Karst seems to be unaware that at the Constitutional Convention it was Southerners, not Northerners, who said the slaves should “stand on an equality with the whites” in the determination of the number of a state’s representatives. Northerners argued that it was wrong “to give such encouragement to the slave trade as would be given by allowing [the Southern states] a representation for their Negroes.”³⁷

Second, the Constitution prohibited Congress from outlawing “[t]he migration or importation of such persons as any of the states now existing

shall think proper to admit” until the year 1808. But was this really a proslavery provision? After 1808, Congress was free to abolish the slave trade, as it did. The guarantee of the trade applied only to the “states now existing.” Clearly, this was a grudging, temporary concession to the slave interest. As part of the compromise leading to this provision, the South Carolina and Georgia delegates supported the clause granting Congress control over commerce with foreign countries and among the states, which implicitly included commerce in slaves. In the Missouri debates of 1819–20, Northerners in Congress began to discuss using the commerce and migration clauses to limit or abolish slavery. Southerners disputed this reading, but the Constitution’s language supported it.³⁸

From the point of view of some Framers, the slave-trade clause had a stronger antislavery character than appears to us. It had not yet been understood how rapidly slaves were multiplying within America. James Wilson said what many Northerners believed, that this clause laid “the foundation for banishing slavery out of this country.”³⁹

Third, the Constitution provided that runaway slaves would be returned to their owners, even if they escaped to free states. This might seem unambiguously proslavery. But consider the language of the fugitive slave clause: “No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.” Here, as everywhere in the Constitution, the words “slave” and “slavery” are carefully avoided. Madison wrote that the Convention “thought it wrong to admit in the Constitution the idea that there could be property in men.” In this clause the original expression, “legally held to service or labor,” was changed when it was objected that the expression “legally” seemed to favor “the idea that slavery was legal in a moral view.” The language adopted was meant to show no approval of slavery but only an acknowledgment that it exists and will remain for the time being.⁴⁰

Some writers, not content with attacking the Constitution for its actual compromises with slavery, make up provisions that are not there. Karen O’Connor and Larry Sabato’s leading college American government text, for example, states that “the Constitution denied blacks the right to vote.”⁴¹ This is totally false. Many blacks voted during the founding era and afterwards in several states.

We acknowledge that the Constitution did give substantial protection to slavery. We also admit that if the Constitution is read in isolation from the principles of the Revolution, it is possible to see it as an unprincipled “bundle of compromises.” “Liberty and Slavery—opposite as

Heaven and Hell—are both in the Constitution,” wrote Frederick Douglass in 1850. It is even possible to read it as a proslavery document, as critics like Thurgood Marshall and Paul Finkelman do, following the interpretation shared by Southerners and extreme abolitionists during the pre-Civil War period.⁴²

The original intent of the Constitution, however, cannot be understood from its text alone. The document was produced by a group of statesmen who generally agreed on the principles of government. In *The Federalist*, Madison said that the Constitution was grounded on “the fundamental principles of the Revolution,” namely, “the transcendent laws of nature and of nature’s God” and “the rights of humanity” announced in the Declaration of Independence. In this light, the slavery provisions of the Constitution must be read as concessions to a brute fact rather than as affirmations of the rightness of slavery. Most Americans, North and South, who voted for ratification held this view of slavery.⁴³

Most Founders knew well that the practice of slavery was ultimately at war with the principles of liberty. One or the other would eventually have to give way. A delegate from Maryland, a slave state, said: “Slavery is inconsistent with the genius of republicanism, and has a tendency to destroy those principles on which it is supported, as it lessens the sense of the equal rights of mankind, and habituates us to tyranny and oppression.” Jefferson, in a famous passage in *Notes on Virginia*, agreed that slavery promotes antidemocratic habits and principles:

The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other . . . The parent storms, the child looks on, catches the lineaments of wrath, puts on the same airs in the circle of smaller slaves, gives a loose to his worst of passions, and thus nursed, educated, and daily exercised in tyranny, cannot but be stamped by it with odious peculiarities. The man must be a prodigy who can retain his manners and morals undepraved by such circumstances.

George Mason, a Virginia delegate, made the same point, without Jefferson’s eloquence, at the Convention.⁴⁴

The Constitution protected slavery. But it did not stand in the way of any state that wished to abolish slavery. Congress could cut off the slave trade after twenty years. Congress could cut off the spread of slavery to new states and to the Western territories. Congress could regulate interstate commerce in slaves. The Constitution was not the problem. The problem was the absence of political will. If a majority of Americans had favored it

strongly enough, the end of the spread of slavery, and its abolition, could have been achieved much earlier than it was, without changing a single word of the Constitution. We will soon see why it was not.

Ralph Abernathy, a prominent civil rights activist of the 1960s and 1970s, wrote:

There can be no pure memory of an American Revolution that published a declaration that liberty was a right accorded to “all men” and then created a Constitution that specifically prohibited blacks from enjoying that right. The only logical conclusion that modern blacks can draw from such circumstances is that their forefathers were not regarded as “men” by the white founders of this country.⁴⁵

Abernathy was wrong. The Constitution did not “specifically prohibit” blacks from enjoying their rights. They were certainly regarded as “men” in that document. (Even the slaves were called “persons.”) The Constitution allowed states to have slavery, but it did not “prohibit blacks from enjoying” the right to liberty. Otherwise the states could never have passed their emancipation laws. Many thousands of free blacks enjoyed their right to liberty under the Constitution before the Civil War. The rest won their liberty through a war fought under its authority.⁴⁶

Prudence, Expediency, and Morality

Were these concessions to slavery immoral, as Finkelman and Marshall assume? O’Connor and Sabato’s textbook *American Government* explains the prevailing view in this way: “Whereas earlier the Declaration of Independence had so eloquently proclaimed that ‘all men are created equal,’ the delegates to the Constitutional Convention put political expediency before the immorality of slavery.”⁴⁷ In this view, the only moral course of action was uncompromising opposition to slavery, period. Anything less was mere “expediency,” in which considerations of right are supposedly sacrificed to self-interest.

This opposition between morality and expediency is the framework in which Americans have been taught in recent decades to think about politics. If a politician is uncompromising and pure, if he pursues the right goal without regard for consequences, he is thought to be *moral*. If he is willing to accept a lesser evil to avoid a greater one, if he takes circumstances into account in deciding what to do, then he is thought to be merely *expedient* and therefore morally tainted.

A better perspective from which to judge the morality of the Founders

is implied in this passage from historian Donald Robinson in his *Slavery in the Structure of American Politics*:

It is probably fortunate that abolitionism as a movement of consequence in America was still far off in the future, for if Samuel Adams and John Jay and Benjamin Franklin and other Northern politicians had forthrightly criticized slavery in the early 1770s, American history would have developed far differently. To begin with, there would have been no Association of twelve colonies in 1774, and certainly no "Unanimous Declaration of the Thirteen United States of America."⁴⁸

In other words, if the Founders had done what O'Connor and Sabato think they should have done, there would have been no union, the South would have been free to develop slavery without restraint, and the eventual abolition of slavery might never have occurred.

The American Founders understood political morality not in terms of right intentions but rather in terms of just results. For them, moral principles give us the goal or end, but prudence (sensible judgment) must determine the means. After the Declaration sets forth the principles of political right, it says, "Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes." A government that violates in some respects the principle of consent or protection of rights may be tolerable as the lesser evil, if the alternative is likely to be worse. The job of the prudent statesman is to determine the right course in a world in which the immoderate pursuit of moral perfection will more often lead to misery and terror than to justice and happiness.

When Lincoln was a young man, he said that the Founders established "political institutions, conducing more essentially to the ends of civil and religious liberty, than any of which the history of former times tells us."⁴⁹ From the point of view of the Declaration's principles, Lincoln was right, in spite of the fact that slavery was still thriving when he said that. Slavery was a terrible injustice. But it would have required the abolition of government by consent to eradicate it during the founding era. Immediate freedom for the minority would have ended freedom for the majority.

The totalitarian impulse at work in Marxist communism is the imprudent, immoderate, and *therefore* immoral demand for the abolition of human evil on earth. That impulse presupposes that human beings can overcome all significant natural, divine, and human limits. Human will, or historical progress, is believed to guarantee this dream. All obstacles to the dream must be ruthlessly thrust aside, no matter what the cost. As he explained in *On the Jewish Question*, Marx had no patience for American democracy, because

he was convinced that it would never liberate human beings from the reign of selfishness.

The same utopian fervor was at work in the abolitionism of the 1830s and 1840s (at the same time that Marx began to advocate communism in Europe). Yet abolitionism is the moral stance most often approved by today's scholars. The abolitionists were impatient and shrill. They antagonized the vast majority, North and South. Instead of advancing the cause of abolition, they promoted Southern intransigence and Northern disgust with antislavery opinion. The leading abolitionist, William Lloyd Garrison, demanded not only the immediate end of slavery but (like Marx) "the emancipation of our whole race from the dominion of man, from the thralldom of self, . . . from the bondage of sin." Garrison had nothing but contempt for moderation: "On this subject, I do not wish to think, to speak, or write, with moderation." "I wash my hands of the blood that may be spilled."

If the Constitution really was a "covenant with death," as Garrison maintained, then one should escape it as quickly as possible. Therefore Garrison called for the secession of the North from the South. Had his advice been followed, the North would have lost all influence over the South. Garrison was proud of his commitment to justice; but the Founders would have said that his approach led to injustice. As Frederick Douglass pointed out, Northern secession would have placed "the slave system more exclusively under the control of the slaveholding states." Slavery would have persisted much longer than it did. The first modern nation based on a "scientific" theory of a master race might have been the Confederacy, and not Nazi Germany.⁵⁰

The Incomplete Founding I: Emancipation versus Selfishness

In spite of the undeniable advance of liberty during the founding era, slavery was not ended. To this extent the critics are right. They, and we, are entitled to ask: Why did the abolition movement of the founding era stop short? What thwarted the political logic of the Revolution?

In one sense, the question is easy to answer. Human beings are imperfect. They are rational but also passionate animals. There will always be a gap between moral principles and actions. In the case of slavery we have, in Jefferson's words, "the interesting spectacle of justice, in conflict with avarice and oppression."

In a passage quoted earlier, Ralph Abernathy said, "The only logical conclusion that modern blacks can draw from such circumstances is that their forefathers were not regarded as 'men' by the white founders of this

country." Abernathy finds it incomprehensible that someone might believe in a moral truth ("slavery is wrong") and not act on it ("slavery must be abolished immediately"). But this happens every day in small ways. Most Americans believe that cruelty is wrong. Yet most of us have been cruel on many occasions to people we do not like. Sometimes we regret it and feel guilty. More often we barely notice. A family that freed its slaves was likely to endanger its own livelihood. The temptation to keep them was great, even for those who knew it was wrong.

Even in the North considerable support for slavery persisted throughout the Revolutionary period. We have already seen how hard it was to pass abolition laws and how slowly abolition took place even after these laws were passed. John Jay explains:

That those who know the value of liberty, and are blessed with the enjoyment of it, ought not to subject others to slavery, is, like most other moral precepts, more generally observed in theory than observed in practice. This will continue to be too much the case while men are impelled to action by their passions rather than their reason, and while they are more solicitous to acquire wealth than to do as they would be done by.

Or, as Lincoln put it more simply, it is "the same old serpent that says you work and I eat, you toil and I will enjoy the fruits of it."⁵¹

Sometimes this age-old conflict between passion and reason is rationalized in the language of crude selfishness. In regard to slavery, this language was sometimes, but not often, heard during the founding era, as in Charles Cotesworth Pinckney's speech at the Constitutional Convention: "South Carolina and Georgia cannot do without slaves. . . . [T]he importation of slaves would be for the interest of the whole union. The more slaves, the more produce to employ the carrying trade; the more consumption, . . . the more of revenue for the common treasury." John Rutledge was even blunter: "If the Convention thinks that North Carolina, South Carolina, and Georgia will ever agree to the plan, unless their right to import slaves be untouched, the expectation is vain. The people of those states will never be such fools as to give up so important an interest."

There was even the rare but ominous assertion, which did not prevail in the South until much later, that slavery is a positive good, not just a necessary evil. Madison denounced some representatives in the first Congress for flirting with this position: "The gentlemen from South Carolina and Georgia are intemperate beyond all example and even all decorum. They are not content with palliating slavery as a deep-rooted abuse, but plead for the lawfulness of the African trade itself."⁵²

Selfish interest sometimes led men to misunderstand their own principles. In 1785 six Virginia counties petitioned the state legislature, objecting to any emancipation of slaves "on the ground that the Revolution had been fought to preserve liberty and property." These Virginians, and other slaveholders who shared their view, forgot that the right to property flows from—is part of—the natural right to liberty. If there is no natural right to liberty, there can be no natural right to property. If all men are rightfully free, they all may keep the bread they earn with their own hands. Therefore there can be no right to property *in slaves*.⁵³

The Incomplete Founding II: Emancipation versus Survival

Let us be blunt. The problem was not just selfishness. The Founders believed that the immediate abolition of slavery *would have been unjust*. On the face of it, this appears to contradict the equality principle. Let us see.

Political scientist Herbert Storing is the author of an outstanding defense of the Founders against their critics. However, Storing remarked that the Founders "do not come off so well" in one respect because the principle of individual liberty "contains within itself an uncomfortably large opening toward slavery." I believe Storing is right about the "opening" but wrong to criticize the Founders on that account. We are dealing here with a genuine, not a false, moral dilemma.

This is sometimes called the "deep-rooted abuse" or "necessary evil" argument. Patrick Henry, slavery's great defender at the Virginia ratifying convention, admitted his seeming inconsistency in clinging to slavery "at a time when the rights of humanity are defined and understood with precision in a country above all others fond of liberty." Yet, he said, "As much as I deplore slavery, I see that prudence forbids its abolition."

Jefferson gave this argument its most memorable expression when he said, "We have the wolf by the ears, and we can neither hold him, nor safely let him go. Justice is in one scale, and self-preservation in the other." Jefferson meant "self-preservation" quite literally. Throughout his career he was firmly antislavery in principle but just as firmly opposed to the social and political integration of free blacks. He gave this reason:

Deep rooted prejudices entertained by the whites; ten thousand recollections, by the blacks, of the injuries they have sustained; new provocations; the real distinctions which nature has made; and many other circumstances, will divide us into parties, and produce convulsions which will probably never end but in the *extermination of the one or the other race*.⁵⁴

Such fears are dismissed today as insincere or irrational. In his critique, Finkelman does not bother to give a serious response to Jefferson's worries about a war between the races. Yet many intelligent antislavery observers of the American scene before the Civil War agreed with Jefferson. After his visit to America in the 1830s, Tocqueville feared that "the most horrible of civil wars" would occur if slavery were abolished, terminating "perhaps in the extermination of one or other of the two races." The novelist James Fenimore Cooper agreed: "The time must come when American slavery shall cease. . . . The struggle that will follow, will necessarily be a war of extermination."⁵⁵

Race war became a horrifying reality for the founding generation in the Haitian revolution of 1791-1804, and it was an ever present fear after that. According to a recent historian, chaos "gripped the island" in those years. Whites and blacks alike were "responsible for the cruellest acts against one another." Blacks used "as their standard 'the body of a white infant impaled upon a stake.'" When Dessalines took over at the end of the revolution in 1804, he invited all the whites who had not yet fled or been killed to come forward for pardon. He murdered them all. "Not a white was left in Haiti after these massacres." American newspapers of that time estimated that one hundred thousand whites and sixty thousand blacks lost their lives over thirteen years of struggle. Americans saw in Haiti their own possible future.⁵⁶

The terrible crimes inflicted by American blacks and whites upon each other since the Civil War—including many thousands of murders—suggest that although the fears of Jefferson, Tocqueville, and Cooper may have been exaggerated, they were not altogether unreasonable. Nor has America seen the end of racial strife.

Under the wrong circumstances, the liberty of the slaves might have ended the lives of citizens as well as slaves. But liberty and life are two of the inalienable rights of the Declaration of Independence. This means that neither continued enslavement nor immediate emancipation would have been simply right, because both choices involved a deprivation of rights. The Declaration could not resolve this conflict. In the South before the Civil War, the stronger party, the body of free citizens, dealt with the problem by the continuation of slavery.

The equality principle itself justified the continuation of slavery to this extent. Of course, it would also have justified a bloody rebellion of the slaves against their masters. Jefferson alluded to that justification and that possibility—one that might lead to the "extirpation" of the masters—in a famous passage from his *Notes on Virginia*, part of which was quoted earlier:

I tremble for my country when I reflect that God is just: that his justice cannot sleep forever: that considering numbers, nature, and natural means only, a revolution of the wheel of fortune, an exchange of situation, is among possible events: that it may become probable by supernatural interference! The Almighty has no attribute which can take side with us in such a contest.⁵⁷

But slavery could only be right in this limited way if its wrongness was admitted and people did their best to work toward eventual emancipation. After the last public debate on slavery, in Virginia in 1831, most Southerners gave up this effort and repudiated the principles of the Declaration.

The Incomplete Founding III: Emancipation versus the Conditions of Citizenship

The threat to life was not the only reason for the Founders' concern about immediate abolition. Even if the problem of violence could be overcome, the question remained: Should the ex-slaves be given citizenship and political equality?

After the Civil War, when the former slaves began to be oppressed once again by their former masters, the Fourteenth and Fifteenth Amendments granted them citizenship and voting rights. But before the Civil War, most Americans, including most of the Founders, opposed black citizenship and political equality. Again, this appears to be another example of raw racism at work, as is commonly believed now. But there is another explanation.

In the first place, we must distinguish between the right to *liberty*, possessed by all human beings, and the right to *citizenship*, which a community gives at its discretion. Lincoln's understanding of this difference was the same as the Founders'. Harry Jaffa explains: "Lincoln did not believe that Negroes had any natural right to citizenship any more than did resident aliens. Citizenship was a privilege which was bestowed upon those whom the community wished, *in their own interests*, to accept as new members. The only political right possessed by free Negroes, implied in the abstract right to freedom, was to leave the country and form political associations of their own, just as the colonists had left Europe to found new political associations in the new world."⁵⁸

Madison opposed emancipation without colonization because of "freedmen who retain the vices and habits of slaves." The result is that "the good of the society" is not "promoted by such a change in their condition." Jefferson agreed: "To give liberty to, or rather, to abandon persons whose

habits have been formed in slavery, is like abandoning children. . . . A man's moral sense must be unusually strong, if slavery does not make him a thief. He who is permitted by law to have no property of his own, can with difficulty conceive that property is founded in anything but force." A preacher who had lived among slaves for many years expanded on the observations of Madison and Jefferson: "Feeling and knowing, that their owners regard and treat them as their money—as property only—[the slaves] are inclined to lose sight of their better character and higher interests, and, in their ignorance and depravity, to estimate themselves, and religion, and virtue, no higher than their owners do." Slaves had little reason to develop habits of hard work, self-restraint, or respect for property when the products of their labor were always stolen by others. Consequently, even opponents of slavery feared that if the slaves gained their freedom, they would become, as St. George Tucker wrote, "idle, dissipated, and finally a numerous banditti instead of turning their attention to industry and labor." George Washington agreed: "To set them afloat at once would, I really believe, be productive of much inconvenience and mischief."⁵⁹

For these reasons, it was feared that black citizenship would harm the rest of the community. As one opponent of voting rights for blacks argued, "The natural tendency has been proven by experience, not to be elevation of the degraded, but the deterioration, the lowering, of the better class, towards the standard of the inferior class."⁶⁰ The Founders believed that liberty would survive only if the citizens possessed the right habits and beliefs. In general that meant, first, an enlightened understanding of the equal rights of all; second, an appropriate degree of courage or self-assertion on behalf of those rights; third, moderation or self-restraint, including respect for the rights of others. (These conditions of citizenship are discussed more fully in the chapter on immigration and citizenship below.) The ex-slaves generally lacked, or were thought to lack, these qualities, at least in comparison with the other citizens. Perhaps they would eventually acquire them. In the meantime their presence as fellow citizens in large numbers was believed to pose a danger to freedom.

Jefferson's and Madison's opposition to black citizenship was shared by most (but not all) Americans until the Civil War. After the founding era, free blacks tended to be treated as noncitizens. At first, no constitution of any state north of Pennsylvania excluded free blacks from voting, and many blacks voted in those states. Free blacks also voted in the slave states of Delaware, Maryland, North Carolina, Kentucky, and Tennessee. Some blacks definitely were part of "we the people" who made the Constitution of 1787. But this initial pattern did not last. By the time of the Civil War, free blacks were excluded, by custom or law, from voting, jury service, and public schools in almost every state. Some states forbade the immigration of free blacks. All

states excluded blacks from their militias, which were understood to consist of the able-bodied adult male citizens of the community. These acts implied that free blacks were something like resident aliens, not citizens, and court decisions increasingly referred to them in this way. On the other hand, blacks in northern New England were treated as citizens, or nearly so.

In spite of these exclusions, the citizenship status of blacks was never quite clear. Obviously, they were not quite resident aliens, for they had no country but the United States. The federal government generally avoided taking a stand on black citizenship when the subject arose. A few blacks got federal passports, implying that they were citizens. Yet the first federal naturalization law (1790) allowed only white immigrants to become citizens. The first federal militia law (1792), in limiting service to whites, seemed to imply that blacks were not citizens of the United States. On the other hand, the Articles of Confederation stated that "the free inhabitants of each of these states . . . shall be entitled to all privileges and immunities of free citizens in the several states," and Congress voted down South Carolina's proposal to insert the word "white" into this clause.⁶¹

Chief Justice Taney, in the infamous 1857 *Dred Scott* decision, asserted that blacks had never been, and could never be, citizens of the United States. He was wrong. But it was true that *most* free blacks were not citizens.

Today it is assumed that racial prejudice alone was responsible for these exclusions. Historians sometimes wildly exaggerate the views of earlier Americans in order to portray them as mindless racists. For example, in the *Reader's Guide to American History*, historian Marc Kruman writes, "Blacks were seen as incapable of civic virtue, white men as naturally virtuous." Kruman's preposterous claim makes unintelligible the intense early American worries and debates about the absence of virtue among *whites*. Debates over voting rights in states like Tennessee, New York, and Pennsylvania before the Civil War show that the objection to black citizenship was based on *observed* differences in conduct, not just racial prejudice. Free blacks, as a group, did not behave as well as others (although of course many individual blacks were exemplary). Historian Leon Litwack reports:

New York Negroes constituted one thirty-fifth of the population but contributed one-fourth of the state's convicts; and Pennsylvania Negroes made up one thirty-fourth of the population but supplied one-third of the prisoners. "Already our prisons and poor houses are crowded with blacks," a Pennsylvania state senate committee reported in 1836. "The disparity of crime between the whites and the blacks . . . is . . . distressing to every friend of humanity and virtue."

Litwack argues that this disparity is explained by the exclusion of blacks from juries, government office, and white society generally. But whatever

the explanation may be, differences between white and black conduct were widely acknowledged even by those who favored black voting rights, as well as by black leaders. A Pennsylvania supporter of black suffrage said that "in their present depressed and uncultivated condition" they were not "a desirable species of population" and he "should not prefer them as a matter of choice." Horace Greeley's prosuffrage New York Tribune admitted that free blacks tended to be "indolent, improvident, servile and licentious."

However, the most convincing testimony on the reality of the problem comes from the blacks themselves. Frederick Douglass, the great black abolitionist, declared in 1848:

What we, the colored people, want is *character*. . . . [O]ur general ignorance makes [intelligent and educated blacks] exceptions to our race. . . . Character is the important thing, and without it we must continue to be marked for degradation and stamped with the brand of inferiority. . . . [T]hank heaven, [our oppressors] have not yet been able to take from us the privilege of being honest, industrious, sober, and intelligent.

Litwack reports that "since at least 1828, Negro leaders, newspapers, and conventions had been voicing similar sentiments." These black leaders condemned the larger society for its hostility and injustices to blacks, but they held that blacks shared the blame for their debased condition. Obviously the legacy of slavery had much to do with it. Greeley plausibly argued that "all degraded, downtrodden tribes or races" behave badly. But as long as the disparity remained, citizens were reluctant to admit freedmen to equal citizenship.⁶²

We conclude that ex-slaves were generally excluded from citizenship for the same reason that Jefferson and Hamilton opposed indiscriminate, massive immigration. As a nation based on the idea of equality, America has been a melting pot. It has taken people from diverse traditions and turned them into freedom-loving and decent citizens. But when their numbers are large, immigrants can change the attitudes of those already living here. The same argument would apply to a large influx of newly freed slaves. States like Massachusetts that had few blacks felt that they could afford to be generous with citizenship. Others were not so generous.⁶³

After the Civil War, when the decision was finally made to accept blacks as full citizens, the Founders' principles provided the theoretical foundation. Lincoln's revival of the Declaration in the 1850s had prepared the way. In principle, people of all races can become citizens of a nation based on the idea that "all men are created equal."

Colonization: Just or Unjust?

If slavery was wrong, and if prejudice and perhaps legitimate fears precluded citizenship for blacks, there was still a solution that would have been consistent with the principles of the Declaration. The policy favored by Jefferson, Madison, Henry Clay, Daniel Webster, and Lincoln was colonization.

Speaking as a slaveholding Southerner, Jefferson wrote:

There is not a man on earth who would sacrifice more than I would to relieve us from this heavy reproach, in any practicable way. The cession of that kind of property, for so it is misnamed, is a bagatelle which would not cost me a second thought, if, in that way, a general emancipation and expatriation could be effected; and gradually, and with due sacrifices, I think it might be.

If the slaves were to be freed, they must live elsewhere. In his *Notes on Virginia*, Jefferson explained the proposal that he had made to the Virginia legislature for gradual emancipation. Children of slaves would be

brought up, at the public expense, to tillage, arts, or sciences, according to their geniuses, till the females should be eighteen, and the males twenty-one years of age, when they should be colonized to such place as the circumstances of the time should render most proper, sending them out with arms, implements, of household and of the handicraft arts, feeds, pairs of the useful domestic animals, etc., to declare them a free and independent people, and extend to them our alliance and protection, till they shall have acquired strength.⁶⁴

Recent scholars, such as Winthrop Jordan, have derided colonization as "preposterously utopian" or condemned it as "treating Negroes as essentially unequal."

Was it impracticable? The obstacles were certainly great. But Lincoln pointed out during the Civil War that slave owners could have been compensated and travel costs paid for less than the cost of the war. Several thousand free blacks migrated to Liberia before the Civil War. Lincoln thought Central America a more practical location. Would expulsion have been cruel, as Jordan thought? Certainly it *could* have been. On the other hand, as an alternative to the emancipation through violence of the Civil War, it would have been a blessing to many.⁶⁵

The deeper question is whether it was consistent for those who believed in human equality to favor colonization. It was. All human beings have a right to liberty. But a right to liberty does not include a right to live

in the country of one's choice, without the consent of those already citizens in that place. The plan to colonize blacks would not have violated their human rights. What defines a *people* is not race, not tradition, not geography, but the free choice of a group of human beings to live together as fellow citizens. The blacks were unjustly dragged to America against their will. But justice required no more than to give them back their native liberty, with appropriate aid until such time as they could live on their own. This could have been done by sending them to a place where they could be their own masters, and then leaving them alone.

The Incomplete Founding IV: Faith in Progress

Beyond the influence of the ordinary selfish passions and the fear that integration would fail, another belief undermined the tenacity of the antislavery men of the founding period. That was their faith in progress. In a letter composed shortly before his death, Jefferson wrote, "All eyes are opened, or opening, to the rights of man," owing to "the general spread of the light of science." In his *Notes on Virginia*, he had predicted that "the spirit of the master is abating, that of the slave rising from the dust, . . . the way I hope preparing, under the auspices of heaven, for a total emancipation." Madison too spoke of "reflections and sentiments that are secretly undermining the institution."⁶⁶

The belief in progress took away the sense of urgency from antislavery men. If, in Franklin's words, "the daily progress of that luminous and benign spirit of liberty . . . is diffusing itself throughout the world,"⁶⁷ then emancipation was bound to come sooner or later. Why press it, especially when real victories for liberty—for example, the Constitution and the union it established—might otherwise be endangered?

The Founders were not witless dreamers. Most agreed with Hamilton's sober view of progress in *The Federalist*: "Is it not time to awake from the deceitful dream of a golden age . . . [and to admit that we] are yet remote from the happy empire of perfect wisdom and perfect virtue?"⁶⁸ The leading Founders were too sensible to indulge the fantasy that human evil might one day disappear, a notion that we rightly associate more with the French and Russian Revolutions than with the American. But the feeling was strong that liberty and enlightenment would continue to grow and that slavery would die an inevitable death.

Noah Webster expressed this view when he said that "slavery in this country will be utterly extirpated in the course of two centuries, perhaps in a much shorter period, without any extraordinary efforts to abolish it."

In 1790 Devereaux Jarrett of Virginia was "well pleased that a spirit of liberation is prevailing" and expected that slavery would end "as soon as it may be consistent with public and private utility."⁶⁹

The speeches of delegates at the Constitutional Convention show how this belief weakened the resolve of slavery opponents whenever its defenders dug in their heels. Roger Sherman said that "the abolition of slavery seemed to be going on in the United States and that the good sense of the several states would probably by degrees complete it." Likewise Oliver Ellsworth: "As population increases, poor laborers will be so plenty as to render slaves useless. Slavery in time will not be a speck in this country." Even Abraham Baldwin, who vigorously defended the slave trade, said: "If left to herself, she [Georgia] would probably put a stop to the evil." His evidence was the growing belief in equality.⁷⁰

This faith was especially soothing to Southerners who knew slavery was wrong but shied away from the controversy that public advocacy of abolition would stir up. Although it was well known that he arranged for his slaves to be freed upon the death of his wife, Washington had never spoken publicly against the institution. After 1790, Jefferson never did; Madison did so only rarely. They seem to have been tranquilized by the belief that slavery was, in Lincoln's words, "in course of ultimate extinction." Perhaps they should have known better. They simply did not anticipate that the beliefs of American leaders might actually go "backwards" to the view that some men are born with saddles on their backs and others born with boots and spurs. But that is what happened, within a few decades after the founding. "In some trifling particulars," said Lincoln in 1857, referring to the founding era, "the condition of that race has been ameliorated; but, as a whole, in this country, the change between then and now is decidedly the other way; and their ultimate destiny has never appeared so hopeless as in the last three or four years."⁷¹

The Founders' hopeful sentiments proved to be a delusion. The grim truth was that slavery was already growing rapidly in the South even in the 1780s. The number of individual manumissions, while substantial, never kept up with the natural increase through new births. The slave interest became so strong over the next seventy years that the quarrel over whether to restrict the expansion of slavery nearly destroyed the nation. So much for the automatic progress of the spirit of liberty and enlightenment.

In the end, as Lincoln saw with supreme clarity, there was no escaping the "eternal struggle between these two principles—right and wrong—throughout the world." No amount of enlightenment, no political reform, however just, can exempt America or any other nation from that struggle, because it springs from the permanent nature of human beings, the conflict between good and evil in every human heart.⁷² The battle for justice and

liberty will never be permanently won. Each generation must fight that battle over again.

The Civil War: The Founding Completed—in Principle

Bernard Bailyn, a leading historian of the founding era, has given an unusually judicious assessment of the Founders' achievement:

To note only that certain leaders of the Revolution continued to enjoy the profits of so savage an institution and in their reforms failed to obliterate it inverts the proportions of the story. What is significant in the historical context of the time is not that the liberty-loving Revolutionaries allowed slavery to survive, but that they—even those who profited directly from the institution—went so far in condemning it, confining it, and setting in motion the forces that would ultimately destroy it. . . . A successful and liberty-loving republic might someday destroy the slavery that it had been obliged to tolerate at the start; a weak and fragmented nation would never be able to do so.⁷³

Bailyn was echoing Lincoln, who opposed Stephen A. Douglas, Chief Justice Taney, and many others who defended the legitimacy of slavery by maintaining the same view of the Founders as the one that prevails today in elite academic circles and in our textbooks. In 1858 Lincoln said:

[T]he fathers of this government expected and intended the institution of slavery to come to an end. They expected and intended that it should be in the course of ultimate extinction. . . . It is not true that our fathers, as Judge Douglas assumes, made this government part slave and part free. Understand the sense in which he puts it. He assumes that slavery is a rightful thing within itself,—was introduced by the framers of the Constitution. The exact truth is, that they found the institution existing among us, and they left it as they found it. But in making the government they left this institution with many clear marks of disapprobation upon it. They found slavery among them and they left it among them because of the difficulty—the absolute impossibility of its immediate removal.⁷⁴

From this standpoint, "The American Revolution and the Civil War were not merely discrete events," as Harry Jaffa has written. "They constitute the first and last acts of a single drama. The fourscore and seven years between the Declaration of Independence and the Gettysburg Address comprehended the action of a tremendous world-historical tragedy." The

slaves were freed, in accord with the promise of the Declaration—but at the cost of hundreds of thousands of lives and the physical destruction of vast regions of the nation. "The successful outcome resembled . . . the end of *Macbeth* or *Hamlet*, when Scotland and Denmark are restored to political health by the pity and terror of a tragic consummation."⁷⁵

At the very moment of the nation's birth, Jefferson's attack on the slave trade was dropped from the draft of the Declaration of Independence, "in complaisance," Jefferson wrote, "to South Carolina and Georgia, who had never attempted to restrain the importation of slaves, and who on the contrary still wished to continue it."⁷⁶ That was a fateful precedent. In 1776 the question could be swept under the rug. That would not do for long.

When it became clear that slavery was not going away by itself, Americans faced a choice. They could keep their slaves and reject their founding principles. Or they could affirm their principles and limit the growth of slavery, placing it, in Lincoln's words, "in course of ultimate extinction." In the 1830s the South made its choice. It broke with the founding. In 1838 Senator John C. Calhoun of South Carolina said:

This [antislavery] agitation has produced one happy effect at least; it has compelled us to the South to look into the nature and character of this great institution, and to correct many false impressions that even we had entertained in relation to it. Many in the South once believed that it was a moral and political evil; that folly and delusion are gone; we see it now in its true light, and regard it as the most safe and stable basis for free institutions in the world.

Against Jefferson and other Southerners of the founding era, Calhoun and the South now insisted that slavery was "a positive good," "an institution indispensable for the good of both races." They denied what the Founders had affirmed, that there was an inseparable link between the Constitution and the equal rights of humanity. Southerners now openly attacked the political theory of the founding. Like today's legal positivists, they would put "natural law" in quotation marks, to show their contempt for any notion of universal human rights. Calhoun asserted that "nothing can be more unfounded and false" than "the prevalent opinion that all men are born free and equal." In 1857 George Fitzhugh wrote that books written by Southerners more than twenty or thirty years earlier "are likely to be as absurd and as dangerous as the Declaration of Independence, or the Virginia Bill of Rights."⁷⁷

Fitzhugh's views were more extreme than those of other Southerners, but he saw more clearly than they the tendency of their position. He

criticized equality not only for blacks but also for whites: "The bestowing upon men equality of rights, is but giving license to the strong to oppress the weak. It begets the grossest inequalities of condition." (Karl Marx was making the same argument at the same time in Europe.) "A southern farm," said Fitzhugh with some exaggeration, but also with some justice, "is the beau ideal of communism."⁷⁸

Alexander Stephens, the Confederate vice president, summed up the Southern rejection of the founding in his "Corner-Stone Speech," delivered in 1861:

Jefferson in his forecast had anticipated this [slavery] as the "rock upon which the old Union would split." He was right. . . . But whether he fully comprehended the great truth upon which that rock *stood* and *stands*, may be doubted. The prevailing ideas entertained by him and most of the leading statesmen at the time of the formation of the old constitution, were that the enslavement of the African was in violation of the laws of nature; that it was wrong in *principle*, socially, morally, and politically. It was an evil they knew not well how to deal with, but the general opinion of the men of that day was that, somehow or other in the order of Providence, the institution would be evanescent and pass away. . . . These ideas, however, were fundamentally wrong. They rested upon the assumption of the equality of races. This was an error. . . .

Our new government is founded upon exactly the opposite idea; its corner-stone rests upon the great truth, that the negro is not equal to the white man; that slavery—subordination to the superior race—is his natural and normal condition.

This, our new government, is the first, in the history of the world, based upon this great physical, philosophical, and moral truth.⁷⁹

Unlike Alexander Stephens, some Northerners, like Senator Stephen Douglas of Illinois, hoped to solve the slavery controversy without directly attacking the Founders' views. Instead, he pretended that the Founders never meant to include blacks in the Declaration. In his debates with Lincoln, Douglas asserted:

The signers of the Declaration of Independence never dreamed of the Negro when they were writing that document. They referred to white men, to men of European birth and European descent, when they declared the equality of all men. . . . When the Declaration was put forth, every one of the thirteen colonies were slaveholding colonies, and every man who signed that instrument represented a slave-holding constituency. . . . When you say that the Declaration of Independence includes the Negro, you charge the signers of it with hypocrisy.

Douglas's view is echoed and reechoed today in the textbooks read by America's children, as we have seen. Lincoln treated it with the scorn that it deserved. The equality of the Declaration, he responded, applies to all human beings, black and white. Lincoln said that the historical record before the 1850s

may be searched in vain for one single affirmation, from one single man, that the Negro was not included in the Declaration of Independence. I think I may defy Judge Douglas to show that he ever said so, that Washington ever said so, that any president ever said so, that any member of Congress ever said so. . . . And I will remind Judge Douglas and this audience, that while Mr. Jefferson was the owner of slaves, as undoubtedly he was, in speaking upon this very subject, he used the strong language that "he trembled for his country when he remembered that God was just."⁸⁰

Lincoln's response to Douglas recalled Northerners to the Declaration of Independence, which he placed at the center of his political rhetoric during the 1850s and the Civil War.

Abraham Lincoln, Stephen Douglas, and Alexander Stephens agreed on one thing: the cause of the Civil War was slavery. Lincoln and the Republicans wished to curb its further expansion. The South demanded its extension westward and southward. The war resolved the question, through Lincoln's Emancipation Proclamation and the Thirteenth Amendment, abolishing slavery in the United States.

We have quoted former Supreme Court Justice Thurgood Marshall's denunciation of the Constitution because of the stain of slavery upon it. Marshall's resentment is forgivable. As Jefferson predicted, there will be "ten thousand recollections, by the blacks, of the injuries they have sustained." Still, we must not forget why the blacks were liberated. For the first time in history, in America during the founding era, and again during the Civil War, slavery was opposed as unjust by the leading men of a country with large numbers of slaves. Lincoln and the Republican party of the 1850s were able to mobilize a national majority against the expansion of slavery only because of the commitment the Founders had made to the proposition that all men are created equal. The Republican opposition to expanding slavery led to secession and civil war. After the border slave states had become committed to the war effort, Lincoln took his earliest practical opportunity to announce the Emancipation Proclamation. From then on, the war for the union became a war to abolish slavery. Hundreds of thousands of whites gave "the last full measure of devotion" in the cause that "this nation, under God, shall

have a new birth of freedom.”⁸¹ “The Battle Hymn of the Republic”—Julia Ward Howe’s popular Civil War song—makes this clear: “As He died to make men holy, let us die to make men free.”

The Founders believed that their compromises with slavery would be corrected in the course of American history after the union was formed. Their belief turned out to be true, although the new birth of freedom proved to be less inevitable and more costly than they anticipated. The Civil War fulfilled the antislavery promise of the American founding.

Lincoln was right, and today’s consensus is wrong. America really was “conceived in liberty, and dedicated to the proposition that all men are created equal.” Under the principles of the Declaration and the law of the Constitution, blacks won their liberty, became equal citizens, gained the right to vote, and eventually had their life, liberty, and property equally protected by the law. But today the founding, which made all of this possible, is denounced as unjust and antiblack. Surely that uncharitable verdict deserves to be reversed.

2

Property Rights

Until the twentieth century, most Americans believed that rich and poor alike benefit from government protection of property rights. They inherited this view from the Founders.

In the American Revolution, liberty and property were thought to be inseparable in two respects. In the first place, there must be “no taxation without representation,” as the famous Revolutionary slogan had it. When government takes your property without your consent, it also takes away your liberty. To show how the logic of the founding pointed toward the abolition of slavery, in chapter 1 we quoted John Dickinson’s 1768 remark: “Those who are taxed without their own consent, expressed by themselves or their representatives, are slaves. We are taxed without our own consent, expressed by ourselves or our representatives. We are therefore—SLAVES.” We quote it again here to introduce our consideration of property. For the same reason, Jefferson spoke of property as part of liberty in his *Summary View of the Rights of British America* (1774):

Still less let it be proposed that our *properties* within our own territories shall be taxed or regulated by any power on earth but our own. The God who gave us life gave us *liberty* at the same time; the hand of force may destroy, but cannot disjoin them.¹

But there is a second limitation on government control over property. It is not enough to say that government may take a person’s property only if the people or their representatives approve it. Even government by consent of the governed should not have unlimited power over the property of its citizens (just as it should not have unlimited power over their other liberties). The “first principle of association,” wrote Jefferson, is “the guarantee to everyone [of] the free exercise of his industry and the fruits acquired by it.”² Government may take a portion of one’s property by taxation, but only

Notes

Preface

1. Conor Cruise O'Brien, *The Long Affair: Thomas Jefferson and the French Revolution, 1785–1800* (Chicago: University of Chicago Press, 1996), 319. Thurgood Marshall, "Reflections on the Bicentennial of the U.S. Constitution," *Harvard Law Review* 101 (November 1987): 4. John M. Blum, *Liberty, Justice, Order: Essays on Past Politics* (New York: Norton, 1993), 25; to illustrate the Founders' understanding, Blum attributes this view (incorrectly) to John Locke, "to whom," he correctly says, "so many American political theorists repaired" during that era. Richard N. Current et al., *American History: A Survey*, 7th ed. (New York: Knopf, 1987), 142. Karen O'Connor and Larry J. Sabato, *American Government: Roots and Reform* (New York: Macmillan, 1993), 133. Rogers Smith, "The 'American Creed' and American Identity: The Limits of Liberal Citizenship in the United States," *Western Political Quarterly* 41 (1988): 245. Joan Hoff Wilson, "The Illusion of Change," in *The American Revolution: Explorations in the History of American Radicalism*, ed. Alfred F. Young (Dekalb: Northern Illinois University Press, 1976), 387.

2. George Washington, To the Roman Catholics in the United States, 15 March 1790, in *George Washington: A Collection*, ed. W. B. Allen (Indianapolis: Liberty Classics, 1988), 547. In my quotations from the Founders in this book, I have sometimes modernized spelling, capitalization, and punctuation for the sake of readability.

3. Thomas G. West, "Was the American Founding Unjust? The Case of Slavery," *Principles*, Spring/Summer 1992, 1–12. "Was the American Founding Unjust? The Case of Women," *Principles*, Winter 1993, 1–12. "Was the American Founding Unjust? The Case of Voting Rights," *Principles*, Spring/Summer 1993, 1–12.

Chapter 1

1. Peter Kolchin, *American Slavery, 1619–1877* (New York: Hill & Wang, 1993), 3, 4, 63. Abraham Lincoln, Gettysburg Address (1863). Thurgood Marshall, "Reflections on the Bicentennial of the U.S. Constitution," *Harvard Law Review* 101 (November 1987): 2.

2. Marshall, "Reflections," 4 (quoting with approval Chief Justice Taney's words in the infamous 1857 *Dred Scott* decision). Conor Cruise O'Brien, *The Long Affair: Thomas Jefferson and the French Revolution, 1785–1800* (Chicago: University

of Chicago Press, 1996), 319. Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University Press of Kansas, 1985), 53.

3. Richard L. Bushman, "Declaration of Independence," in *The Readers' Companion to American History*, ed. Eric Foner and John A. Garraty (Boston: Houghton Mifflin, 1991), 272.

4. John Blum et al., *The National Experience: A History of the United States*, 8th ed. (Fort Worth: Harcourt Brace Jovanovich College Publishers, 1993), 130; Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson* (Armonk, N.Y.: M. E. Sharpe, 1996), 105.

5. Samuel Eliot Morison, *Oxford History of the American People* (1965; reprint, New York: Mentor, New American Library, 1972), 1: 295. Thomas Jefferson, *Writings*, ed. Merrill D. Peterson (New York: Library of America, 1984), 22.

6. Donald Robinson, *Slavery in the Structure of American Politics, 1765–1820* (New York: Norton, 1979), 379. Jefferson, "A Bill concerning Slaves" (1779), in *Papers of Thomas Jefferson*, ed. Julian P. Boyd (Princeton: Princeton University Press, 1950–), 2:470–72. Jefferson, *Notes on the State of Virginia* (1787), Query 18, in *Writings*, 288–89. Jefferson, "Sixth Annual Message" (1806), in *Writings*, 528. Ralph Lerner, *The Thinking Revolutionary: Principle and Practice in the New Republic* (Ithaca: Cornell University Press, 1987), 67.

7. Gordon S. Wood, "Equality and Social Conflict in the American Revolution," *William and Mary Quarterly* 51 (1994): 707.

8. Jack P. Greene, *Imperatives, Behaviors, and Identities: Essays in Early American Cultural History* (Charlottesville: University Press of Virginia, 1992), 265. See also David B. Davis, *The Problem of Slavery in the Age of Revolution, 1770–1823* (Ithaca: Cornell University Press, 1975), 257. Like Greene, Davis argues that the Revolution did not necessarily point to the end of slavery. It supposedly defined liberty as a reward for righteous struggle, not as a natural right possessed by all. Therefore, Davis believes, it must be earned.

9. John A. Garraty, *The Story of America: Beginnings to 1877* (Austin, Texas: Holt, Rinehart, & Harcourt Brace, 1992), 163, my emphasis. See also Lorna C. Mason et al., *History of the United States*, vol. 1, *Beginnings to 1877* (Boston: Houghton Mifflin, 1992), 188: "When Jefferson spoke of 'the people,' however, he meant only free white men. In Jefferson's time it was commonly believed that some people should rule and others should be ruled." Both textbooks are Texas-approved for eighth grade.

10. George Washington to Morris, 12 April 1786, in *George Washington: A Collection*, ed. W. B. Allen (Indianapolis: Liberty Classics, 1989), 319. John Adams to Evans, 8 June 1819, in *Selected Writings of John and John Quincy Adams*, ed. Adrienne Koch and William Peden (New York: Knopf, 1946), 209. Benjamin Franklin, "An Address to the Public from the Pennsylvania Society for Promoting the Abolition of Slavery" (1789), in *Writings*, ed. J. A. Leo Lemay (New York: Library of America, 1987), 1154. Hamilton, *Philo Camillus* No. 2 (1795), in *Papers of Alexander Hamilton*, ed. Harold C. Syrett (New York: Columbia University Press, 1961–79), 19:101–2. James Madison, speech at Constitutional Convention, 6 June 1787, in *The Records of the Federal Convention of 1787*, ed. Max Farrand (New Haven: Yale University Press, 1937), 1:135.

11. Bushman, "Declaration of Independence," in *Readers' Companion*, ed. Foner and Garraty, 272.

12. John Jay to the President of the Society for the Manumission of Slaves, June 1788, in *The Founders' Constitution*, vol. 1, *Major Themes*, ed. Philip B. Kurland and Ralph Lerner (Chicago: University of Chicago Press, 1987), 550.

13. John Dickinson, *Letters from a Farmer* (1768), Letter 7, end, in *The Political Writings of John Dickinson, 1764–1774*, ed. Paul L. Ford (New York: Da Capo, 1970), 356. Congress, "Declaration of Causes of Taking Up Arms, July 6, 1775," in *Sources and Documents Illustrating the American Revolution*, ed. Samuel Eliot Morison (New York: Oxford University Press, 1923), 144–45.

14. Resolutions of the House of Representatives of Massachusetts, 29 October 1765, in *Founders' Constitution*, ed. Kurland and Lerner, 1:629.

15. James Otis, *The Rights of the British Colonies* (1764), in *Pamphlets of the American Revolution*, ed. Bernard Bailyn (Cambridge: Harvard University Press, 1965), 1:439. Jay to Price, 27 September 1785, in *Founders' Constitution*, ed. Kurland and Lerner, 1:538; Leon F. Litwack, *North of Slavery: The Negro in the Free States, 1790–1860* (Chicago: University of Chicago Press, 1961), 9.

16. Kenneth Coleman, *The American Revolution in Georgia, 1763–1789* (Athens: University of Georgia Press, 1958), 45–46. Gary Nash, *Race and Revolution* (Madison, Wis.: Madison House, 1990), 15.

17. Slave Petition to the Province of Massachusetts, 25 May 1774, in *Founders' Constitution*, ed. Kurland and Lerner, 1:435. Other slave petitions: Nash, *Race and Revolution*, 171–76; Benjamin Quarles, *The Negro in the American Revolution* (Chapel Hill: University of North Carolina Press, 1961), 39–40. David B. Davis, "American Slavery and the American Revolution," in *Slavery and Freedom in the Age of the American Revolution*, ed. Ira Berlin and Ronald Hoffman (Charlottesville: University Press of Virginia, 1983), 279.

18. Garraty, *Story of America*, 163.

19. Franklin to Waring, 17 December 1763, in *Writings*, 800. Hamilton to Jay, 14 March 1779, *Papers of Alexander Hamilton*, 2:18. Benjamin Rush agreed; see "Address . . . upon Slave-Keeping" and "Vindication of the Address" (both Philadelphia, 1773), in *Am I Not a Man and a Brother: The Antislavery Crusades of Revolutionary America, 1688–1788*, ed. Roger Bruns (New York: Chelsea House, 1977), 224–25. St. George Tucker, a Virginia professor of law, said that there was not enough evidence to resolve the debate over black inferiority; see "On the State of Slavery in America," in Tucker's edition of William Blackstone's *Commentaries* (1803; reprint, New York: Augustus Kelley, 1969), vol. 2, appendix, p. 75 n. H.

20. Jefferson, *Notes on Virginia*, Queries 14, 18, in *Writings*, 269–70, 289. Jefferson to Gregoire, 25 February 1809, in *Writings*, 1202. Rush, "Vindication of the Address" (Philadelphia, 1773), 240. Lincoln makes the same point as Jefferson and Rush in his "Fragment on Slavery," 1 July 1854 (?), in *Collected Works of Abraham Lincoln*, ed. Roy T. Basler (New Brunswick: Rutgers University Press, 1953), 2:223.

21. Edmund Randolph, *History of Virginia*, ed. Arthur H. Shaffer (written about 1810; Charlottesville: University Press of Virginia, 1970), 96. Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: Norton, 1975), 4, 380–81, 385. Morgan quotes the "unbounded love of

liberty" remark from an English diplomat with whom he expresses his agreement.

22. Robinson, *Slavery in the Structure of American Politics*, 297.

23. Arthur Zilversmit, *The First Emancipation: The Abolition of Slavery in the North* (Chicago: University of Chicago Press, 1967), 116–24, 131, 181, 193, 222. On Massachusetts, Davis, *Problem of Slavery*, 319.

24. Zilversmit, *First Emancipation*, 181–82. The authorship of the Pennsylvania preamble has been attributed to Thomas Paine; see Moncure Conway, ed., *Writings of Thomas Paine* (1902; reprint New York: Burt Franklin, 1969), where it is printed at 2:29.

25. Nash, *Race and Revolution*, 43; Zilversmit, *First Emancipation*, 155; James H. Kettner, *The Development of American Citizenship, 1608–1870* (Chapel Hill: University of North Carolina Press, 1984), 302; Ira Berlin, *Slaves without Masters: The Free Negro in the Antebellum South* (1974; reprint, New York: Oxford, 1981), 46–50, 396. Benjamin Quarles, *The Negro and the American Revolution* (Chapel Hill: University of North Carolina Press, 1961), chaps. 4–6. Paul A. Finkelman, ed., *Slavery, Revolutionary America, and the New Nation* (New York: Garland, 1989), xii.

26. Hamilton to Jay, 14 March 1779, *Papers of Alexander Hamilton*, 2:18.

27. William M. Wiecek, *Sources of Antislavery Constitutionalism in America, 1760–1848* (Ithaca: Cornell University Press, 1977), 102–3.

28. *Harry v. Decker & Hopkins* (1818); *Mississippi v. Jones* (1820); Paul Finkelman, *The Law of Freedom and Bondage: A Casebook* (New York: Oceana Publications, 1986), 171, 249 (other courts: 169). Kettner, *Development of American Citizenship*, 305. Robert M. Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven: Yale University Press, 1975), 95–99. Herbert J. Storing, "Slavery and the Moral Foundations of the American Republic," in *The Moral Foundations of the American Republic*, ed. Robert H. Horwitz, 3d ed. (Charlottesville: University Press of Virginia, 1986), 316–18.

29. Lawrence M. Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993), 90–91, emphasis added.

30. Adams to Belknap, 21 March 1795, in *Founders' Constitution*, ed. Kurland and Lerner, 1:559. There are many scholars whose research supports the "logic of revolution" argument presented here, including Zilversmit, *First Emancipation*; Davis, "American Slavery," 262–80; Bernard Bailyn, *The Ideological Origins of the American Revolution*, enlarged ed. (Cambridge: Harvard University Press, 1992), 232–36; Duncan J. MacLeod, *Slavery, Race, and the American Revolution* (Cambridge: Cambridge University Press, 1974); Nash, *Race and Revolution*, 3–23.

31. Kolchin, *American Slavery*, 4.

32. Finkelman, *Slavery and the Founders*, 1. Marshall, "Reflections," 2.

33. Morris, 8 August, in *Records of the Convention*, ed. Farrand, 2:222.

34. Madison, 14 June, in *Records of the Convention*, ed. Farrand, 2:10; Davie, 12 June, in *ibid.*, 1:594; Pinckney, 23 July, in *ibid.*, 2:95; Rutledge and Pinckney, 21 August, in *ibid.*, 2:364; Pinckney, Baldwin, Williamson, 22 August 1787, in *ibid.*, 2:371–73. Finkelman, *Slavery and the Founders*, 16, 27.

35. "Circular to the States" (1783), in *George Washington: A Collection*, 241.

36. Frederick Douglass, "The Constitution of the United States: Is It Pro-

Slavery or Anti-Slavery?" (1860) in *The Life and Writings of Frederick Douglass*, ed. Philip S. Foner (New York: International Publishers, 1950), 2:478.

37. Kenneth L. Karst, *Belonging to America: Equal Citizenship and the Constitution* (New Haven: Yale University Press, 1989), 48. Pinckney, 6 July; Gouverneur Morris, 11 July; in *Records of the Convention*, ed. Farrand, 1:542, 588.

38. Pinckney, 29 August, with Madison's footnote, in *Records of the Convention*, ed. Farrand, 2:449. Wiecek, *Sources of Antislavery Constitutionalism*, 117–18.

39. Speech at Pennsylvania Ratifying Convention, 3 December 1787, in *Documentary History of the Ratification of the Constitution*, ed. Merrill Jensen (Madison: State Historical Society of Wisconsin, 1976–), 463.

40. See *Records of the Convention*, ed. Farrand, 2:417 (25 August); 601 (report of Committee of Style); 628 (15 September).

41. Karen O'Connor and Larry J. Sabato, *American Government: Roots and Reform* (New York: Macmillan, 1993), 37.

42. Frederick Douglass, quoted by William Wiecek, "The Witch at the Christening," in *The Framing and Ratification of the Constitution*, ed. Leonard W. Levy and Dennis J. Mahoney (New York: Macmillan, 1987), 181.

43. Alexander Hamilton et al., *The Federalist* (New York: New American Library, 1961), No. 39, 240; No. 40, 253; No. 43, 279–80. This question is ably explored by Harry V. Jaffa, *Original Intent and the Framers of the Constitution: A Disputed Question* (Washington: Regnery Gateway, 1994).

44. Luther Martin, *Genuine Information* (1788), in *The Complete Anti-Federalist*, ed. Herbert J. Storing (Chicago: University of Chicago Press, 1981), 2:62. Jefferson, *Notes on Virginia*, Query 18, in *Writings*, 288. Mason, 22 August, in *Records of the Convention*, ed. Farrand, 2:370.

45. Ralph David Abernathy, *And the Walls Came Tumbling Down: An Autobiography* (New York: Harper Perennial, 1990), 17.

46. For further support of my argument, see Storing, "Slavery and the Moral Foundations"; John Alvis, "The Slavery Provisions of the U.S. Constitution: Means for Emancipation," *Political Science Reviewer* 17 (1987): 241–65; Bernard Bailyn, *Faces of Revolution* (New York: Knopf, 1990), 222–23; Paul Rahe, *Republics Ancient and Modern* (Chapel Hill: University of North Carolina Press, 1992), 625–37.

47. O'Connor and Sabato, *American Government*, 132.

48. Robinson, *Slavery in the Structure of American Politics*, 88.

49. Lincoln, "Perpetuation of Our Political Institutions" (1838), in *Collected Works*, ed. Basler, 1:108.

50. William Lloyd Garrison, *Liberator*, 15 December 1837 and 1 January 1831, in *Slavery Attacked: The Abolitionist Crusade*, ed. John L. Thomas (Englewood Cliffs, N.J.: Prentice-Hall, 1965), 77, and George M. Frederickson, ed., *William Lloyd Garrison* (Englewood Cliffs, N.J.: Prentice-Hall, 1968), 23. William Lloyd Garrison, *Thoughts on Colonization* (1832; reprint, New York: Arno, 1968), 9. Aileen S. Kraditor, *Means and Ends in Abolitionism: Garrison and His Critics on Strategy and Tactics, 1834–1850* (New York: Pantheon, 1969). Harry V. Jaffa, *Crisis of the House Divided* (1959; reprint, Seattle: University of Washington Press, 1973), 261, 270–72. Thomas G. West and Sanderson Schaub, *Marx and the Gulag: Two Essays* (Montclair, Calif.: Claremont Institute, 1988). Charles L. Griswold Jr., "Rights and

Wrongs: Jefferson, Slavery, and Philosophical Quandaries," in *A Culture of Rights*, ed. Michael J. Lacey et al. (Cambridge: Cambridge University Press, 1991), 189–214.

51. Jefferson to Richard Price, 7 August 1785, in Thomas Jefferson, *Life and Selected Writings*, ed. Adrienne Koch and William Peden (New York: Modern Library, 1944), 368. Jay to Society for the Manumission of Slaves, June 1788, *Founders' Constitution*, ed. Kurland and Lerner, 1:550. Lincoln, Speech at Chicago, 10 July 1858, in *Collected Works*, ed. Basler, 2:500.

52. 22 August, *Records of the Convention*, ed. Farrand, 2:371, 373. Rawlins Loundes, South Carolina ratifying convention, 1788, in Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Constitution* (Philadelphia: Lip-pincott, 1937), 4:272. Madison to Rush, 10 March 1790, *Founders' Constitution*, ed. Kurland and Lerner, 1:555.

53. Petitions to Virginia legislature from six counties (1785), Robert E. Brown and B. Katherine Brown, *Virginia, 1705–1786: Aristocracy or Democracy?* (East Lansing: Michigan State University Press, 1964), 285.

54. Storing, "Moral Foundations," 324–25. John Henry to Pleasants, 18 January 1773, in *Founders' Constitution*, ed. Kurland and Lerner, 1:517. Henry quoted in Elliot, *Debates*, 3:590. Jefferson to Holmes, 22 April 1820; Jefferson, *Notes on Virginia*, Query 14, both in *Writings*, 1434, 264 (emphasis added).

55. Finkelman, *Slavery and the Founders*, chap. 5. Alexis de Tocqueville, *Democracy in America*, ed. J. P. Mayer (New York: Harper & Row, 1988), 357–60. James Fenimore Cooper, *The American Democrat* (1838; reprint, Indianapolis: Liberty Classics, 1981), 222. St. George Tucker, who opposed slavery, also feared that a general emancipation would lead to a race war ending in "the extermination of one party or the other"; Tucker to Belknap, 29 June 1795, *Founders' Constitution*, ed. Kurland and Lerner, 1:559.

56. Alfred N. Hunt, *Haiti's Influence on Antebellum America* (Baton Rouge: Louisiana State University Press, 1988), 21–22, 39–40.

57. Jefferson, *Notes on Virginia*, Query 18, *Writings*, 289.

58. Harry V. Jaffa, *The Conditions of Freedom: Essays in Political Philosophy* (Baltimore: Johns Hopkins University Press, 1975), 244.

59. Jefferson to Bancroft, 26 January 1788, *Papers*, 14:492. James Madison, "Memorandum on an African Colony for Freed Slaves" (1789), in *Founders' Constitution*, ed. Kurland and Lerner, 1:552. Frederick Law Olmsted, *The Cotton Kingdom* (1861; reprint, New York: Modern Library, 1984), 464. St. George Tucker to Belknap, 29 June 1795, *Founders' Constitution*, ed. Kurland and Lerner, 1:559. Washington to Lafayette, 10 May 1786, in *George Washington: A Collection*, ed. Allen, 322.

60. Litwack, *North of Slavery*, 66.

61. Winthrop P. Jordan, *White over Black: American Attitudes toward the Negro, 1550–1812* (Chapel Hill: University of North Carolina Press, 1968), 411–12. Ket-tner, *Development of American Citizenship*, 236, 319, 330. Robert J. Dinkin, *Voting in Revolutionary America: A Study of Elections in the Original Thirteen States, 1776–1789* (Westport, Conn.: Greenwood, 1982), 41–42. Kirk H. Porter, *A History of Suffrage in the United States* (1918; reprint, New York: AMS Press, 1971), 80–85, 90. "An Act

... Establishing an Uniform Militia," 8 May 1792, in *Annals of Congress*, ed. Joseph Gales and William W. Seaton (Washington, D.C.: Gales and Seaton, 1834–56), 1:1392.

62. Kruman, "Suffrage," in *Reader's Companion*, ed. Foner and Garraty, 1044. Litwack, *North of Slavery*, 94, 79, 90, 174. Cf. MacLeod, *Slavery, Race*, 168–69. Douglass, "What Are the Colored People Doing for Themselves?" (1848), in *What Country Have I? Political Writings by Black Americans*, ed. Herbert J. Storing (New York: St. Martin's, 1970), 45–46.

63. Litwack, *North of Slavery*, 66.

64. Jefferson to Holmes, 22 April 1820, *Writings*, 1434; *Notes on Virginia*, Query 14, *Writings*, 264.

65. Jordan, *White over Black*, 548, 567. Lincoln to Caleb Smith, 23 October 1861, in *Collected Works*, ed. Basler, 4:561; Abraham Lincoln, Annual Message to Congress, 3 December 1861, in *ibid.*, 5:48; Appeal to Border State Representatives, 12 July 1862, in *ibid.*, 5:318; Address on Colonization to a Deputation of Negroes, 14 August 1862, in *ibid.*, 373; Annual Message to Congress, 1 December 1862, in *ibid.*, 5:530, 534–35.

66. Washington, "Circular to the States" (1783), in *George Washington: A Col-lection*, 240. Jefferson to Weightman, 24 June 1826; *Notes on Virginia*, Query 18, both in *Writings*, 1517, 289. Madison to Rush, 20 March 1790, in *Founders' Constitution*, ed. Kurland and Lerner, 555.

67. "An Address to the Public from the Pennsylvania Society for Promoting the Abolition of Slavery" (1789), in Franklin, *Writings*, 1154.

68. Hamilton, *Federalist* No. 6, p. 59.

69. Daniel Webster, *Effects of Slavery, on Morals and Industry* (1791), quoted in David B. Davis, *Slavery and Human Progress* (New York: Oxford University Press, 1984), 159. Devereaux Jarrett quoted in Larry E. Tise, *Proslavery: 1701–1840* (Athens: University of Georgia Press, 1987), 37.

70. 22 August, in *Records of the Convention*, ed. Farrand, 2:369–72.

71. Lincoln, speech at Springfield on Dred Scott, 26 June 1857, in *Collected Works*, 2:403–4. Rahe, *Republics Ancient and Modern*, 641–50. The "saddles on their backs" reference is to Jefferson's famous letter to Weightman, 24 June 1826, in *Writings*, 1517.

72. Abraham Lincoln, Speech at Alton, 15 October 1858, in *The Lincoln-Douglas Debates of 1858*, ed. Robert W. Johannsen (New York: Oxford University Press, 1965), 319. On the permanent conflict between good and evil in the soul, see Aleksandr Solzhenitsyn, *The Gulag Archipelago* (New York: Harper & Row, 1974), 1:168; 2: 615.

73. Bailyn, *Faces of Revolution*, 222–23.

74. Lincoln, Speech at Alton, 15 October 1858, in *Lincoln-Douglas Debates*, 311–12.

75. Harry V. Jaffa, *How to Think about the American Revolution* (Durham: Carolina Academic Press, 1978), 53.

76. Jefferson, *Writings*, 22, 18.

77. John C. Calhoun, Senate speech of 10 January 1838, in *Slavery Defended*, ed. Eric L. McKittrick (Englewood Cliffs, N.J.: Prentice Hall, 1963), 18. Calhoun,

Senate speeches, 6 February 1837 and 19 February 1847, in *Union and Liberty: The Political Philosophy of John C. Calhoun*, ed. Ross M. Lence (Indianapolis: Liberty Fund, 1992), 474, 518. Harry V. Jaffa, *Defenders of the Constitution: Calhoun vs. Madison* (Irving: University of Dallas, 1987). *George (a slave) v. The State* (Mississippi, 1859), in Finkelman, *Law of Freedom*, 261. John C. Calhoun, *A Disquisition on Government* (1853), in *Union and Liberty*, ed. Lence, 44. George Fitzhugh, "Southern Thought" (1857), in *The Ideology of Slavery*, ed. Drew G. Faust (Baton Rouge: Louisiana State University Press, 1981), 279.

78. *Sociology for the South* (1854), in *Slavery Defended*, ed. McKittrick, 38, 44. Compare Karl Marx, *On the Jewish Question*, in *The Marx-Engels Reader*, ed. Robert C. Tucker, 2d ed. (New York: Norton, 1978), 24–51.

79. Alexander Stephens, "Corner-Stone Speech," 21 March 1861, in Henry Cleveland, *Alexander H. Stephens* (Philadelphia: National Publishing, 1866), 721.

80. Lincoln, Speeches at Galesburg, 7 October 1858, *Lincoln-Douglas Debates*, 215–16, 219–20. Jefferson's statement is from *Notes on Virginia*, Query 18, in *Writings*, 289.

81. Lincoln, Gettysburg Address, 19 November 1863.

Chapter 2

1. John Dickinson, *Letters from a Farmer* (1768), Letter 7, end, in *The Political Writings of John Dickinson, 1764–1774*, ed. Paul L. Ford (New York: Da Capo, 1970), 356. Thomas Jefferson, *A Summary View*, in *Writings*, ed. Merrill D. Peterson (New York: Library of America, 1984), 121–22, emphasis added.

2. Letter to Milligan, 6 April 1816, in *Writings of Thomas Jefferson*, ed. Albert E. Bergh (Washington: Thomas Jefferson Memorial Association, 1904), 14:466.

3. Alexander Hamilton, "The Defence of the Funding System" (July 1795), in *Papers of Alexander Hamilton*, ed. Harold C. Syrett (New York: Columbia University Press, 1961–79), 19:52. *Vanhorne's Lessee v. Dorrance*, 2 Dallas 304, 310, in *The Founders' Constitution*, vol. 1, *Major Themes*, ed. Philip B. Kurland and Ralph Lerner (Chicago: University of Chicago Press, 1987), 599.

4. Vernon L. Parrington, *Main Currents in American Thought* (1927; reprint, New York: Harvest Book, Harcourt, Brace, 1954), 1:350. Garry Wills, *Inventing America: Jefferson's Declaration of Independence* (Garden City, N.Y.: Doubleday, 1978), 250–51, 255. Gordon S. Wood, *The Creation of the American Republic* (New York: Norton, 1969), 61, 64, 418. On Wood's misunderstanding, Gary J. Schmitt and Robert H. Webking, "Revolutionaries, Antifederalists, and Federalists: Comments on Gordon Wood's Understanding of the American Founding," *Political Science Reviewer* 9 (1979):195–229.

5. Jefferson, First Inaugural Address (1801), in *Writings*, 494.

6. Virginia Declaration of Rights (1776), in *Founders' Constitution*, ed. Kurland and Lerner, 1:6.

7. Seventh Lincoln-Douglas debate, 15 October 1858; speech at Springfield, 26 June 1857; in Abraham Lincoln, *Collected Works*, ed. Roy P. Basler (New

Brunswick: Rutgers University Press, 1953), 3:315; 2:405.

8. James Madison, "Note to His Speech on the Right of Suffrage," in *Records of the Federal Convention of 1787*, ed. Max Farrand, (New Haven: Yale University Press, 1937), 3:450. Edward J. Erler, "The Great Fence to Liberty: The Right to Property in the American Founding," in *Liberty, Property, and the Foundations of the American Constitution*, ed. Ellen F. Paul et al. (Albany: State University of New York Press, 1988), 43.

9. Thomas G. West, "The Decline of Free Speech in Twentieth-Century America: The View from the Founding," in *Liberty under Law: American Constitutionalism Yesterday, Today, and Tomorrow*, ed. Kenneth L. Grasso and Cecilia Rodriguez Castillo (Lanham, Md.: University Press of America, 1997), 160.

10. Robert Lerner et al., *Molding the Good Citizen: The Politics of High School History Texts* (Westport, Conn.: Praeger, 1995), 102–5. Gary B. Nash, *American Odyssey: The United States in the Twentieth Century*, teacher's ed. (New York: Glencoe/McGraw Hill, 1994), 121, 126, 170–71. (Nash mentions Carnegie as one "of the robber barons who . . . supported the spirit of charity.") David E. Shi, *Matthew Josephson: Bourgeois Bohemian* (New Haven: Yale University Press, 1981). Burton W. Folsom Jr., *The Myth of the Robber Barons*, 3d ed. (Herndon, Va.: Young America's Foundation, 1996).

11. Nash, *American Odyssey*, p. 763.

12. Alexander Hamilton et al., *The Federalist* (New York: New American Library, Mentor, 1961), No. 10, p. 78; and No. 51, p. 324.

13. Michael Parenti, "The Constitution as an Elitist Document," in *How Democratic Is the Constitution?* ed. Robert A. Goldwin and William A. Schambra (Washington: American Enterprise Institute, 1980), 52–53.

14. Kenneth L. Karst, *Belonging to America: Equal Citizenship and the Constitution* (New Haven: Yale University Press, 1989), 179. Arthur S. Miller, quoted by Michael Les Benedict, "Laissez-Faire and Liberty: A Re-Evaluation of the Meaning and Origins of Laissez-Faire Constitutionalism," *Law and History Review* 3 (Fall 1985): 293.

15. Jefferson, *Autobiography*, in *Writings*, 32.

16. Cass Sunstein, *The Partial Constitution* (Cambridge: Harvard University Press, 1993), 40–67, 138.

17. This is proved beyond a reasonable doubt by Steven M. Dworetz, *The Unvarnished Doctrine: Locke, Liberalism, and the American Revolution* (Durham: Duke University Press, 1990).

18. Thomas G. West, "The Classical Spirit of the Founding," in *The American Founding: Essays on the Formation of the Constitution*, ed. J. Jackson Barlow, Leonard W. Levy, and Ken Masugi (Westport, Conn.: Greenwood Press, 1988), 4. Locke, *Second Treatise*, in *Two Treatises of Government*, ed. Peter Laslett, student ed. (Cambridge: Cambridge University Press, 1988); secs. 44–45, my emphasis.

19. Locke, *Second Treatise*, secs. 34, 41, 42. Far from being only of rhetorical use, as some scholars suggest, Locke's account of the origin of property rights (labor) remains effective in society, where money and contract law enable producers to keep the monetized fruits of their labor. Cf. Abram N. Shulsky, "The Concept of Private Property in the History of Political Economy," in *From Political Economy to Economics—And Back?* ed. James H. Nichols Jr. and Colin Wright (San Francisco: ICS Press, 1990), 25–26.