



AMERICAN CONSTITUTIONALISM  
 VOLUME I: STRUCTURES OF GOVERNMENT  
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Supplementary Material

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Chapter 4 The Early National Era – Powers of the National Government

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Quaker Petition on Slavery (1790)<sup>1</sup>

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On February 11, 1790, during the second session of the first Congress, Representative Thomas Fitzsimons of Pennsylvania presented to the House an “Address of the people called Quakers,” which urged Congress to abolish the slave trade. The Quakers (and allies such as Benjamin Franklin) had petitioned the Continental Congress to abolish the slave trade in 1783, but Congress had failed to respond at that time, in part because it had no meaningful power over the subject. The situation was different under the new Constitution. While Congress was expressly forbidden in Article I, section 9 from prohibiting the slave trade before 1808, there were still many questions about whether the federal government had other powers that might be used to regulate or curtail the slave trade. A similar petition had been presented to the New York state legislature, but New York put it off, contending that the federal government had exclusive authority over the matter. The Quaker petition triggered extensive debate in the House of Representatives over the federal government’s authority over slavery.

The debates are noteworthy for a variety of reasons, not the least of which is James Madison’s remark that Congress may have the authority to regulate “the introduction of [slaves] into the new States to be formed out of the Western Territory” – an issue that would be at the core of the Supreme Court’s infamous Dred Scott opinion in 1857. Eventually a committee drafted a report that offered a summary of what Congress could and could not do in relation to slavery. The proposed resolutions were significantly altered on the floor of the House, tilting it in a more pro-slavery direction. The House deleted any reference to Congress’s power to impose a \$10-per-person tax on imported slaves and a proposal to reassure the petitioners that Congress would take action “in all cases” within its power to advance the “humane objects” of the petitions. It weakened language on congressional authority over the international slave trade and beat back a proposal to delete a resolution declaring that Congress had no power to emancipate slaves or interfere with the “internal regulations of particular States.”

As you review these materials, pay special attention to the debate over how members of Congress should interpret the agreement over slavery between the North and the South at the time of the creation of the Constitution. Also, what is the significance of having members of Congress come to an agreement among themselves about the scope of their constitutional powers? Are there advantages to this process over a judicial resolution of such disputes? Disadvantages?

Thursday, February 12 [1790]

Mr. Thomas FITZSIMONS [Federalist, Pennsylvania] presented the following Address to the Senate and House of Representatives of the United States:

*To the Senate and House of Representatives of the United States.*

The Address of the people called Quakers, in their annual assembly convened.

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<sup>1</sup> *Annals of the Debates in Congress*, 1<sup>st</sup> Cong., 2<sup>nd</sup> Sess. (1790), 1224–1247, 1465–1522



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Many are the enormities abhorrent to common humanity, and common honesty; which, under the Federal countenance given to this abominable commerce, are practiced in some of the United States, which we judge it not needful to particularize to a body of men, chosen as eminently distinguished for wisdom as extensive information. But we find it indispensably incumbent on us, as a religious body, assuredly believing that both the true temporal interest of nations, and eternal well-being of individuals, depend on doing justly, loving mercy, and walking humbly before God, the creator, preserver, and benefactor of men, thus to attempt to excite your attention to the affecting subject; earnestly desiring that the infinite Father of Spirits may so enrich your minds with his love and truth, and so influence your understandings, by that pure wisdom which is full of mercy and good fruits, as that a sincere and impartial inquiry may take place, whether it be not an essential part of the duty of your exalted station, to exert upright endeavors, to the full extent of your power, to remove every obstruction to public righteousness, which the influence of artifice of particular persons, governed by the narrow mistaken views of self-interest, has occasioned, and whether, notwithstanding such seeming impediments, it be not in reality within your power to exercise justice and mercy, which, if adhered to, we cannot doubt, must produce the abolition of the slave trade....

Mr. Josiah PARKER [Republican, Virginia].— I hope, Mr. Speaker, the petition of these respectable people will be attended to with all the readiness the importance of its object demands; and I cannot help expressing the pleasure I feel in finding so considerable a part of the community attending to matters of such momentous concern to the future prosperity and happiness of the people of America. I think it my duty, as a citizen of the Union, to espouse their cause; and it is incumbent upon every member of this House to sift the subject well, and ascertain what can be done to restrain a practice so nefarious. The Constitution has authorized us to levy a tax upon the importation of such persons as the States shall authorize to be admitted. I would willingly go to that extent; and if anything further can be devised to discountenance the trade, consistent with the terms of the Constitution, I shall cheerfully give it my assent and support.

Mr. James MADISON [Republican, Virginia].— . . . the Constitution secures to the individual States the right of admitting, if they think proper, the importation of slaves into their own territory, for eighteen years yet unexpired; subject, however, to a tax, if Congress are disposed to impose it, of not more than ten dollars on each person.... It may be, that foreigners take the advantage of the liberty afforded them by the American trade, to employ our shipping in the slave trade between Africa and the West Indies, when they are restrained from employing their own by restrictive laws of their nation. If this is the case, is there any person of humanity that would not wish to prevent them?

Mr. James JACKSON [Republican, Georgia].— . . . I apprehend, if through the interference of the General Government the slave trade was abolished, it would evince to the people a disposition towards a total emancipation, and they would hold their property in jeopardy.... I would beg to ask those, then, who are desirous of freeing the negroes, if they have funds sufficient to pay for them? If they have, they may come forward on that business with some propriety; but, if they have not, they should keep themselves quiet, and not interfere with a business in which they are not interested. . . . [W]hy do these men set themselves up in such a particular manner against slavery? Do they understand the rights of mankind, and the disposition of Providence, better than others? If they were to consult that book, which claims our regard, they will find that slavery is not only allowed but commended....

Mr. William Loughton SMITH [Federalist, South Carolina] . . . This is desiring an unconstitutional act, because the Constitution secures that trade to the States, independent of Congressional restrictions, for a term of twenty-one years. If, therefore, it prays for a violation of constitutional rights, it ought to be rejected as an attempt upon the virtue and patriotism of the House. . . .

Mr. Elbridge GERRY [Republican, Massachusetts] thought . . . nothing would excuse the General Government for not exerting itself to prevent, as far as they constitutionally could, the evils resulting



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from such enormities as were alluded to by the petitioners; . . . it was the cause of humanity they had interested themselves in, and he wished, with them, to see measures pursued by every nation, to wipe off the indelible stain which they slave trade had brought upon all who were concerned in it. . . .

Friday, February 12 [1790]

The following memorial of the Pennsylvania Society for promoting the Abolition of Slavery, the relief of free negroes unlawfully held in bondage, and the improvement of the condition of the African race, was presented and read:

The memorial respectfully showeth, . . .

That mankind are all formed by the same Almighty Being, alike objects of his care, and equally designed for the enjoyment of happiness, the Christian religion teaches us to believe, and the political creed of Americans fully coincides with the position. Your memorialists . . . have observed, with real satisfaction, that many important and salutary powers are vested in you for “promoting the welfare and securing the blessings of liberty to the people of the United States;” and as they conceive that these blessings ought rightfully to be administered, without distinction of color, to all descriptions of people, so they indulge themselves in the pleasing expectation, that nothing which can be done for the relief of the unhappy objects of their care will be either omitted or delayed.

From a persuasion that equal liberty was originally the portion, and is still the birth-right of all men; an influenced by the strong ties of humanity, and the principles of their institution, your memorialists conceive themselves bound to use all justifiable endeavors to loosen the bands of slavery, and promote a general enjoyment of the blessings of freedom. Under these impressions, they earnestly entreat your serious attention to the subject of slavery; that you will be pleased to countenance the restoration of liberty to those unhappy men, who alone, in this land of freedom are degraded into perpetual bondage, and who, amidst the general joy of surrounding free-men, are groaning in servile subjection; that you will devise means for removing this inconsistency from the character of the American people; that you will promote mercy and justice towards this distressed race, and that you will step to the very verge of the power vested in you for discouraging every species of traffic in the persons of our fellow-men.

BENJ. FRANKLIN, *President*  
PHILADELPHIA, *February 3, 1790.*

Mr. Thomas TUCKER [Republican, South Carolina] was sorry the petition had a second reading, as he conceived it contained an unconstitutional request, and from that consideration he wished it thrown aside. . . . He was surprised to see another memorial on the same subject, and that signed by a man who ought to have known the Constitution better. . . . Do these men expect a general emancipation of slaves by law? This would never be submitted to without a civil war. . . .

Mr. Thomas SCOTT [Republican, Pennsylvania].—I cannot entertain a doubt but the memorial is strictly agreeable to the Constitution; it respects a part of the duty particularly assigned to us by that instrument, and I hope we may be inclined to take it into consideration. We can, at present, lay our hands upon a small duty of ten dollars; I would take this, and if it is all that we can do, we must be content: but I am sorry that the framers of the Constitution did not go further, and enable us to interdict the traffic entirely; for I look upon the slave trade to be one of the most abominable things on earth; and if there was neither God nor the devil, I should oppose it upon the principles of humanity, and the law of nature. . . .

Mr. SMITH . . . observed, that in the Southern States, difficulties had arisen on adopting the Constitution, inasmuch as it was apprehended that Congress might take measures under it for abolishing the slave trade. . . . If [the petitioners’] object had been for Congress to lay a duty of ten dollars per head on the importation of slaves, they would have said so, but that does not appear to have been the case. . . . For



what purpose, then, shall [the petition] be committed? If gentlemen can assign no good reason for the measure, they will not support it, when they are told that it will create jealousies and alarm in the Southern States; for I can assure them that there is no point on which they are more jealous and suspicious, than on a business with which they think the Government has nothing to do. . . . On entering into this Government, [the Southern States] apprehend that other States, not knowing the necessity the citizens of the Southern States were under to hold this species of property, would, from motives of humanity and benevolence, be led to vote for a general emancipation; and had they not seen that the constitution provided against the effect of such a disposition, I may be bold to say they never would have adopted it. . . .

Mr. MADISON.—The debate has taken a serious turn, and it will be owing to this alone, if an alarm is created. . . . He admitted, that Congress is restricted by the Constitution from taking measures to abolish the slave trade; yet there are a variety of ways by which it could countenance the abolition, and regulations might be made in relation to the introduction of them into the new States to be formed out of the Western Territory. He thought the object well worthy of consideration.

Mr. GERRY thought the interference of Congress fully compatible with the constitution, and could not help lamenting the miseries to which the natives of Africa were exposed by this inhuman commerce. He never contemplated the subject, without reflecting what his own feelings would be, in case himself, his children, or friends were placed in the same deplorable circumstance. He then adverted to the flagrant acts of cruelty which are committed in carrying on that traffic; and asked, whether it can be supposed that Congress has no power to prevent such abuses? . . . [T]hat we have a right to regulate this business, is as clear as that we have any rights whatever; nor has the contrary been shown by any person who has spoken on the occasion. . . . He made a calculation of the value of the slaves in the Southern States, and supposed they may be worth ten millions of dollars. Congress have a right, if they see proper, to make a proposal to the Southern States to purchase the whole of them, and their resources in the Western Territory might furnish them with the means: He did not intend to suggest a measure of this kind; he only instanced these particulars to show that Congress certainly has a right to intermeddle in the business. . . .

[The motion to send the petition to a committee passed by a vote of 43-14.]

Monday, March 8 [1790]

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Mr. Thomas HARTLEY [Republican, Pennsylvania] moved that the report of the committee on the memorials of the people called Quakers, should be taken up for a second reading, which motion being adopted, it was read as follows, viz:

#### REPORT

That, from the nature of the matters contained in those memorials, they were induced to examine the powers vested in Congress, under the present Constitution, relating to the abolition of slavery, and are clear of opinion:

First. That the General Government is expressly restrained from prohibiting the importation of such persons as any of the States now existing shall think proper to admit until the year 1808.

Secondly. That Congress, by a fair construction of the Constitution, are equally restrained from interfering in the emancipation of slaves, who already are, or who may, within the period mentioned, be imported into, or born within any of the said States.

Thirdly. That Congress have no authority to interfere in the internal regulations of particular States, relative to the instruction of slaves in the principles of morality and religion, to their comfortable clothing, accommodation and subsistence; to the regulation of their marriages,



and the prevention of the violation of the rights thereof, or to the separation of children from their parents; to a comfortable provision in cases of sickness, age, or infirmity, or to the seizure, transportation, or sale of free negroes, but have the fullest confidence in the wisdom and humanity of the Legislatures of the several States, that they revise their laws, from time to time, when necessary, and promote the objects mentioned in the memorials, and every other measure that may tend to the happiness of slaves.

Fourthly. That, nevertheless, Congress have authority ... to lay, at any time, a tax or duty, not exceeding ten dollars for each person, or any description, the important of whom shall be by any of the States....

Fifthly. That Congress have authority to interdict, or (so far as it is, or may be carried on by citizens of the United States, for supplying foreigners) to regulate the African trade, and to make provision for the humane treatment of slaves, in all cases while on their passage to the United States, or to foreign ports, as far as it respects the citizens of the United States.

Sixthly. That Congress have also authority to prohibit foreigners from fitting out vessels in any port of the United States for transporting persons from Africa to any foreign port.

Seventhly. That the memorialists be informed, that in all cases, to which the authority of Congress extends, they will exercise it for the humane objects of the memorialists, so far as they can be promoted on the principles of justice, humanity, and good policy.

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Wednesday, March 17 [1790]

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Mr. SMITH said he lamented much that this subject had been brought before the House; that he had deprecated it from the beginning, because he foresaw that it would produce a very unpleasant discussion. . . . If the citizens of the Northern States were displeased with the toleration of slavery in the Southern States, the latter were equally disgusted with some things tolerated in the former. He had mentioned on a former occasion the dangerous tenets and pernicious practices of the sect of Shaking Quakers, who preached against matrimony. . . . However the people of South Carolina reprobated the gross and immoral conduct of these Shakers, they had not petitioned Congress to expel them from the Continent. . . . The Northern States knew that the Southern States had slaves before they confederated with them. If they had such an abhorrence for slavery, why, said Mr. S., did they not cast us off and reject our alliance?

...

. . . I disapprove of the whole of the report; because it either states some power sufficiently expressed in the Constitution which is unnecessary, or it sets forth some power which I am clear Congress does not possess. . . . In short, Mr. Chairman, the whole of this business has been wrong from beginning to end. . . .