Enacting Freedom: How Abraham Lincoln and Ralph Waldo Emerson completed the American Revolution

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Enacting Freedom: How Abraham Lincoln and Ralph Waldo Emerson completed the American Revolution

By

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Abstract

Slavery thrust America into a moral and legal dilemma. The Constitution and Declaration of Independence offered contradicting readings with regards to natural law and actual law. Slavery became representative of the gulf of interpretation between these two documents. Ralph Waldo Emerson and Lysander Spooner were moral reformers that attacked slavery by supporting the message of equality found within the Declaration of Independence. Thomas Dew and Rufus Choate were proslavery theorists who regularly used history as a means to legitimize slavery. William Henry Seward called for the support of a “Higher Law” than the Constitution that owes more to the verbiage within the Declaration of Independence than anything else. Daniel Webster offered a compromise over morality in an effort to stop the impending civil war, believing more in a whole union, though fractured and divisive, rather than an actual secession. Abraham Lincoln represents a conflicted politician who idolized the founding fathers and their political and moral ambition, yet felt obligated to uphold the law of the land.

These figures and their respective beliefs came to a head in the period between 1830-1860. Though the war was inevitable, what was not clear was how to address the slavery issue. The tension between the Constitution and Declaration of Independence sparked a furious debate over slavery, morality, law, and America itself. Lincoln recognized this and, with the assistance of reformers Emerson and Spooner, and senator Seward, understood he had to fuse the moral sentiment in the Declaration of Independence with the lawful enforcement of the Constitution, thus making morality law.
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Tension and Slavery in 19th Century America

When the founding fathers penned the Declaration of Independence and agreed upon the framework of what would become their Constitution, they made concessions with the southern states to preserve slavery (Maltz 37 – 49). The original vision of many of the founding fathers for the nation was one of freedom and equality; however, this vision was not shared by many slave owners among that group and so the sectional conflict we associate with the middle of the nineteenth century actually had an incubation period dating back to this gathering of the nation’s founders (53 – 59).

Slavery was the main point of contention that continued to hang over American society and politics during much of the following century. It antagonized northern states, and it remained the structural way of life of the southern states. Slavery in the south also sapped at northern political power. As Daniel Walker Howe puts it, “many northern politicians were increasingly alarmed at the disproportionate political influence of southern slaveholders. The North had come to resent the constitutional clause by which three-fifths of the slave population counted for purposes of representation in Congress and the electoral college” (Howe 150). Slavery became representative of the conflict not only between northern and southern states but also between the original vision of antislavery founders and the movement away from that vision by influential men such as Rufus Choate and Thomas Dew, who sought to convince their countrymen that human equality was contrary to history, sciences, and religion (Foner 73 – 77). Eric Foner disputes this by arguing that antislavery was “the intended policy of the founders of the nation, and was fully compatible with the constitution (73). Slavery became the epicenter of this conflict over equality within American morality.
This moral battle threatened to erupt into civil war. In order to eliminate this conflict once and for all, the moral readings of the Constitution and Declaration of Independence had to be given the force of law. This meant that the intentions of the founders had to be revisited and solidified in the law; their cosmopolitan views of equality had to become more than a mode of interpretation; it had to become an amendment that guaranteed freedom to the slaves, the beings that had been mere concessions in 1776. Only this progress would end the sectional conflict over slavery once and for all. Unfortunately, proslavery interpretations of the Constitution dominated the intellectual environment during the nineteenth century. These pro-slavery interpretations of the Constitution and Declaration of Independence represent an important ideological cause of the Civil War.

On either side of the battle over which interpretation would survive, there were politicians, writers, activists, and others that straddled the line between the two sides. On the antislavery side there were individuals who argued that the concessions that were being made were tantamount to Americans making moral concessions for their progeny—the longer slavery existed in America, the less American society looked like the society they envisioned. Further exacerbating this conflict was a developing contest between those that felt slavery was right in a legal sense, and those that felt it was wrong in a moral one. The law of the land further impeded moral progress.

Thomas Dew and Rufus Choate are especially important in developing the pro-slavery argument. In late 1831, Thomas Dew, President of William and Mary College, wrote one of these defenses in the *American Quarterly Review* (Dew 324 – 341). In his accompanying commentary editor Ronald Reid remarks that Dew’s essay departed from the older pro-slavery rhetoric. Reid noted that in Dew’s essay there were “two important
transitions in proslavery rhetoric.” These are that Dew’s “rhetoric turned slavery into a ‘positive good’ that benefited everybody, including slaves” (325), and later, “whereas earlier rhetoric ignored Thomas Jefferson’s antislavery sentiments, later writers and speakers often attacked him” (327). Dew thus introduces a new interpretation of slavery by arguing that it is a positive good. He cites history as his guide: “The Children of Israel themselves were slaveholders.” Dew also identifies the futility of abandoning slavery, again citing our “innocence” in inheriting the slaves: “Let us admit that slavery is an evil, and what then? Why it has been entailed upon us by no fault of ours.” However, as Kenneth Stampp notes, Dew’s approach to slavery shows just how far he “and his associates had departed from the democratic ideals of the Declaration of Independence” (Stampp 387).

Rufus Choate, a constitutional lawyer and senator, speaking in Lowell, Massachusetts twenty-five years later, conjures up horrible images of slave armies invading the nation: “We should like to see slavery cease from the earth; but should we like to see black regiments from the West Indies landing at Charleston or New Orleans to help on emancipation?” (Choate 396). Here, Choate is carefully placing himself alongside the other abolitionists when he says, “We should like to see slavery cease.” He cleverly defines the slaves as foreign invaders, and reminds his audience that white is safer than black. Choate had good reason to reject antislavery arguments, as well as conjure up images of the Republican Party as responsible for the likely onslaught of slave-related violence, due to his loss of stature in the wake of the rise of the Republican Party (Wilentz 697).

Choate and Dew represent one side of this argument over the nature of American slavery. The counterpoints in the antislavery community were reformers, such as Lysander Spooner and Ralph Waldo Emerson. These men often discussed the meaning beyond the text
of the Constitution and the laws of the nation during the antebellum crisis, appealing to a moral standard, a natural law, that was threatened by the presence of slavery. Lysander Spooner, in the same year as Choate’s speech, provided an in-depth analysis of the slavery issue in his *The Unconstitutionality of Slavery*, by examining the Constitution, The Articles of Confederation, and even the Colonial Charters as to how slavery related to all three. In his analysis of the Constitution, Spooner claims that “the Constitution of the United States did not, *of itself, create or establish* slavery as a *new* institution; or even give any authority to the state governments to establish it as a new institution” (55). Spooner’s arguments carried enough weight that the Liberty Party and its founder, Gerrit Smith, eventually recognized them, as a valid rejection of the constitutionality of slavery (Alexander 202). Spooner also goes to great lengths to invoke the idea of “natural law” and how slavery was invalidated by it—slavery could not exist in nature (212 – 213). According to Spooner, “We thus politically and judicially *recognize* the principle of law as originating in the nature and rights of man . . . If, then, law be a natural principle—one necessarily resulting from the very nature of man, and capable of being destroyed or changed only by destroying or changing the nature of man—it necessarily follows that it must be of higher and more inflexible obligation than any other rule of conduct, which the arbitrary will of any man, or combination of men, may attempt to establish” (7).

Ralph Waldo Emerson expounds on theories of nature in many of his writings. Acting as a social reformer for much of his years leading up to the Civil War, Emerson believed in a self-reliant approach to reform. His ideas could often be viewed as an anticipation of the Republican Party’s antislavery platform due to the similarities in each other’s doctrine (Malachuk 413). His beliefs are also in line with the idea mentioned above that the traditions
of a nation are required to be embodied by its people in order to survive—when speaking on the Fugitive Slave Law before an audience Emerson instructed them that they “[them]selves must be Declarations of Independence” (Antislavery Writings 83). Emerson repeatedly, as one political theorist puts it, “appealed to what was highest and noblest in the human character” (Padover 335). We see an evolution of this ideology described above: if the nation is a living thing that must be kept alive by adherence and practice of tradition, and that tradition is rooted in the highest of cosmopolitan and human beliefs, it is only right and logical to assume that to ensure the nation maintained these high standards of expectation, its individuals should also recognize the equality of every man, or the highest of cosmopolitan beliefs. On this subject of recognition “Emerson explicitly demands that we relocate power in the mind, not in society, government, property, and ‘sensible masses’” (Leverenz 43).

Slavery, by the reasoning of Spooner and Emerson, was a perversion of nature, as well as of this individual, moral, and national responsibility to both progress and human rights. Moreover, slavery sparked a change in Emerson as these lofty ideas were given a forum to be displayed: “Rebellion against a proslavery government could be a first step in making radical individualism something more than just a literary fancy or a prerogative of isolated genius . . . . Emerson passed from a theoretical anti-institutionalism to something approaching straight-out anarchism” (Fredrickson 39).

Slavery also came to dominate the political discussion within the U.S. Congress. Massachusetts Senator Daniel Webster aided the proslavery cause by continuing the theme of making concessions for short-term unity. On March 7, 1850 Webster came to the defense of moral and political compromise by placing his argument alongside that of other pro-slavery supporters—by looking backwards like Thomas Dew, Webster begins, “I propose . . . to
review, historically, this question of slavery . . . We all know, sir, that slavery has existed in the world from time immemorial. There was slavery, in the earliest periods of history, in the oriental nations. There was slavery among the Jews” (269). Here, Webster is building the case for tolerating slavery; however, he does acknowledge the idea of a “natural law” that opposes slavery: “The Roman Jurists . . . admitted that slavery was against the natural law.” Webster ultimately looked back into history as cause enough for a compromise in the nation, which became known as the Compromise of 1850 and included the Fugitive Slave Law. Webster’s thinking was typical of a type that made concessions rather than address slavery directly. However, as the sectional crisis became more intense, this view was becoming more and more prevalent. This speech, Sean Wilentz argues, “bolstered the view that some sort of compromise was required to keep the nation from falling apart” (640).

The arguments for slavery and for compromise, however, were countered by the natural law argument that ultimately won the debate. Opposing Webster in the Senate chamber was New York Senator William Seward who, on March 11, 1850, was calling for recognition of a “Higher Law” in response to Webster’s support of the Compromise Bill. Four days after Webster spoke, Seward replied:

But there is a higher law than the Constitution, which regulates our authority over the domain, and devotes it to the same noble purposes. The territory is a part . . . of the common heritage of mankind, bestowed upon them by the Creator of the universe. We are his stewards, and must so discharge our trust as to secure in the highest attainable degree, their happiness (308).

Seward is now situating the Constitution as a man-made text that carries spiritual—even heavenly—responsibility. This speech compounds the already conflicting legal
arguments over what is permissible by the Constitution and introduces a sense of moral
euprightness that must be adhered to by all who are authorized power by it—namely Seward
and his fellow politicians. Of course, not all politicians would agree to this, as it pushed
many into a corner based on Seward’s clear-cut message that slavery was on the path to
destruction, “either peaceably, gradually, and with financial compensation under an intact
Union, or violently, immediately, and utterly if the Union were dissolved” (Wilentz 641).

The “Higher Law” speech echoed the cosmopolitan themes of equality and freedom
found within the Declaration of Independence. It addressed the responsibility of the nation,
which itself was “a living thing, the product of vital forces; it transcends all written words; it
embodies the thoughts, the traditional beliefs, the inherited tone and temper of the people”
(McLaughlin 2). The nation’s responsibilities thus were directly tied to its traditions and
beliefs, essentially a “moral right.” Thomas Pressly, in his article on Abraham Lincoln,
discusses a different type of moral right, the “right of revolution,” that also speaks to a
tradition of the nation (647-662). According to Seward, the nation was in the middle of
another possible revolution (Wilentz 704 – 705). In his “Higher Law” speech, Seward posits
this notion that the nation must remain obedient to a higher law that is part of the national
tradition that transcends textual documents such as the Constitution by respecting a higher,
cosmopolitan plane of equality.

Abraham Lincoln was ahead of most other politicians of his time regarding debates
over the “higher law” and compromise on slavery. While Lincoln believed that laws should
be obeyed until they are amended in a lawful manner, he also believed that slavery was
unjust and wrong and should be removed from American society (Wilentz 737). It became
Lincoln’s goal, as Herman Belz writes, his:
historic responsibility, as he believed . . . to perpetuate the institutions of the Founding as expressed in the organic law . . . . Lincoln was saying in effect that to guard against the destructive effects of popular passion and the danger of democratic dictatorship, statesmen must use rational arguments to shape and instill constitutionalist conviction in the public mind, such that in a time of crisis the people will rise to the defense of constitutional form and institutions (170, 176).

In his early years Lincoln spoke often about the law and routinely referred to the accomplishments of the founding fathers. He does so in his “Lyceum Address” in 1838 when he calls for law to be the “political religion” of the nation, Lincoln asks his audience of young men to act “as the patriots of seventy-six did to the support of the Declaration Laws . . . pledge his life, his property, and his sacred honor;—let every man remember that to violate the law, is to trample on the blood of his father” (Lincoln 22). Lincoln appeals to the memory of the founders to honor the law. However, Lincoln is thinking of the law in much a different way than politicians such as Webster or Rufus Choate. Lincoln believes the law is something that can be used progressively, as an instrument, to remedy society. The law is not the chain around the slave’s neck, but the hammer that breaks it.

Lincoln’s speeches towards the end of his political career echo the same sentiment. His speech at Gettysburg is a prime example of this, specifically when Lincoln remarks: “that we here highly resolve that these dead shall not have died in vain—that his nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth” (324). Nearly twenty-five years after his Lyceum address, in the midst of war, Lincoln realizes that the sacrifice made at Gettysburg
demands all efforts be made to see slavery removed from the country. He can do that by force alone in the war, but in order to make it permanent, the concessions to the types of thought that legitimate slavery must be undone. Lincoln’s Emancipation Proclamation laid the groundwork for the 13th and 14th amendments following the Civil War, and illustrates that he would not make concessions to preserve both his “political religion” of law, and his belief in the Declaration of Independence.

In this thesis I will seek to synthesize legal and moral arguments surrounding the constitutionality of slavery as well as the tension created by them. I will illustrate how the thoughts about slavery moved away from the founders’ understanding of human equality towards the arguments by proslavery theorists such as Thomas Dew. The majority of the founders held a cosmopolitan vision of human rights—especially in their belief that natural law makes all men free and equal. Through analysis of the tension between the natural, or “higher,” law and the actual law during this time period will reveal a debate that posed a systemic risk to the Union. The closer America moved towards Emerson, Spooner, and the reformer’s view of morality, the further away from the legal standpoint of Choate, Dew, and Webster it became, and vice-versa. This is significant because both sides of this debate and the tension in it had their origins in the varying interpretations of the Constitution and Declaration of Independence.

This thesis will also emphasize how the reformers Spooner and Emerson, and the politicians Seward and Lincoln, worked to return the nation to a cosmopolitan view of universal human rights. However, in order to complete the return to this original vision, American’s had to ensure the end of slavery for their posterity. The equality fought for by the
founders had to be enacted as law, just as their own freedom was during the Revolution. Rather than let passion tear the country apart again, Lincoln had to use democracy to rectify what the founders could not. The nation’s return to this original vision liberated it from the philosophical tradition that justified slavery, and enabled Americans to fuse the “higher law” that defined the founding fathers’ theory of human rights with the pragmatics of constitutional interpretation that has made equality, as ferociously as it is still debated, a central value of American civil society.
Pro and Anti-Slavery Debates

To begin to interrogate the complex varying interpretations that are at the center of the debate over constitutional interpretations as they relate to slavery, we must first examine the legal arguments and actual text of these documents. Paramount to the actual words drafted by the framers were the intentions that many expressed in their debates for and against slavery. It is well established that during the late eighteenth century there was a sentiment that slavery was inhuman and immoral which pervaded through much of the nation’s early legislation. However, the historical arguments that slavery was essential to a civilization’s survival and prosperity were difficult to ignore.

The framers intended to prevent slavery from expanding. In drafting the Declaration of Independence a number of the framers believed that individual freedom and liberty must be granted—in their eyes the opportunity for personal advancement in life represented what America would become. Lincoln believed that slavery could not exist in the same world as this belief: “allowing slavery to expand would ‘prevent that slavery from dying a natural death’” (Oakes 58). If slavery would be allowed to live on, it would inevitably and continuously contend with the framers’ plan for equality in America. Oakes argues: “Slavery thus undermined the opportunity for upward mobility even for free men, the very thing that made the territories so attractive” (59). Lysander Spooner reiterated this belief that the framers’ intentions did not support slavery when he advised his readers to simply look towards the actual language: “But why do the partisans of slavery resort to the debates of the
convention for evidence that the constitution sanctions slavery? Plainly for no other reason than because the words of the instrument do not sanction it” (Unconstitutionality 116).

Spooner provides a straightforward point that the language of the document never mentions the word “slavery,” and so the proslavery argument must always return to the early debates regarding the intentions of the Framers. It is to this debate over intentions that we also turn.

Whereas the government in the middle of the nineteenth century was enacting laws to allow slavery to expand, the Founders in the previous century were enacting laws to prevent such expansion. Lincoln understood this and solidified this belief that the framers hated slavery and assumed it would die out. As James Oakes notes: “Indeed [the Founders] themselves repeatedly interfered with slavery and prevented its spread in the territories. Even before the Constitutional Convention the Continental Congress meeting under the Articles of Confederation enacted the Northwest Ordinance of 1787. Also known as the Northwest Ordinance, it excluded the importation of slaves into the Northwest territory” (66).

To further this point, Spooner wrote of the public during this period that “they looked simply at the instrument,” and approved it. Spooner posits that had the Constitution specifically mentioned and supported slavery in any way “the people, in some parts of the country would sooner have had it burned . . . than they would have adopted it” (Unconstitutionality 119). Continuing this topic of legal precedent set by the framers, Lincoln, in his “Cooper Union Address,” discusses the early question of slavery in the Louisiana Purchase. On this he says that there were three points key to understanding the legal position of the framers:

First. That no slave should be imported into the territory from foreign parts.

Second. That no slave should be carried into it who had been imported into the
United States since the first day of May, 1798. Third. That no slave should be carried into it, except by the owner, and for his own use as a settler; the penalty in all the cases being a fine upon the violator of the law, and freedom to the slave (200 – 201).

This is striking because it essentially should have ended the question of extending slavery into the territories. What is also striking is that for violating the statute the immediate penalty is the freedom of the slave; if the framers could not immediately abolish slavery they would certainly do so with harsh and strict penalties forced upon the slave owner whenever feasible.

Spooner raises an intriguing issue regarding the nature of the language of the Articles of Confederation. He argues, “the rules of law require that an innocent meaning should be given to all words that will bear an innocent meaning” (Unconstitutionality 52). I believe this is to combat the proslavery argument that would set slaves apart from white citizens by the use of the word “free” in the section referred to. He follows this standard of adhering to “innocent” language when he later asks what is the point of the Constitution: “Is it not that the meaning of those who make [laws] be known with the most absolute precision of which language is capable? Is it not to get rid of all the fraud, and uncertainty, and disagreements of oral testimony?” (121). Spooner instructs his readers to look to the precision of the framers’ language and interpret the Constitution based on the language that was an extension of the belief the Founders held regarding slavery.

Furthermore, Spooner, in his treatise No Treason: The Constitution of No Authority, argues that the government itself has become twisted in its understanding and execution of the Constitution: “the writer thinks it proper to say that, in his opinion, the Constitution is no
such instrument as it has generally been assumed to be; but that by false interpretations, and
naked usurpations, the government has been made in practice a very widely, and almost
wholly, different thing from what the Constitution itself purports to authorize” (The
Constitution of No Authority 55). Earl Maltz identifies an aspect of contention that led to
much of the varying interpretations that Spooner describes, saying that with regards to
slavery “the Convention took a middle course, guaranteeing slaveowners’ rights in
recovering fugitives, but allowing states to emancipate all slaves voluntarily transported into
their territory by the slaves’ masters” (Proslavery Constitution 58). According to Earl Maltz,
the Convention deferred to states to make their own decisions and policies with regards to
emancipating slaves, further complicating the issue of the Founder’s effort to restrain slavery
(“Slavery, Federalism, and the Structure of the Constitution” 467 - 472). Maltz writes,
“While the drafters of the Constitution agreed on the need to strengthen national authority,
many were also ideologically committed to retaining the maximum degree of state autonomy
consistent with the necessary functions of a federal government” (467). Both slave and free
states had claims to the social status of the slave, thereby making the slavery issue a battle
between individual states as much as it was a battle between north versus south.¹

Rufus Choate illustrates how slippery an argument like Spooner’s could be—to the
proslavery man (Bryan 830 – 833). Giving a speech in Lowell, Massachusetts the same year
as Spooner’s Unconstitutionality of Slavery was published, Choate goes to great lengths to
discuss the dangers of basing a factual argument in something as contentious as textual

¹ Maltz again writes on this issue and succinctly explains that “it should not be surprising that the
Constitution of 1787 took no position on the basic institution of slavery. Generally, the question of
slavery would involve the status of two inhabitants of the same state—the master and slave—and the
legal import of the relationship between them . . . Conversely, even the most vehement defenders of
slavery conceded that slaves had authority to prohibit their own citizens from holding slaves while in
those states. The rights of free blacks were also generally held to be within the control of the states in
which they resided,” Ibid, 468.
interpretation. His remarks are directed at the newly formed Republican Party which asserts their platform as “the principles promulgated in the Declaration of Independence, and embodied in the Federal Constitution” (404). Choate advises his audience that such a platform is ridiculous and impossible to enact—it is simply meant to “solicit the votes of a section of the States of this Union by the boast that it claims some special and characteristic relation to that immortal act and composition” (404). He asserts that the language of the Constitution of 1787 can be interpreted, enlarged or narrowed, darkened or illustrated by the language of [the Declaration of Independence], penned in 1776, in a time and for a purpose so different . . . that the latter of these papers, in point of time, is to be interpreted by the former in any sense, which any jurist, or any reader of his mother-tongue, can form conception, is a proposition too extravagant to be imputed to the author of the platform (405—406).

Choate acknowledges the importance of the intentions of the framers, but reasons that the intentions put into the framing of one document cannot be interpreted within the principles of the other—effectively striking at the heart of the Republican’s constitutional argument against slavery.

As many antislavery theorists were so often quoting the Declaration of Independence and explaining the intentions of the framers, the proslavery argument dipped into history as well. Between the 1830s and 1850s the proslavery theorists used history as a way to legitimize slavery. It is worth noting that many of the historical examples that follow predate the Constitution and Declaration of Independence, and so remain vested with the “old world” mentality that America no longer valued. However, judges and politicians that were players
in the slavery debates in antebellum America often found ways to situate the language of the Constitution within these proslavery examples. In order for partisans on either side to debate slavery with any success, he had to understand and articulate how history was on their side.

Thomas R. Dew, in his open letter mentioned previously, was a determined supporter of the historical argument that was so often used to prove that slavery was ingrained in civilizations of the world. He goes so far as to suggest that Christ himself did not have a problem with slavery when he writes, “that the meek and humble Savior of the world in no instance meddled with the established institutions of mankind—he came to save a fallen world, and not to excite the black passions of men and array them in deadly hostility against each other” (326). Following this assertion, Dew discusses the happiness of the slave. He argues that the relationship of the slave to his master is much closer than antislavery factions assume: “there is nothing but the mere relations of husband and wife, parent and child, brother and sister, which produce a closer tie, than the relation of master and slave” (329). He goes even further to suggest that out of the whole history of slavery “a merrier being does not exist on the face of the globe than the Negro slave of the United States” (330).

Historically, there had always been slavery. This is not something that can be argued or interpreted—it is simply fact. Dew was well aware of the history of slavery and went to great lengths to ensure that his readers knew it as well. He wrote that in “whole history of the world . . . in the ancient republics of Greece and Rome, where the spirit of liberty glowed with most intensity, the slaves were more numerous than the freemen” (330). If slaves were truly treated unfairly and were plotting insurrection as some feared, why would they not simply rebel given their advantage in population? Because with slavery, as Dew tells his
readers, there is order. He compares the violent crimes of the south to those of “civilized” London, and his findings reinforce his notion of slavery as safe and secure:

If we should look to the whole of our southern population, and compare the average number of deaths, by the hands of assassins, with the numbers elsewhere, we would be astonished to find them perhaps as few or fewer than in any other population of equal amount on the globe. In the city of London there is, upon average, a murder or a house-breaking and robbery every night in the year, which is greater than the amount of deaths by murder, insurrections, &c., in our whole southern country; and yet the inhabitant of London walks the streets and sleeps in perfect confidence, and why should not we who are in fact in much less danger? (333).

Here, Dew is making the argument for the security and safety that slavery brings to not only the United States, but the world as well. He mentions the insurrections in St. Domingo as a warning of what danger the slave can bring if not kept in check (332).

But it wasn’t only former Whig politicians and proslavery activists like Choate and Dew that saw the dangers of breaking up slavery. William Seward and Daniel Webster both looked into history and found differing accounts of how to view slavery in America. Seward chose to look into history and find a comparable model of slavery with which to critique the American model—he found it in 1844 Russia. He informs his fellow senators that out of the 54,251,000 that populated Russia, only 751,000 were not slaves, but rather the nobles, clergy, and merchants that made up the free population who maintained a distance from the serfs: “If ever the government interferes at all with the serfs, who are the only laboring population, it is by edicts designed to abridge their opportunities of education, and thus continue their
debasement” (309). In his attempt to portray slavery as an evil in history, he goes even further to argue that the Russian model of slavery “it seems to me, is identical with American slavery,” and because of this, Seward “cannot stop to debate long with those who maintain that slavery is itself practically economical and humane” (309).

Daniel Webster again looked on history as a guide for allowing slavery to be permitted in the United States. Though the Romans believed that slavery was against the law of nature, “they justified slavery—first, upon the ground and authority of the law of nations—arguing, and arguing truly . . . that, by the civil law, there might be servitude—slavery, personal and hereditary” (269). Furthermore, not only does the Roman institution of law supercede the law of nature—it also supercedes religious doctrine. Webster discusses the history of Christianity and its introduction to the Roman world in similar ways as Dew and Choate did. In fact, quite remarkably is Jesus Christ used again in the same logical explanation for slavery—Webster argues that when Christianity was popular and growing “the Roman world was full of slaves, and I suppose there is to be found no injunction against that relation between man and man in the teachings of the Gospel of Jesus Christ, or of any of his Apostles” (269 – 270).

These historical and constitutional debates over the intentions of the Founders, and the implications of historical slavery created the rhetorical context of the Anthony Burns and Dred Scot cases in the courts. These two incidents demonstrate the intersection of the constitutional and historical debates, with the politics of expanding slavery into the territories.

In May of 1854, just days before the passing of the Kansas-Nebraska Act, Anthony Burns’ was on trial to determine whether or not he would return to his owner in Virginia.
Bums’ master, a man named Charles Suttle, had made the trip to Boston to reclaim Burns. The antislavery Boston faithful did not take kindly to the trial being held in their city—enforcing the Fugitive Slave Law in Boston would add insult to moral injury.

Antislavery activists had a twofold dilemma. First, they wanted Burns to be a free man again and did not want his conviction to occur in Boston for fear of how Bostonians would be represented. As Al von Frank puts it, “The recovery of Anthony Burns was a political device to make Massachusetts and all her citizens individually and collectively complicit in the Fugitive Slave Law and compliant to its workings” (106). So, as much as the Boston activists wanted to ensure Burns remained free, they also did not want to give any credibility to the other side. The second, “How would they win this case?” There was little value in arguing that Burns was not in fact an escaped slave because that would validate the slave law. The danger here to the activists was in how they went about preparing Burns’ defense: “Victory could consist only in blocking the return of an actually escaped slave . . . if, here, they maintained that Burns was not in fact a slave, they might save him, but at the cost of affirming and even strengthening the very law they meant to destroy” (19). They had to defeat the law while saving the man.

Of course this was made even more difficult due to the fact that in accordance with the Fugitive Slave Law, Burns could not take the stand in his own defense—he was a spectator. In fact, some of the only testimony he provided during the trial was when William Brent, “a longtime crony of Suttle’s” (86), took the stand: “When Brent testified that the slave had expressed a willingness to return to Virginia, courtroom spectators saw Burns shake his head in a vigorous mute denial” (132). It ultimately mattered little—the support given to Burns by the Vigilance Committee—in the eyes of the law: Burns was a slave and
he would go back with his master. However, as von Frank summarizes the import of the case, the:

response in Massachusetts to the enforcement of the Fugitive Slave Law and to the passage of the Kansas-Nebraska Act emboldened antislavery workers throughout the North . . . Slavery had slipped its bonds. It could no longer be regarded simply as the condition of some millions of black folk far removed in the South: it had become a belligerent philosophy of government predicated on the elimination of freedom . . . The slave’s freedom, becoming more familiar, got bound up with the free man’s freedom, so that whites who now felt jeopardized, who were feeling a new sort of regard for their own liberties were beginning to act rather like fugitive slaves themselves (322 – 323).

Slavery had invaded Boston. Slavery had invaded the North.

The Dred Scott case addressed several facets of the slavery debate. The case involved a slave who was suing for his freedom based on the fact that his master had taken him into a free state and, thus, should no longer remain a slave (Thomas 172). Scott was taken into Lincoln’s own state of Illinois and also into Wisconsin territory where slavery is illegal—it is logical to think that while in that state and territory he would become a free man. However, there were several aspects of this case that needed to be thoroughly examined before a decision should be rendered: Scott’s status as either property or an individual, the precedent this case would set in relation to slavery in the territories, and how this case would affect the growing tension between the north and south.”

2 Despite how momentous this case turned out to be, the nature of it was conducted spoke more to the rights of slaves than the unsurprising verdict: “No oral testimony was given in this trial; attorneys’ arguments were based upon a written statement of facts . . . The decision in that court was subsequently based upon this statement of facts . . . That statement—indeed, the entire case was built
According to Lincoln, Chief Justice Taney’s decision ultimately brought about more questions than answers. In a speech responding to the Supreme Court’s ruling, Lincoln remarks that Chaney ultimately “declare[d] two propositions—first, that a Negro cannot sue in the U.S. Courts; and secondly, that Congress cannot prohibit slavery in the Territories. It was made by a divided court” (87 – 88). The latter point—being that he courts were divided in this 5-4 decision—is representative of the conflict the nation was facing regarding slavery. The first and second points Lincoln makes in his “Dred Scott” speech point out inconsistencies in the decision. First, if a slave cannot sue in the U.S. Courts then he must not have any standing as a citizen. According to Benjamin Thomas: “Slaves were property, and Congress had no power to exclude them from a territory” (172). So, if Taney’s decision rendered slaves as property and that Congress could not prohibit anyone from bringing their property into the territories, this decision effectively reversed the Missouri Compromise: “The decision opened all the national domain to slavery” (173).

Lincoln continued to point out areas in the decision where Taney was incorrect with regards to the principle he based his ruling on. He argues:

Taney, in delivering the opinion of the majority of the Court, insists at great length that Negroes were no part of the people who make, or, for whom was made, the Declaration of Independence, or the Constitution of the United States. On the contrary, Judge Curtis, in his dissenting opinion, shows that in five of the then thirteen states, to wit, New Hampshire, Massachusetts, New York, New Jersey and North Carolina, free Negroes were voters, and, in

upon one fundamental assertion: Dred Scott was owned by John F. A. Sanford. But Sanford did not own Scott, nor did he have any right to claim ownership.” For further analysis on the specific faults on the Dred Scott proceedings and background, refer to Ehrlich, Walter. “Was the Dred Scott Case Valid?” The Journal of American History. 55. 2. (1968), pp. 256-265, pp. 257.
proportion to their numbers, had the same part in making the Constitution as that the white people had (92-93).

What Lincoln says here is important because it depicts free Negroes as having the right to vote and engaging in the enacting of the Constitution. Citizens were the only Americans permitted to vote. The continued debate over slavery had trickled down into a debate over citizenship for the sole reason that a citizen could never be a slave. Moreover, a state and federal battle over whether or not an individual could be a citizen of the entire nation, one state and not the other, or one state alone, continued to gain traction and provide varying interpretations of the Constitution with regards to citizenship. In fact, if freed Negroes could vote in five of thirteen states (a right Lincoln later explains has been taken away) on the Constitution, would they now see themselves reduced to slaves by the very document they voted on?

Taney’s decision also opened the door for sharp attacks on the grounds of state autonomy as it related to this question of citizenship. The dilemma is best described in the following section of his ruling: “He then differentiated sharply between state citizenship and federal citizenship, contending that while a state could declare anyone whom it pleases to be a citizen for its own purposes, the states lacked authority to ‘introduce a new member into the political community created by the Constitution of the United States.’ That status . . . was to be determined by a federal standard” (“Slavery, Federalis, and the Structure of the Constitution” 482). However, another justice, Massachusetts’ own Benjamin Curtis, disagreed with Taney, and he found support within the Constitution and its comity clause:

Neither the Article III grant of jurisdiction to the federal courts nor the comity clause—the critical provisions of the Constitution—explicitly recognizes an
independent federal citizenship. Instead, Article III gives the federal courts authority (for example) over suits ‘between Citizens of different States’, and the comity clause provides that ‘[t]he Citizens of each State shall be entitled to all the Privileges and Immunities of Citizens in the several States.’ In each case, the language seems to suggest that state governments should have the authority to define citizenship for constitutional purposes (485).

Furthermore, those politicians that despised the Fugitive Slave Law, such as Lincoln and Seward, now found a pretext for attacking Taney’s decision that would not work against them: “By adopting Curtis’s approach to the citizenship issue, moderate republicans such as Abraham Lincoln could attack “Dred Scott” on the far more palatable ground that Taney threatened states’ rights by imposing a national standard for citizenship” (485).

But was this decision wrong? With regards to the slave’s status as property, how can one accept both that concept as well as the three-fifths clause? There is an inherent contradiction here that renders this decision unconstitutional. If three-fifths of all slaves counted toward population, and that number also influenced the number of electoral votes a region received, how could property be counted as population? After all, the clause counted three-fifths of the slave population for purposes of representation in the House. Lincoln . . . complained that the three-fifths clause increased the number of slave state representatives in Congress and thus the numbers of presidential electors as well. This was “manifestly unfair.” But because it was part of the Constitution, Lincoln would stand by it (Oakes 64).
When the framers were debating the three-fifths clause, it ended up a compromise of how many slaves would count towards population, which in turn led directly to the number of representatives in the House. It was a curious sort of population in that the slaves had no rights as individuals, only as three-fifths of the entire mass:

Slaves could not vote; therefore, counting them fully in the basis of representation would serve only to enhance the political power that the slave states (and thus slaveholders) would have in the new national government. Such an increase in power could only work to the detriment of the slaves themselves by tilting federal policy toward the pro-slavery position and decreasing incentives for emancipation ("Slavery, Federalism, and the Structure of the Constitution" 469).

Chief Justice Taney’s decision was in direct conflict with the Constitution—how could three-fifths of slaves be counted as both property and population? Following that logic, shouldn’t three-fifths of slaves moved into territories be freed?

Taney’s decision ironically destroyed the notion that popular sovereignty was to decide whether or not a territory would be a slave or free state. It opened the entire country to slavery and amplified northern fears that increased southern political power would bury any hope for expanding human rights. In 1857, Taney was not the first but one of the more prominent figures to take a broad interpretation of both the Declaration of Independence and the Constitution and apply it in his own way. As Lincoln put it in his response to Dred Scott, “Taney, in his opinion in the Dred Scott case, admits that the language of the Declaration is broad enough to include the whole human family, but he . . . argue[s] that the authors of that instrument did not intend to include negroes” (95).
The Dred Scott and Anthony Burns cases had escalated the slavery issue to unprecedented levels of danger. They were similar, but also had different lessons for the nation. During the 1830-1857 period, the pro-slavery and anti-slavery rhetoricians had debated in an evenly contested struggle, but with the legal decisions of Burns and Scott, the balance had shifted over to the pro-slavery factions. In the Dred Scott case, the nation was shown that a single man of the law could apply a broad interpretation in however manner he may wish in an attempt to declare the Missouri Compromise unconstitutional and allow for the extension of slavery. In the Anthony Burns case, the nation was shown that citizens of the north had to become active in order to ensure their rights and beliefs were not overthrown by slavery—they were being forced to act as slave-catchers themselves by the Fugitive Slave Law.

Regardless of the results of these cases, they also presented two types of danger that were not unknown to America, but were now prevalent. One, the danger of passion and acting outside the law was becoming a very real threat in the eyes of many; and two, narrow, agenda-driven interpretations of the Constitution and Declaration of Independence were also becoming just as common and dangerous. Both Lincoln and Emerson were aware of the legal arguments for and against slavery, as well as the passion these arguments were whipping up throughout the nation. They also knew it was more than just legal arguments that were endangering the nation—it was the interpretations of the Constitution and Declaration of Independence that were made that threatened the delicate peace of America. The ruling in the Dred Scott case had created a “free-for-all” on the subject of citizenship, as the lines between state autonomy and federal power became blurred. Force and intimidation became the new political tools of this time period, as “false interpretations” threatened the Union.
Human Law and “Higher Law”

Slavery warranted the long, heated debates on the Senate floor, the incendiary textual wars between pro and anti-slavery newspapers, as well as unceasing public debate that kept it in the forefront of the American psyche. In fact, the Constitution and the Declaration of Independence would not have been interpreted in various ways if slavery did not exist.

The Constitution is a tool like any other inanimate object: it is manmade, constructed for a specific purpose, yet it can also be abused with ill intentions. The same can be said of the hammer, book, or pencil. James Oakes touches on this necessity for responsibility—as well as adhering to the item’s inherent purpose, what it was created for, when writing of Frederick Douglass’ about-face regarding the antislavery nature of the Constitution: “The Constitution must be read in light of its Preamble, promising universal freedom, especially since there was no overt reference to slavery anywhere in the document. Viewed from this angle, the Constitution was an antislavery instrument, a weapon to ‘be wielded in behalf of emancipation’” (20). The Preamble to the Constitution reads as follows:
We the People of the United States, in Order to form a more perfect Union, 
establish Justice, insure domestic Tranquility, provide for the common 
defence, promote the general Welfare, and secure the Blessings of Liberty to 
ourselves and our Posterity, do ordain and establish this Constitution for the 
United States of America (par. 1).

There is no division of race, creed, or anything to indicate separate classes of 
people—there is only “ourselves and our Posterity.”

The tension created by the conflicting interpretations of the Constitution with 
regards to the lawfulness of slavery eventually led many to take legal matters into their own 
hands. These unlawful acts then forced others to react and respond to them, further dividing 
the nation. The November 7, 1837 murder of Elijah Lovejoy was such an incident, as it was 
not a singular incident but a precursor to much of the “mobcratic spirit” that Lincoln 
despised. Lovejoy, the editor of the Alton Observer, had already been threatened and had his 
newspaper office vandalized; it came as a shock to no one, that he was attacked again while 
under the protection of twenty armed guards—such was the fervor of proslavery radicals 
(Reynolds 62 – 63). The fervor was so intense that two years earlier President Andrew 
Jackson, Len Gougeon writes, “declared that [antislavery writings were] incendiary and 
recommended that a law be passed to prohibit the circulation of antislavery information 
through the federal mails” (Antislavery Writings xv).

Lovejoy’s death initiated several responses. What was undoubtedly the most volatile 
response but would not be realized for another twenty-two years was John Brown’s raid on 
Harpers Ferry. David Reynolds, in his biography of Brown, points to Lovejoy’s murder as 
the moment when Brown put himself all-in on his personal crusade to destroy slavery. He
writes of John Brown sitting through a church meeting with his sons: “John Brown and his father sat silently through the harangues. As the meeting drew to a close, John Brown suddenly rose, lifted his right hand, and said, ‘Here, before God, in the presence of these witnesses, from this time, I consecrate my life to the destruction of slavery!’” (65). John Brown might have ended up at Harpers Ferry regardless of Lovejoy’s murder, but it is important to note that he wasn’t going to end up anywhere else once it happened.

Emerson’s response to Lovejoy’s murder was indicative of the fatalist ideology gripping the nation: “The brave Lovejoy has given his breast to the bullet . . . and has died when it was better not to live. There are always men enough ready to die for the silliest punctilio; to die like dogs . . . but I sternly rejoice that one was bound to die for humanity and the rights of free speech and opinion” (The Heart of Emerson’s Journals 114). Emerson would go on to characterize John Brown with similar glowing praise after his raid on Harpers Ferry, calling him the “hero of Harpers Ferry . . . the rarest of heroes, a pure idealist, with no by-ends of his own” (Antislavery Writings 117 - 118). Emerson used John Brown to point out the corrupt nature of institutional forms when, giving another speech on John Brown two weeks before he would be executed, he said: “Indeed, it is the reductio ad absurdum of Slavery, when the governor of Virginia is forced to hang a man whom he declares to be a man of the most integrity, truthfulness and courage he has ever met. Is that the kind of man the gallows is built for?” (Essential Writings 796). Carrying on the gallows theme, Emerson, “in his Boston lecture of November 8, 1859, entitled “Courage,” Emerson made a statement about Brown similar to if not identical to the following: ‘[He is] The Saint, whose fate yet hangs in suspense, but who martyrdom, if it shall be perfect, will make the gallows as glorious as the cross” (qtd. in Bush 208 - 209). Not surprisingly, Emerson, along with
Wendell Phillips, “would be asked to appear together in forums intended to raise funds for Brown’s family,” and to preserve and defend the ideology behind his actions (Bartlett 288–290).

The fact that Emerson and Phillips were asked to assist in raising money for the family of a man found guilty of treason further creates some complexity when one attempts to analyze the figures like Brown and Lovejoy, as well as the men putting them to death—murder was involved in both cases, but was different each time; Lovejoy lawfully protested a legal evil and was murdered by the impassioned frenzy the issue created, while Brown used that same emotion to attempt to strike down the evil permitted by law and was subsequently lawfully murdered while simultaneously being called a man of integrity by his executioner and a hero in the northern half of the nation. The task of interpreting the law was creating casualties before the war even began.

Levels of violence increased during this time, and also the reactions, both public and legal, to the victims and perpetrators. It seemed that what was right in one area of the country was treason in another—American justice had become a kaleidoscope and that changed in the eye of the beholder. Emerson and Lincoln both address this passionate action throughout the 1830s-50s with many conflicting views.

This issue of passion versus law was front and center as early as 1838 in Lincoln’s “Lyceum Address” given just two months after Lovejoy’s murder. Early on in his address, Lincoln “analyzed the democratic distemper of his time” the unlawful actions and spirit of lawlessness evident in mob outrages occurring from New England to Louisiana” (Belz 176). Lincoln addresses this “mobocratic spirit”:
By such examples, by instances of the perpetrators of such acts going unpunished, the lawless in spirit, are encouraged to become lawless in practice; and having been used to no restraint, but dread of punishment, they thus become, absolutely unrestrained . . . While, on the other hand, good men . . . become tired of, and disgusted with, a Government that offers them no protection; and are not much averse to a change in which they imagine they have nothing to lose (20 - 21).

Lawlessness begets lawlessness, Lincoln sums up. He believed that one of the most immediate dangers relating to mob rule was that innocents would die as frequently as the guilty, and as a result of Lovejoy’s murder, among others, during this time period, Lincoln recognized that “the public’s attachment to the government and its laws would break down” (Oakes 107). Rather than berate his listeners, Lincoln conjured up the memory of the founding fathers who risked their lives so that the nation could solve its problems with law. He ensures that his audience remembers the sacrifices made so that they would have this right:

We find ourselves under the government of a system of political institutions, conducing more essentially to the ends of civil and religious liberty, than any of which the history of former times tells us . . . they are a legacy bequeathed to us, by a once hardy, brave, and patriotic, but now lamented and departed race of ancestors. Their’s was the task . . . to uprear upon [America’s] hills and its valleys, a political edifice of liberty and equal rights (18).

Lincoln crafted his speech to do several things. First, he recognizes and gives credence to the fact that the moral temperature of the nation is several degrees above comfort
when he tells the young men that are to be America’s future (though he, himself was only twenty-eight at the time) that there are now no men equal to those of the founding fathers.\(^3\) They endowed his generation with the ability to sort out its internal problems with laws. However, as much as Lincoln may have daydreamed about the founding fathers and their accomplishments (Thomas 267) he recognized that “at this point in [America’s] history . . . passion ha[d] become the enemy. This fear of unrestrained passion, this abiding commitment to ‘unimpassioned reason,’ stayed with Lincoln forever” (Oakes 108). Benjamin Thomas, in his biography on Lincoln, agrees with Oakes: “Lincoln could use pathos and emotion quite as well as Herndon, but more he appealed to reason” (98 -99).

This concentration on the value of unimpassioned reason led Lincoln to fuse his faith in the law with this impassioned deification of the founding fathers. This is an important unintentional contradiction in Lincoln’s philosophy: he is seeking adherence to the law through the memory of the very thing he believes will tear apart the nation—passion. He describes his “political religion” in a way that one would think him an evangelist: “Let reverence for the laws, be breathed by every American mother . . . let it become the political religion of the nation; and let the old and the young . . . sacrifice unceasingly upon its altars” (22). Lincoln’s measured response to the “mob” is to simply repeal bad laws rather than seek out justice by their own means. He says that “while [bad laws] continue in force, for the sake of example, they should be religiously observed” (22). Part of what settled Lincoln on this

\(^3\) As a side note but of importance was Alexis de Tocqueville’s views on the manner of American men and the impact slavery had on their will to work. Directly related to Lincoln’s view that there are few men left that are as worthy as the founders, slavery is a key reason for the depreciation of the American male: “The wages given to the [free] worker are given in a lump sum, and it seems to enrich him who receives it, but in reality the slave has cost more than the free man, and his work has been less production . . . The American of the southern bank disdains not only work, but all the enterprises that work causes to succeed . . . Slavery thus not only prevents the whites from making their fortune, it turns them away from wishing to do so.” Tocqueville, Alexis de. Democracy in America. Cambridge: Hackett Publishing Company, Inc, 2000, 158-59.
issue of following “bad laws” was that no law could be so wrong that it demanded immediate repeal (though sixteen years later the Nebraska-Kansas Act would stir up Lincoln like no previous law had) (Oakes 43, 70)—Thomas stated that Lincoln always believed that “the true rule, in determining to embrace, or reject any thing, is not whether it have any evil in it; but whether it have more of evil, than of good. There are few things wholly evil, or wholly good” (121).

However, Lincoln readily points out that while the memory of the founding fathers is a triumph for America—it is also the very thing that threatens its future. When he starts to close his speech Lincoln warns against the impassioned response of America’s founders, characterizing passion as such: “But this state of feeling must fade, is fading, has faded, with the circumstances that produced it . . . Passion has helped us; but can do so no more. It will in future be our enemy. Reason, cold, calculating, unimpassioned reason, must furnish all the materials for our future support and defence” (25 - 26) Lincoln is on record in 1838 as saying that reason will lead America past this terror of the “mobcratic spirit” and that it is the nation’s responsibility to see that passion does not rule the day—Lincoln stresses that the nation owes this to the founding fathers.

Lincoln, however, is a complex figure regarding passion and revolutions. As Pressly writes, “One pattern in Lincoln’s actions and ideas before he became President was his support of the “right of revolution” concept” (649). Pressly quotes Lincoln in a speech delivered in January of 1848 as saying:

Any people anywhere, being inclined and having the power, have the right to rise up, and shake off the existing government, and form a new one that suits them better. This is a most valuable,—a most sacred right—a right, which we
hope and believe, is to liberate the world... It is a quality of revolutions not to go by *old* lines, or *old* laws; but to break up both, and make new ones (650).

However the term “revolution” in Lincoln’s mind, Pressly argues, is believed to be a “movement for national independence,” and that Lincoln believed they were weighed with regards to human life in order to find justification: “revolutions exacted a price and that they were to be evaluated by comparing, on the one hand, the amount of ‘human misery’ they alleviated with, on the other hand, the amount of ‘human misery’ they inflicted” (651 - 652).

When faced with the south’s secession and their claim that it was lawful, Lincoln had to articulate his belief in revolution and democracy so as to not contradict himself. Pressly argues that “the supporters of popular government, the majority in this case, must now demonstrate to the world, that those who can fairly carry an election, can also suppress a rebellion—that ballots are the rightful, and peaceful successors of bullets” (659). It was Lincoln’s belief that the people should be able to have their revolution through elections.

When speaking directly to the validity of the south’s secession Lincoln believed that it “was the right, and the duty, of a majority to preserve a system of constitutional democracy against an unjustified revolt” (660). Lincoln’s rational and legal approach was representative of his values and how he envisioned the nation using the tools of democracy endowed to him by the Founders to rectify what had gone wrong with the country.

While Lincoln was condemning the lawlessness of the impassioned mob in the wake of Lovejoy’s murder, Emerson sought to affirm his stance on the matter publicly (*Virtue’s Hero* 2 - 4). Emerson approaches the issue from a Transcendental point of view. What this means is that rather than standing by law, religion, or some other overarching institution that tried to sway the hearts and minds of each American, Emerson “relied largely on the power
of moral suasion. He felt . . . that the reform of society must always begin with the reform of individuals” (Antislavery Writings xi). Where Lincoln preaches obedience and having faith in the law, Emerson would reject such outside influence because it would be tantamount to deception. If a law is “bad” as Lincoln puts it, and someone instructs you to obey it, they are not doing you any favors—obeying a law that is not just is not the path of justice that Emerson would preach.

In light of this personal belief, and in response to Lovejoy’s murder, Emerson further believed that “if moral suasion was to have its effect, if the hearts of those in need of moral regeneration were to be touched then the principle of free speech must be preserved at all costs . . . without it no amelioration of personal or social ills was possible” (xvi). Emerson is going public with his views that freedom of speech must be preserved above all else in order to preserve moral dignity in America—this is in stark contrast to Lincoln’s view that “bad laws” must be religiously adhered to until they can be repealed. Emerson, writing his “Heroism” just three days before Lincoln’s “Lyceum Address,” as well as his open letter to Martin Van Buren three months later, publicly states his opinions on how best to bring about this “moral suasion.”

In “Heroism,” Emerson writes that it is the most important characteristic to the survival of a culture: “We need books of this tart cathartic virtue more than books of political science or of private economy” (Essential Writings 228). Perhaps in the most direct condemnation of Lincoln’s policy of adherence to bad laws for the sake of supporting “political religion,” Emerson does not mince his words: “The violations of the laws of nature by our predecessors and our contemporaries are punished in us also. The disease and deformity around us certify the infraction of natural, intellectual, and moral laws, and often
Emerson is sermonizing in this essay about following laws, but he is juxtaposing a heritage of false statute laws against a higher moral law—the law of nature. Emerson’s laws are not the laws of Lincoln and other politicians. To further illustrate how different these two minds were at this point in history, Emerson believes that “Heroism feels and never reasons, and therefore is always right” (229). Also, considering Emerson’s comments about John Brown and Elijah Lovejoy and the nature of violence surrounding their lives, it is fitting that he writes that “times of heroism are generally times of terror... human virtue demands her champions and her martyrs, and the trial of persecution always proceeds. It is but the other day that the brave Lovejoy gave his breast to the bullets of a mob, for the rights of free speech and opinion, and died when it was better not to live” (234).

Emerson decided that action must be taken in the face of unjust and immoral laws, and that no one individual or institution should escape criticism. As part of this belief, he “(along with 490 other male citizens) signed a petition to the U.S. Congress stating ‘that the treaty under color of which [the Cherokees] are to be removed beyond the Mississippi...[is] an atrocious fraud’ (Antislavery Writings xxvi). In the letter to Van Buren, Emerson inverts Lincoln’s previous declaration that the people should adhere to the letter of the law by charging the president with the following assertion: “Sir, does the Government think that the People of the United States are become savage and mad?”... You, sir, will bring down that renowned chair in which you sit into infamy if your seal is set to this instrument of perfidy; and the name of this nation, hitherto the sweet omen of religion and liberty, will stink to the world”(3). Further castigating the government, according to Hans von Rautenfield, Emerson knew that the hope for the nation’s future rested in an engine of “moral perfectionism to
develop a conception of public reason that [would] allow a greater range of views held by citizens to play a legitimate role in democratic deliberations” (62).

Not only does Emerson illustrate how *individuals* adhering to the letter of the law can corrupt what he calls the “law of nature,” he also touches on what would become the rallying cry of William Lloyd Garrison and what would remain the most fiercely debated issue for the next several decades: how can America stay upright when its *institutions* are corrupting this “law of nature”? This disagreement over what to adhere to—morality or legality—separated men and women into two camps with slavery being the issue that brought everyone to the forefront of this contentious issue. Furthermore, Emerson, perhaps foreshadowing what would be required to end this debate once and for all—and also echoing the public sentiment of his letter—wrote to Van Buren: “Will this American Government steal? will it lie? will it kill?” (*Antislavery Writings* 4).

Lincoln would have the population adhere to existing law and amend this using the ballot box, whereas Emerson would have the individual reform his or herself and be wary of a government that continued to impede moral progress. William Seward and Daniel Webster were also men on opposing sides of this intellectual and moral situation, illustrating how even the American government could not yet resolve the issue of equality. When men like John Brown and Lovejoy are being characterized as heroes, there is more than an interpretation of law occurring—there are different interpretations of human rights occurring. This debate regarding interpretation over laws and human rights would find its way to the senate floor.

The context for Seward and Webster’s speeches in 1850 was the issue of California’s admission to the Union, as well as the extension of slavery that inevitably came up when one
discussed individual states. Seward initially called for practical reasons for California’s admittance, such as the sheer size and population of the territory—“California is already a state . . . Well-established calculations in political arithmetic enable us to say, that the aggregate population of the nation now is .. 22,000,000”—but later adds global “renovation” to his argument, citing that “The Atlantic states, through their commercial, social, and political affinities and sympathies, are steadily renovating the governments and the social constitutions of Europe and Africa the Pacific states must necessarily perform the same sublime and beneficent functions in Asia” (297 - 299). There is an explicit indication here that America must “renovate” the world—but how can it do that while holding slaves?

Seward addresses this issue in rather plain language, leaving no illusions as to where he stands on the slavery issue: “But it is insisted that the admission of California shall be attended by a COMPROMISE of questions which have arisen out of SLAVERY! I AM OPPOSED TO ANY SUCH COMPROMISE . . . because . . . they involve the surrender of the exercise of judgment and conscience” (300). This is, I believe, a striking moment in American history: a United States senator opposing a compromise over slavery that is lawful by the Constitution. America, Seward tells us, is to “renovate” and be the leaders of a new, morally golden age for the entire world, but slavery acts as a retardant to all that progress. If the nation cannot move forward and do something that is essential to maintain the Union, such as agreeing on California’s admission, how can it initiate and maintain global progress? Moreover, slavery acts as a dark cloud further tainting each day in America’s, and the

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4 Maltz, “Slavery, Federalism, and the Structure of the Constitution,” pp. 481. “The debate over the conditions under which California would be allowed to join the Union added further fuel to the fire in 1850. Thje problem was resolved only be a new compromise that provided for the admission of California as a free state, but only at the price of opening other territories to slavery and the passage of a strengthened Fugitive Slave Act. Finally, the bitter dispute over the Kansas-Nebraska Act in 1854 led directly to the rise of the Republican Party—the first major American party to adopt opposition to slavery as its organizing principle.”
world’s, future—California can only be admitted after slavery once again forces a compromise.

Proposing something that would be new within the walls of the Senate, Seward invokes his “Higher Law” rhetoric:

If slavery, limited as it yet is, now threatens to subvert the Constitution, how can we, as wise, and prudent statesmen, enlarge its boundaries and increase its influence, and thus increase already impending dangers? Whether, then, I regard merely the welfare of the future inhabitants of the new territories, or the security and welfare of the whole people of the United States, or the welfare of the whole family of mankind, I cannot consent to introduce slavery into any part of this continent which is now exempt from what seems to me so great an evil. These are my reasons for declining to compromise the questions relating to slavery as a condition of the admission of California (310).

Seward raises a few key issues here. One, he is remarking on the intelligence of the men in the room with him—the senators. To Seward, expanding slavery not only further endangers America and its posterity, but is something that he cannot even understand why they would do it; how could they win a revolution that attained freedom for all and then turn around and debate something as simple as individual human liberty? He says as much in his speech: “I confess that the most alarming evidence of our degeneracy, which has yet been given, is found in the fact that we even debate such a question” (309). When Seward says, “our degeneracy,” he refers to the fact that the nation has allowed the slavery debate to usurp the nation’s position as “God’s Stewards.” America has won a war for its independence against a foreign tyrant, only to then shackle itself in bondage on its own.
Slavery was more than a domestic policy to be argued over within the Constitution, Seward believed; it was an injustice against the present nation, and threat to the future of America. Equality and freedom are nothing if the government does not guarantee basic human rights. If the “Higher Law” asserts that a higher power regulates his and his fellow politicians’ rule over the nation, then conflicting with a basic tenet of that “Higher Law” will result in the ruin of the nation. Seward would rather stand and fight than compromise and spread the seed of slavery from coast to coast: “Seward thought that the slave States and slaveholders were entitled to the exact rights and privileges which the Constitution gave them, but to nothing more; that slavery was a moral and political wrong, and that under no compulsion and by no persuasion would he ever consent to give it one hair’s breadth of advantage not distinctly secured to it by the compromise of the Constitution” (Lothrop 91).

By adhering to this position and defending it on the grounds as a higher law than the Constitution, Seward would become “the principal antislavery voice in the Senate” (Goodwin 146).

The issues Seward raises here are primarily made in response to Daniel Webster’s speech made four days prior on a similar subject matter. In his opening words, Webster correctly identifies the state of the Union:

It is not to be denied that we live in the midst of strong agitations, and are surrounded by very considerable dangers to our institutions of government. The imprisoned winds are let loose. The East, the West, the North, and the stormy South, all combine to throw the whole sea into commotion, to toss its billows to the skies, and to disclose its profoundest depths (267).
However, after addressing this volatile state, Webster immediately moves to placating these agitations rather than eradicating them. This tone of compromise and acquiescence hangs over the entire speech as Webster states his intention at the outset: “for the good of the whole, and the preservation of the whole” (267). To Webster, whether or not the Union is maintained is the most important issue at hand—he takes a Machiavellian approach to this, which is something that would seem anachronistic to the values and laws set out by the founding fathers of America: “As Senator from the State of Massachusetts, he had no constitutional right to interfere with slavery in the Southern States, and he felt it his duty to convince his countrymen, if possible, that the observance of the obligations which they had assumed when they adopted the Federal Constitution was consistent with good conscience” (Wheeler 159). Also, Webster gravely miscalculated the national temperature with regards to the impeding conflict; with this mistake perhaps leading to the only exacerbate these divisions in the North and South. (Foster 257).

This approach would also find support with Lincoln. Oakes writes that, “loyal Whig that he was, Lincoln accepted Daniel Webster’s dictum: ‘Liberty and Union, now an forever, one and inseparable.’ Only within the Union, only under the Constitution, could the dream of universal liberty be realized” (66). Though this quote of Webster’s does not directly apply to the crisis facing the nation and Lincoln, it is representative of the political and moral background that Lincoln carried around. Webster was his idol and Lincoln believed very much in the Union and the immortality of the documents that went into the creation of America. This quote of Webster’s tells us more about Lincoln and his approach to the issues in 1850 rather than anyone about the decade itself. Further complicating this issue for Lincoln was—and this being another extension of Webster’s thinking—the belief that “no
elected official could swear to uphold the Constitution and subsequently refuse to enforce its slavery provisions" (67). Here is the fundamental point of difference between Webster and Lincoln’s interpretation of the Constitution and Seward and Emerson’s interpretation—the extension of the law.

After discussing the history of the issue as outlined in the preceding chapter, Webster adheres to the extension of the Constitution with regards to the Fugitive Slave clause of the Compromise of 1850. Webster steps out into the spotlight and declares the following:

It is my judgment that the South is right, and the North is wrong. Every member of every northern legislature is bound, by oath, like every other officer in the country, to support the Constitution of the United States; and the article of the Constitution, which says to the these states, they shall deliver up fugitives from service, is as binding in honor and conscience as any other article (282).

For Emerson, as well as much of the North, the Fugitive Slave Law symbolized a series of immoral, corrupt laws that the nation had trotted out and used to “preserve the Union.” The fact that this legislation forced northern citizens to arrest and return runaway slaves was too much for Emerson: “The new Bill made it operative; required me to hunt slaves” (Antislavery Writings 80). Delivering an address on the law, Emerson declares the law is invalid and argues that there are only “two forces in nature by whose antagonism we exist: Fate and Fortune, the laws of the world, the order of things, or, however else we choose to phrase it, --the material necessities on one hand; and Will, or Duty, or Freedom, on the other. May and must: the sense of right and duty, on one hand; and the material necessities, on the other” (81).
Emerson also characterizes the nature of Webster: “I never felt the check on my free speech and action; until the other day when Mr. Webster by his personal influence brought the Fugitive Slave law on the country. I say Mr. Webster, for though the bill was not his, yet it is notorious that he was the life and soul of it, that he gave all he had, it cost him his life.” Further on he addresses the senators in general who supported this law: “I say inferior men; there were all sorts of what are called brilliant men, accomplished men, men of high office, a President of the United States . . . but men without self-respect, without character, and it was droll to see that office, age, fame, talent, even a repute for honesty, all count for nothing” (74). These men that enacted, followed, and supported this law all count for nothing, according to Emerson. For if “a man who commits a crime defeats the end of his existence,” a man of the government then extends that “end of existence” to his station. According to Emerson, “He was created for benefit, and he exists for harm” (84). If the government is a conglomerate of men that allow slavery, they defeat the end of their existence and, by extension of Emerson’s principles, the government as well. The “Higher Law” is a moral revolution that eliminates government—a type of Transcendental anarchy.

Lincoln remained a supporter of the Fugitive Slave law—precisely because it was the law: “Lincoln detested the fugitive slave clause . . . ‘It is ungodly; it is ungodly; no doubt it is ungodly!’ . . . ‘But it is the law of land, and we must obey it as we find it’” (Oakes 63 - 64). Lincoln abhorred the Fugitive Slave law in much the same way he did slavery: “I have always hated slavery, I think as much as any abolitionist” (118). Lincoln hated slavery with such passion that at the outset of the Civil War “his main goal was to thwart the spread of slavery” (Danoff 690). He did recognize that it was a compromise to retain the Union, and
believed that there was nothing unorthodox in what the Founders had done. Oakes writes of this belief Lincoln held:

As disturbing as the three-fifths and fugitive slave clauses were, Lincoln believed they were put into the Constitution out of necessity, whereas in principle most of the Founders were opposed to slavery. This was clear, he said, from the way the Constitution was written. Because its authors assumed that the document would outlast slavery, they would not so much as allow the word “slavery” to appear anywhere in it . . . The Founders put slavery into the Constitution only because they had to, not because they wanted to. Because it could not be eradicated at the time without putting the creation of the new nation at risk. Because no one could imagine a way to free more than a million slaves right then and there (65).

This speaks to the intent versus the “letter of the law” debate that is central to the slavery issue. Lincoln’s sentiment in the above-quoted passage can be found in his 1858 speech in Chicago: “What were they but a clear indication that the framers of the Constitution intended and expected the ultimate extinction of [slavery]” (119). If this was so obvious to Lincoln, a self-proclaimed Whig and supported of the law, how come so many politicians failed to see this as well?

In his speech on the Fugitive Slave Law, Emerson appeals to the sentiment of the Founders and the Declaration of Independence to guard against such corrupt legislation. He attacks the political institution by asking: “What is the use of admirable law forms and political forms if a hurricane of party feeling and a combination of monied interests can beat them to the ground?” (Antislavery Writings 82). Emerson continues his harangue of
Washington’s stance on slavery by calling for a pardon of all violent crimes: “If slavery is a good, then is lying, theft, arson, incest, homicide . . . These things show that no forms, neither Constitutions nor laws nor covenants nor churches nor bibles, are of any use in themselves; the devil nestles comfortably into them all. There is no help but in the head and heart and hamstrings of a man” (83) Emerson calls for his listeners to become “yourselves Declarations of Independence” (83).

Emerson views supporters of the Fugitive Slave law as committing a crime against all that America stands for—to impose unjust responsibility onto its innocent citizens. The politicians that Emerson condemns are so because they are all guilty of doing this by supporting this bill. They are void of moral life: “A man who commits a crime defeats the end of his existence. He was created for benefit, and he exists for harm” (84). Furthermore, Emerson says that “the habit of oppression cuts out the moral eyes,” (85) and so these men who support slavery to preserve the union fail to see what Lincoln sees. Granted, Lincoln supports the law, but seeks to amend it through the proper channels. Unfortunately, these channels were becoming more and more corrupt. Emerson commented on a fervor growing in the North when he tells his listeners “liberty is never cheap. It is made difficult because freedom is the accomplishment and perfectness of a man” (86). America had paid a dear price for liberty once before, it was poised to do so again, as Lincoln prophesized: “In my opinion, it will not cease, until a crisis shall have been reached, and passed. ‘A house divided against itself cannot stand.’ I believe this government cannot endure, permanently half slave and half free . . . It will become all one thing, or all the other” (101). As the nation had done so before, it now was facing disunion over the slavery matter. Lincoln, for personal, political,
and moral reasons, could not let it abide any longer—he had to complete the work begun by the framers.

Lincoln’s “Political Religion” and Emerson’s “Self-Reliance”

I have emphasized how legal arguments for and against slavery are directly related to interpretations of the Constitution and Declaration of Independence. I have also emphasized how these interpretations are efforts to interpret the intentions of the founding fathers and then apply their logic to the current slavery crisis. The dangers of these broad interpretations, on one side, are evident in Chief Justice Taney’s Dred Scott decision; however the views expressed by Ralph Waldo Emerson on the Fugitive Slave Law were just as incendiary, on the other. Lincoln represents the middle ground when he stakes out positions such as reading the Slave Law as “ungodly,” but still recognizing it as binding law. Furthermore, individuals were constantly looking backwards in history to authenticate their current desires for upholding slavery. Senators were divided on this issue, often appealing for a “higher law” in
the case of William Seward. Lysander Spooner discusses something similar when writing that slavery interrupts the "natural law" of the world.

But how does this natural law relate to the rights of man and the rights of a nation? Thus far, the rights of the sovereign seem to govern the rights of the individual. The natural law of Spooner, the law of nature for Emerson, and the higher law of Seward are all the same thing—they are the embodiment of the cosmopolitan virtues introduced to American discourse in the Declaration of Independence. For Lincoln this idea of a natural law was "his philosophy of government [that] was based on the ideas of liberty and equality as expressed in the Declaration of Independence" (Belz 180). Ultimately, according to Lincoln, government should strive to ensure those two things—liberty and equality, and the government is just in suppressing a revolution that contradicts the American principles upon which it was founded. The South did not only secede from the Union—it struck at its most hallowed core, its identity—the ideas of equality and liberty themselves. What I propose now is that through Emerson and Lincoln's writings and speeches, this natural law came to represent the new American thinking that ultimately led to the moral defeat of slavery. Furthermore, this natural law became actual law through the enacting of 13th and 14th amendments, for which Lincoln and Emerson laid the groundwork.

First, Emerson addresses the historical argument validating slavery by proposing his own views on history. Published in his first series of essays in 1841, the historical argument for slavery was already being propagated by Thomas Dew and others. In fact, these early essays constitute a "republican political philosophy of self-reliance, a version of self-reliance, in fact, that makes more sense—because its republican origins are still intelligible—than the poeticized version presented in 'Self-Reliance'" (Malachuk 413-14). Emerson, who believed
that the individual must reform himself before he can reform society, articulates that sentiment while discussing the history of reform: "Every revolution was first a thought in one man’s mind, and when the same thought occurs to another man, it is the key to that era . . . It is remarkable that involuntarily we always read as superior beings" (Essential Writings 114).

Now here are two key components of Emerson’s insight into the crisis the nation will face in the 1850s: 1) That the “key” to Emerson’s era is the ability of like-minded men to become cognizant of a necessary revolution; and 2) that Emerson’s generation is not necessarily superior to those that came before them. Too often in these historical arguments men like Webster, Dew, and Choate would look on history, find slavery, and deem it okay to continue—Emerson warns against such an accepting view of history:

The student is to read history actively and not passively; to esteem his own life the text, and books the commentary. Thus compelled, the Muse of history will utter oracles, as never to those who do not respect themselves. I have no expectation that any man will read history aright who thinks that what was done in a remote age, by men whose names have resounded far, has any deeper sense than what he is doing to-day. The world exists for the education of each man (115).

The lesson here is that men must look into history and ascertain what is right and what is wrong based on a universal standard of equality and virtue—not based on the time period that is being reviewed. According to Emerson, slavery is not acceptable because it is an understanding of history held by passive men.
In “History” Emerson expresses a similar viewpoint on slavery as Lincoln will do. Whereas Lincoln believed that slavery was fated to die out, Emerson, in different terms and rhetoric, supports this notion that there is more to history than facts—there are intentions and perspectives of what is right. He quotes Napoleon in support of this sentiment: “Time dissipates to shining ether the solid angularity of facts. No anchor, no cable, no fences avail to keep a fact a fact. . . . ‘What is history,’ said Napoleon, ‘but a fable agreed upon.’ . . . All history becomes subjective; in other words there is properly no history, only biography” (Essential Writings 116). Lincoln’s viewpoint would then, in Emerson’s rhetoric, be that American history is the extended biography of the founding fathers. Essential to that biography is the understanding that slavery should eventually die out.

Emerson further believed that there was something inherently wrong with the institutions that adhered to the historical proslavery argument. In 1844, Emerson published “Politics” in his second series of essays. In the early parts of this essay Emerson articulates the individual sentiment that abounds in “History” three years prior, but this time does so with venom directed at the State: “the State must follow and not lead the character and progress of the citizen” (379). Emerson goes on to express his anger at those content with the state of his society, arguing, “Society always consists in greatest part of young and foolish persons. The old, who have seen through the hypocrisy of courts and statesmen, die and leave no wisdom to their sons. They believe their own newspaper, as their fathers did at that age. With such an ignorant and deceivable majority, States would soon run to ruin” (381).

Lincoln says this numerous places, but specifically points to the intentions of the framers as well as the language of the Constitution during his 1858 speech in Chicago, IL: “Why did those old men (framers), about the time of the adoption of the Constitution, decree that Slavery should not go into the new Territory, where it had not already gone? Why declare that within twenty years the Africa Slave Trade, by which slaves are supplied, might be cut off by Congress? Why were all these acts? I might enumerate more of these acts—but enough. What were they but a clear indication that the framers of the Constitution intended and expected the ultimate extinction of that institution,” Portable Lincoln, 119.
Individuals must reform themselves—as Lincoln educated himself—because the state will not do so; in fact, it will reinforce its own ingrained crimes. As Emerson puts it: “Every actual State is corrupt” (382). Emerson further claims that slavery is just as much a creation of corrupt government: “This is the history of governments—one man does something which is to bind another. A man who cannot be acquainted with me, taxes me; looking from afar at me ordains that a part of my labor shall go to this or that whimsical end—not as I, but as he happens to fancy” (386). Malachuk argues that Emerson’s self-reliance “rendered government little more than the work of ‘clerks’” and that “the republican tradition is . . . a crucial source of Emerson’s thought here. Properly ‘educated,’ citizens become ‘self-reliant’ insofar as they are reliant upon Reason, aware, that is, of the greater civic—indeed cosmic—whole to which they are indebted” (426 - 427). If the state and political institutions are corrupt, where can men turn?

Emerson’s answer is to the individual. But how does the individual set about reforming himself or herself? Emerson argues that to do so is to come face to face with God and nature, rather than looking into history for moral truth. In his introduction to Nature Emerson writes: “Our age is retrospective. It builds the sepulchers of the fathers . . . The foregoing generations beheld God and nature face to face; we, through their eyes. Why should we not also enjoy an original relation to the universe?” (Essential Writings 3). However, to see nature, that being the “essence unchanged by man,” is something “few adult persons can see . . . they have a very superficial seeing” (4 - 6). Emerson describes what happens when one truly sees nature:

Standing on the bare ground—my head bathed by the blithe air and uplifted into infinite space—all mean egotism vanished. I become a transparent
eyeball; I am nothing; I see all; the currents of the Universal Being circulate through me; I am part of parcel of God. The name of the nearest friend sounds then foreign and accidental: to be brothers, to be acquaintances, master or servant, is then a trifle and a disturbance (6).

As his politics develop, Emerson encourages his audience to move closer to “nature” by embodying truths, and in his thought, the values written into the Declaration of Independence represent just such a convergence of transcendent truth and practical faith. This is synonymous with natural law—something beautiful that can be shared by all men, something that neither infringes upon men, nor retards society’s progress. Emerson’s natural law is not something that can only be found in the woods through meditation; it is something woven into the Constitution and the Declaration of Independence.

Lysander Spooner explains how the virtue of the Declaration—higher law—was intended to be applied to the framers’ posterity through the enforcement of the Constitution’s extension of those virtues. Spooner defines law in such a way that makes slavery unimaginable. He writes, “Natural law, then, is the paramount law. And being the paramount law, it is necessarily the only law . . . And this natural law is no other than that rule of natural justice, which results either directly from men’s natural rights, or from such acquisitions as they have a natural right to make, or from such contracts as they have a natural right to enter into” (Unconstitutionality 7). He then clearly explains the hierarchy of natural law in relation to the law of political institutions: “In order that the contract of government may be valid and lawful, it must purport to authorize nothing inconsistent with natural justice, and men’s natural rights. It cannot lawfully authorize government to destroy or take from men their natural rights: for natural rights are inalienable” (8). This would seem to end the slavery
debate in quite clear terms: slavery endangers man’s natural rights, and so it must be unlawful.

Spooner traces this aspect of natural law through American history. He argues that during the colonial period, antislavery was woven throughout the colonies’ legal identity. Britain influenced virtually everything that made America in its early years and, such as was the case, the founders were aware of Britain’s intentions to exterminate slavery. Spooner cites just such an example during the colonial years:

It was decided by the Court of King’s Bench in England—Lord Mansfield being Chief Justice—before our revolution, and while the English Charters were the fundamental law of the colonies—that the principles of English liberty were so plainly incompatible with slavery, that even if a slaveholder, from another part of the world, brought his slave into England—though only for a temporary purpose, and with no intention of remaining—he nevertheless thereby gave the slave his liberty... This decision was given in the year 1772 (23).

Even though slavery was tolerated for a number of years in Britain and America, it was clear in this court ruling that slavery was not long for the world under Britain’s sphere of influence. Though there was no national language concerning slavery before the Declaration of Independence was written—there were only a few charters in the southern states—Spoonер argues that slavery, where it existed in infant charters, was abolished the moment the document existed. If the statutes of early colonial America articulated that slavery was

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6 Spooner goes through the charters of Virginia and the Carolinas, yet only finds separation based on color, writing that “even th[ese] statute[s], in reality, defined nothing; for the whole purport of it was, to declare that all negroes, Indians, mulattoes and mestizoes, except those who were then free, should be slaves,” p. 34-5.
determined by color of the skin, and this led to the division of colored individuals as “not free” while whites were “free,” then the Declaration changed that. Spooner argues that this “principle” was invalid: “For if [the Declaration of Independence] were the law of the country even for a day, it freed every slave in the country . . . and the burden would then be upon the slaveholder to show that slavery had since been constitutionally established. And to show this, he must show an express constitutional designation of the particular individuals, who have since been made slaves” (37). Since the Constitution never defines what a slave is, only permits it where it already exists, Spooner suggests that because slaves are people, and the Declaration of Independence declared all men free, this abolishes slavery in the United States and, quite simply, argues that the Constitution cannot validate slavery without specifically defining what a slave is. Spooner makes one final important point that slavery is not a product of the Constitution: “All those parts of the state constitutions . . . that recognize and attempt to sanction slavery, have been inserted, by amendments, since the adoption of the constitution of the United States” (39).

Spooner lays out compelling evidence that slavery was abolished by the Constitution, while Emerson argues that the spirit of the Declaration of Independence was more in line with his view of nature and God. Whether the argument is legal or transcendental, the sum of its parts is the same—slavery violates natural law and natural rights, and therefore is not in harmony with Nature or the founding principles of America. This sentiment was prevalent among many of the influential figures who played roles in the Anthony Burns case.

The concept of law and “what is right” seemed to take on new meanings in the aftermath of the Anthony Burns case. Plainly speaking, Henry David Thoreau argued that “the new hero is a breaker of laws” (Von Frank 105), by comparing the government to a
machine and encouraging individuals to “break the law,” Thoreau separates virtue and the “political religion” that Lincoln advocated in the Lyceum Address. In saying: “Let your life be a counter-friction to stop the machine” (677) Thoreau says that a citizen’s life must be spent working against the continuation of inequality perpetrated by the government. Martin Stowell, remarking on how the Fugitive Slave Law was to make everyone in Massachusetts and the North “an agent of injustice to another,” decided that this law was the end-all-be-all for diplomatic resistance: “What better incitement to bold action and heroic protest can there be?” (Von Frank 106). Theodore Parker called out the integrity of the North in its obedience to Daniel Webster, a man who “had repudiated the higher law” that Parker and the reformers sought to put in the place of the legalistic arguments that sustained slavery. Von Frank describes Parker’s commitment to this ideal: “Webster had sarcastically asked the Union in 1850, ‘Will you have the “higher law of God,” to rule over you?’ The meeting, Parker recalled, ‘howled down the higher law of God!’ In the face of such blasphemy” Parker could only join with his compatriots in their moral crusade (112).

Emerson had long spoken of private change being necessary for revolution. He believed that a single man must reform before society can. Von Frank echoes this when he writes of Emerson: “The private road to truth had some advantages over the rutted public way . . . In the Emersonian scheme, then, revolutions go best when they are conducted in private—especially because in that site they can and should be chronic rather than acute” (98 – 99). Parker applied this model of self-reliance to Massachusetts as a whole. Addressing both the North and South, Parker argued

What Emerson had earlier said about individual self-reliance, Parker now said about sectional self-reliance: that unless you take your own proper values for
the informing of your character, we cannot know you—we shall see only that overmastering, overshadowing power which signified for you. “Southern slavery,” said Parker, “is an institution which is in earnest. Northern freedom is an institution that is not in earnest. It was in earnest in ’76 and ’83. It has not been in earnest since (113).

An extension of this was the renewed sense of devotion to the antislavery cause, as well as the region. Thomas Wentworth Higginson, mentioned in the previous chapter in his heroic and confrontational role in driving out the slave catcher, said of the outcry and action in response to the Anthony Burns case: “I am thankful for what has been done—it is the greatest step in Anti-Slavery which Massachusetts has ever taken. I am ready to do my share over again” (123). Higginson would be noted for arguing that performing actions in like with Nature and God is right: “Our souls and bodies are both God’s, and resistance to tyrants is obedience to Him” (260) furthering Emerson’s belief in right action that evolves from individual reform leads to one finding himself close to God.

With the defenders of slavery rejecting the higher law, Transcendentalism became the philosophical doctrine that combats slavery, by defending universal standards of human equality. If slavery was fracturing the nation, then “the remedy was revolution,” as Higginson said. He would later provide the ingredients for the remedy: “Transcendentalism, deployed as antislavery, becomes revolution” (261). It made further sense that the Transcendentalists were the ones to lead the way into this new age of equality because prominent among their thought “the concept of a law higher than any that space and time could show had been extensively explored” (282)—they understood the higher law argument and sought to apply it to American culture. As Emerson put the change after the Anthony Burns episode: “Liberty
is aggressive. Liberty is the crusade of all brave and honest men. It is the epic poetry, the new religion, the chivalry of all gentlemen. This is the oppressed Lady whom all true Knights on their oath and honor must rescue and save” (229). In Len Gougeon’s assessment Emerson primarily “attempted to apply the force of culture to the problems of American society, especially slavery,” but after the Fugitive Slave Law and the actions surrounding the Anthony Burns Case he “came to regard many abolitionists like Garrison and Wendell Phillips and others, in a much more positive light. Generally, he came to see them as spokespersons for morality and ethics” (“Emerson, Poety, and Reform” 40).

These reformers who Emerson had previously thought radical represent a change in American thinking and values that owe more to the founders and the Declaration of Independence, as well as the intentions behind the Constitution, than the legalistic view that dominated the public discourse. The irony is that the nation had somehow found a way to enslave itself with its legal interpretations of these documents, and by emphasizing an alternative tradition Emerson and Lincoln were pointing the nation into the future by returning it to the cosmopolitan principles of the Founders.

Abraham Lincoln moved from his views of law as the “political religion” of the land to a more cosmopolitan and virtuous route. He followed the same internal path of reform that Emerson preached. He disappeared from the political scene after losing reelection in Illinois in the 1830s, running a successful law practice. He did this until the Kansas-Nebraska Act. He admits as much during his Chicago Speech: “I believe [slavery] has endured because, during all that time, until the introduction of the Nebraska Bill, the public mind did rest, all the time, in the belief that slavery was in course of ultimate extinction . . . I have always been quiet about [slavery] until this new era of the introduction of the Nebraska Bill began” (118).
He is not the same politician from his earlier days, however, as evidence by his Emancipation Proclamation during the Civil War in his presidency.

More important than the Emancipation Proclamation, however, are his later “Gettysburg Address” and 2nd Inaugural Address. In these speeches, Lincoln appeals to a more religious tone and message that, ostensibly, contradicts his previous message in the “Lyceum Address.” Lincoln eventually came to demonstrate, as I will point out in these speeches, the virtue and religion that both Emerson seeks for reform in the individual, as well as the cosmopolitan language of the founding fathers. What Lincoln came to realize is that the spirit and beauty of the Declaration of Independence existed first, and the law was there to enforce that—everything should settled thereafter. With the passing of the 13th Amendment, Lincoln actualized the Emerson ideology and fused it with his own “political religion.”

In his “Gettysburg Address,” Lincoln initiates a rebirth of the nation’s morality under God. The nation becomes God’s country, and the stakes are higher than obedience to laws—survival and equality must be reacquired. Lincoln opens the short address by noting that America had been “conceived in Liberty, and dedicated to the proposition that all men are created equal” (323). This was the origin of the nation, and could not survive if it moved away from its intellectual and spiritual foundation. Rather than offer words in dedication to the site of the gruesome battle, Lincoln says that he and his audience “can not dedicate—we can not consecrate—we can not hallow—this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract . . . It is rather for us to be here dedicated to the great task remaining before us . . . that this nation, under God, shall have a new birth of freedom” (324). It is the Lincoln taking the gloves off and
declaring a moral crusade against slavery—it is also here that Lincoln starts to publicly display his spiritual commitment to the eradication of slavery.

Lincoln’s relationship with the Constitution is representative of the whole American integrous spirit. I would suggest that Lincoln is of the mind “that a nation must have a constitution and that a real constitution is more than ink on paper” (McLaughlin 4). McLaughlin argues that “the framers of our Constitution were intent upon maintaining and strengthening liberties and protective forms which had been won by the toil of centuries. They were intent not only upon strengthening their hold upon liberty but also upon giving liberty the support of fundamental law” (4 - 5). Slavery cannot exist in the future America.

Lincoln claims as much when, in his speech on the Kansas-Nebraska Act in 1854, he says:

This declared indifference, but, as I must think, covert real zeal, for the spread of slavery, I cannot but hate. I hate it because of the monstrous injustice of slavery itself. I hate it because it deprives our republican example of it just influence in the world; enables the enemies of free institutions with plausibility to taunt us as hypocrites; causes the real friends of freedom to doubt our sincerity; and especially because it forces so many good men among ourselves into an open war with the very fundamental principles of civil liberty, criticizing the Declaration of Independence, and insisting there is no right principle of action but self-interest” (50).

In order for the nation to remain a beacon of liberty it must do away with slavery. Is that message not made abundantly clear in Lincoln’s words above? The fact remained that even though many individuals and states continued to point to the Constitution as a document that supports expansion of slavery, as well as defended it where it was, Michael Zuckert points
out that James "Madison predicted that the Constitution would not last long" (75). This is illustrated because the Constitution was incomplete (76). In order for American to move forward, abolish slavery, and preserve the Union, Lincoln had to complete the Constitution and ensure the ideas of liberty and equality for America's posterity. According to his own philosophy of American government, it was the only just and self-reliant action open to him. To evaluate how this was done, we need to examine the exact language of the 13th and 14th amendments.

Section one of the 13th amendment states the following: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction"; section two adds the following clause: "Congress shall have power to enforce this article by appropriate legislation" (par. 5). The first section abolishes slavery and ultimately wins the war on a moral and political ground for both the northern states and the Declaration of Independence. The second section brings the entire debate full circle with the clause that Congress can enact legislation to enforce section one—the entire debate centered around Congress' ability to regulate slavery in both territories and states alike; now there was certainly no confusion as to what was law and wasn't. This was first step in using the democracy endowed to Lincoln by the founders to combat slavery.

Section one of the 14th amendment states the following:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State
deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (par. 4).

This amendment takes the conflict out of Taney’s Dred Scott decision in that no state can no interfere with any determinants of citizenship. Lincoln’s central philosophy of government grants liberty and equality for all those born in America. The second clause eliminates the three-fifths compromise and ensures that representation on the House is directly tied to total population:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State (par. 5).

This laid the groundwork for further assimilation of freed blacks into a predominantly white society. With all persons born in America citizens, it made an individual count for representation regardless of color and social status. Granted, this amendment was ratified
after Lincoln was assassinated, many can see that it was of his design and belief based on how his focus towards the end of the war and his life.

In fact, by the end of the war Lincoln became “an antislavery warrior who resorted to extreme violence and who humbled himself . . . a heightened version of what John Brown, the God-directed fight against slavery, had been when he died on the scaffold six years earlier” (Reynolds 95). In his second Inaugural Address, Lincoln uses much religious rhetoric in reference to the war on slavery:

The Almighty has His own purposes. ‘Woe unto the world because of offences! for it must needs by that offences come; but woe to that man by whom the offence cometh!’ If we shall suppose that American Slavery is one of those offences which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South, this terrible war, as the woe due to those by whom the offence came, shall we discern therein any departure from those divine attributes which the believers in a Living God always ascribe to Him? Fondly do we hope—fervently do we pray—that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue, until all the wealth piled by the bond-man’s two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash, shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said ‘the judgments of the Lords, are true and righteous altogether’ (349).
Here Lincoln is putting aside the politician and embracing what he once condemned—passion and the "mobocratic spirit." By believing himself to be leading the armies in compliance with what he says is God’s Will, Lincoln is putting himself on the side of God. Through war Lincoln could express his hate of slavery in much the same way Brown did—once his laws were not in jeopardy. In fact, Lincoln now could authorize the enforcement of a world seeking equality—Emerson’s moment of beauty with regards to human society—since the law had now been rectified. What I mean to say by that is that the “spirit” of the law was now being used for its true intended purpose: that all men were created equal.

At his second Inauguration, Lincoln both repudiated Southern law—“All knew that this interest [slaves] was, somehow, the cause of the war” (348)—and preserved his own law that resided in the Union. However, Lincoln quietly became the next antislavery warrior in America, firmly maintaining the belief that the eradication of slavery by violent means is tantamount to following God’s Will—this is made evident by his statement at his “Cooper Address”: “Let us have faith that right makes might, and in that faith, let us, to the end dare to do our duty as we understand” (216). Lincoln is now elevating the stakes of the Civil War—not only with the stronger side win, but that side will have been God’s side in this struggle. Lincoln’s law in the order of the Union, and the natural law that Emerson ascribes to be in accordance with, temporarily, became fused together in similar fashion as at the founding of the nation: higher laws creating a more unified nation out of severe discord. The proof lies in the enacting of the 13th and 14th amendments abolishing slavery and granting citizenship to freed slaves.
Conclusion

The years leading up to the Civil War saw a multitude of conflicting views on slavery that all point to the same documents to support their arguments. Many of these arguments focused on historical evidence in support of slavery. Interpreting the intentions of the founding fathers was also a common argument for both pro and antislavery factions. Broad interpretations of legal language in both the Constitution and Declaration of Independence further muddled the intellectual milieu and created a lasting tension within antislavery rhetoric. While the Constitution was a document that enforced and protected slavery for some, it was simultaneously a document that was used in the effort to abolish slavery. A tension between “higher law” and “rational law” existed during the period from the 1830s to the late 1850s and erupted in war soon thereafter.

Lincoln internalized this tension as he deeply felt the spirit of the Declaration of Independence conflict with his devotion to law. Only through his fusion of the two could he seek to amend the ways of the nation. In order to do this Lincoln, like the nation, had to spend some time away from the impending crisis and look to reform himself—his retreat from politics served to do this.

Emerson, like Lincoln, was similar to the Founders in that they both believed slavery would die out and morality would overcome. I believe that the following is an extension of that belief: over the course of history the evolving quality of men will always seek to interpret and revise laws for the betterment of the society as a whole, not for any one particular group of individuals—that, I believe, was the true intention and belief held by America’s founding fathers. That evolving quality often has to go to war to eliminate
mistakes that allow for the unjust and evil to manipulate documents like the Constitution and Declaration of Independence. Furthermore, that evolving equality would need to complete the Constitution. Lincoln eventually set this in motion with the groundwork for the 13th and 14th amendments—the sentiment for which had been in incubation for several decades: “Most of the new nationalists trace the inspiration for the Fourteenth Amendment and the new constitutional order to antebellum anti-slavery thought” (Zuckert 71).

Ultimately, it was the required individual reform that Emerson believed in that would turn the nation around. For Emerson, the abolition of slavery and enforcement of equality were necessary to achieve a national level of self-reliance: “If equality is a source of inspiration, then what exactly does it inspire? For Emerson, as for most everybody else then and since, the answer is obvious: it inspires self-reliance” (Larson 316). Regis Michaud describes Emerson’s self-reliance as “a declaration of spiritual independence, a plea for religious autonomy. To keep the soul forever young and active, to defend its creative energies, the personal and actual character of religious experience, the right for the individual to expand into universal relations” (76). Emersonian heroism gripped the nation in response to the Fugitive Slave Law and, like the founding fathers, virtue was found outside the law. Even steadfast proponents of the law like Lincoln found themselves going through a personal reform in an attempt to rediscover the collective spirit of the founding fathers. Lincoln moves from calling for people to defend the law with their lives, to calling for people to fight through the Civil War for as long as it takes, until slavery is no more.

This change in Lincoln is a microcosm of the nation itself as it attempted to work through the legal and moral tension created by the existence of slavery. Lincoln is his generation’s example of Emersonian self-reliance fused with the Founders’ political
ambition. Lincoln’s right of revolution was evident as well during this crisis, as he was initiating a revolution of spirit during his presidency. As Pressly articulates in his article, Lincoln equated revolution with national independence, but this revolution was not against a tyrannical nation, but rather against moral decay that threatened to undo all the moral progress initiated by the Founders.

An immoral system of laws cannot be defended—it has to be remade; but the nation first had to reform itself spiritually, and resolve the tension created by the Constitution and Declaration. Once it did, it was more than a Civil War—it was a moral contest to abolish slavery. Lincoln and Emerson were thus the catalysts in returning the nation to its earliest and most cosmopolitan virtues and principles. Lincoln, as the all-seeing eyeball Emerson refers to in Nature, recognizes how best to abide by his belief in law and preserve the memory and ideology of his own philosophy of government—use the gift of democracy and law to ensure liberty and equality for his and America’s posterity.
Works Cited


Transcript of the Constitution of the United States.


