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The Original Intent of the Slaveholding Founders

From the antebellum era to the present, Americans have been devoted to their two founding documents – the Declaration of Independence and the Constitution. If there is one thing that generations of Americans could agree on, it was the nobility of the Declaration and the Constitution. While these two documents are frequently conflated by the general public,¹ editors of leading national newspapers,² and even a few scholars,³ they are actually quite different. Where the Declaration asserted that the thirteen British colonies were “Free and Independent States,” the Constitution would make those states into a “more perfect Union.” Where the Declaration soared on the rhetoric of natural rights ideology, the Constitution plodded along with the dry legal jargon of a bill of sale. Where the Declaration was largely the work of a lone (slaveholding) genius written in just a few days, the Constitution was the product of a series of committees that haggled over each clause for several months. Where the Declaration appealed to “mankind” to overthrow “any Form of Government” that was oppressive, the Constitution was organized by elites to “insure domestic Tranquility.” In short, the Declaration was philosophical, universal, and inspirational, while the Constitution was legalistic, specific, and prosaic.⁴

¹ Steve Goldstein, “Most in U.S. Know Little of Constitution, Poll Says,” *Austin American-Statesman*, Sept. 16, 1997, A2.

² “One Nation Under Justices,” *Washington Post*, Oct. 16, 2003, A24; “Locked, Loaded, and Looney,” *New York Times*, Aug. 30, 2007, A22.

³ Hugh Thomas, *The Slave Trade: The Story of the Atlantic Slave Trade, 1440–1870* (New York: Simon and Schuster, 1998), 613.

⁴ For an excellent introduction to both documents, see Jack N. Rakove, ed., *The Annotated U.S. Constitution and Declaration of Independence* (Cambridge, A: Harvard University Press, 2009).

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Although the lofty natural rights rhetoric of the Declaration of Independence appealed to all Americans, it was, after all, the Constitution that actually set down the rules by which the United States government was run. After the Founders achieved independence, it was the Constitution's technical specifications for the machinery of government that really mattered. Despite its dry and legalistic language, the Constitution became an object of veneration for many Americans. Indeed, the *North American Review*, the very soul of conservative American opinion in the mid-nineteenth century, transformed that weakness into a strength. The *Review* boasted that the Constitution was not the product of "a priori theories," but was instead framed to meet the "practical wants" of ordinary Americans. In the same way, free-soil Democrat John Bigelow, a New York City lawyer and newspaper editor, attributed much of the Constitution's success to the fact that it was drafted to meet actual political necessities rather than abstract philosophical aspirations.⁵

Many white Southerners frankly preferred the Constitution to the Declaration of Independence because it privileged practice over theory. Cavalierly dismissing the Declaration's assertion of universal natural rights, the *Southern Quarterly Review* disclaimed, the Constitution asserts that men were "neither created [n]or remain equal and independent, and that property may be held in men." So strong was their aversion to the Declaration and so great was their veneration of the Constitution that some Southerners broke with tradition and emphasized the Constitution at Independence Day celebrations rather than the Declaration. During a telling 1849 Fourth of July address at Charleston, William Porcher Miles, a South Carolina college professor, referred to the Constitution seven times, as well as George Washington twice, the Wilmot Proviso twice, and the Missouri Compromise once, but he did not mention the Sage of Monticello or his Declaration even once. The closest the Palmetto fire-eater came was when he alluded to the "spirit of '76," but this was not very close as he quickly added that that spirit was "embodied" in the Constitution. Indeed, the Declaration was not read aloud during that Independence Day celebration – a striking departure from antebellum American protocol.⁶

⁵ Review of George Ticknor Curtis's *History of the Origin, Formation, and Adoption of the Constitution*, *North American Review* 80 (Jan. 1855): 259; John Bigelow, Dec. 9, 1843, 1843–1853 Diary, John Bigelow Papers, NYPL.

⁶ "Political Elements," *Southern Quarterly Review*, 2d ser., 10 (Oct. 1854): 415; William Porcher Miles, *Oration Delivered before the Fourth of July Association* (Charleston: James S. Burges, 1849), 13.

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While proslavery Southerners preferred the Constitution, antislavery Northerners exalted the Declaration of Independence instead. The sectional divide over the Declaration and the Constitution was dramatically revealed in radical abolitionist William Lloyd Garrison's famous Fourth of July oration in 1854. At Framingham, Massachusetts, one month after the Bay State had returned the fugitive Anthony Burns to slavery, Garrison honored the national jubilee in his own distinctive way. In the course of his remarks, Garrison, the most infamous opponent of slavery in the United States, contrasted the Declaration with the Fugitive Slave Act of 1850. Afterwards, the arch-abolitionist read the provisions of the Constitution that he believed made it irredeemably proslavery – the three-fifths clause, the international slave trade clause, the fugitive slave clause, the militia clause (Article I, Section 8), which allowed the militia to suppress slave insurrections, and the guarantee clause (Article IV, Section 4), which promised federal protection to the states against domestic violence, including slave revolts – and then burned copies of the Constitution and the Fugitive Slave Act. After condemning the last document to the flames, Garrison proclaimed: “so perish all compromises with tyranny.” Most Northerners were not impressed. Indeed, the majority of his audience – expecting to hear slavery and the Fugitive Slave Act of 1850 rather than their beloved Constitution denounced – booed and hissed. Beyond Boston, Garrison's political theater was largely ignored.⁷ The vast majority of mid-nineteenth-century Americans revered both the Constitution and the Declaration.

THE FOUNDERS' TRANSCENDENT CONSTITUTION

Except for a few radical abolitionists led by William Lloyd Garrison, antebellum Americans revered the Constitution and lionized its drafters. Former Vice-President George M. Dallas spoke for most mid-nineteenth-century Americans when he praised the document in terms so lofty as to make even proud parents blush were they to have been spoken of their child. Dallas, a Pennsylvania doughface who had served as the running mate of slaveholder James K. Polk, believed the Constitution was as close to perfection as mere humans could aspire to. Not only would he have retained every single clause

⁷ Albert J. Von Frank, *The Trials of Anthony Burns: Freedom and Slavery in Emerson's Boston* (Cambridge, MA: Harvard University Press, 1998), 279; Michael Kammen, *A Machine That Would Go of Itself: The Constitution in American Culture* (New York: Alfred A. Knopf, 1986), 98.

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and provision, Dallas would not “change a [single] phrase [*sic*].” In sixty years of trial, Dallas averred, the Constitution had “endured every variety of test – the rude shock of foreign war, the rough handling of conflicting parties, the noiseless yet ceaseless cankers of the spirits of monarchy, monopoly and money – and answered every purpose for which a free and virtuous community . . . could contemplate.” After all, the Constitution had guided the United States from the late eighteenth century when it was a small, isolated, Protestant landowners’ republic clustered on the Atlantic seaboard to the mid-nineteenth century, when it had become a white man’s continental democracy, stretching from the Atlantic to the Pacific, with not just hemispheric ambitions but global aspirations.⁸

From the Preamble to the Bill of Rights, mid-nineteenth-century Americans from Providence to Santa Fe hailed the Constitution as a “beacon light to the oppressed” and the “ark of liberty.” This was not just grandiloquent patriotic boilerplate. At a time when Europe and Asia faced aggressive and expanding empires ruled by absolutist monarchs in St. Petersburg and Berlin, only slightly restrained emperors in Vienna and Istanbul, and the Catholic Church was governed by a pontiff who would soon declare himself to be infallible, many Americans believed that centralizing despotisms were on the march. It was for this reason that they gloried in the Constitution’s protection of America’s “free institutions” – freedom of speech and press, free exercise of religion, representative democracy, and local self-government. Indeed, many antebellum Americans imagined that the United States, as the world’s preeminent constitutional republic, led the forces of “Liberty” against the hydra-headed hosts of “Despotism.” They knew what the leading historian of the 1800s had recently declared: “the nineteenth century was an age of empires.” Charles S. Stringfellow, a Virginia lawyer, and the *New York Tribune*, one of the most notorious reform newspapers in the North, could agree on this ideological struggle and the Constitution’s key role in it. For this reason, references to the “Czar of Russia,” the “fanatical Turk,” and the “Catholic power” peppered American paeans to the Constitution.⁹

⁸ George M. Dallas to Peter Filbert, J. Hagenman et al., July 1, 1850, George Mifflin Dallas Papers, HSP; *Providence Post*, July 4, 1854.

⁹ *Providence Post*, Dec. 29, 1853; James J. Deavenport to [Messrs.] Webb & Kingsbury, July 7, 1856, James Josiah Webb Papers, MoHS; Jürgen Osterhammel, *The Transformation of the World: A Global History of the Nineteenth Century* (Princeton: Princeton University Press, 2014), 466; Charles S. Stringfellow, “Graduating Speech Delivered [to] the College of William & Mary, Free Discussion,” July 4, 1855, Charles S. Stringfellow Papers, VHS; *New York Tribune*, Feb. 16, 1852; *Baltimore Republican*, July 13, 1855.



FIGURE 1.1 Antebellum Americans were grateful that the Constitution protected their “free institutions” from the despotisms of Europe, especially those of the Russian Czar, the Turkish Sultan, and the Catholic Pope. Note the military bearing of Nicholas I. Although the Crimean War had just begun when this illustration was made, American concerns about the Czar extended well before 1853 and after 1856. (“Equestrian Portrait of the Emperor of Russia,” *Gleason’s Pictorial Drawing-Room Companion* 5 [Nov. 12, 1853]: 308.)

If Americans conceded that their accomplishments in literature, art, and science were overshadowed by Europeans’, then they took solace in the conceit that their “political institutions” had no rival – let alone an equal – throughout the world. Indeed, John Bigelow, the New York City lawyer, extolled the fact that there were “no such constitutions [*sic*] in the world” that rivaled the American one. Even the British Constitution – though the antecedent to the American one – was clearly inferior. After all, it was unwritten, not even affording paper protections. The limits of such a constitution seemed clear enough to most Americans. Despite having a constitutional monarchy, ordinary Britons bowed and scraped before a king, deferred to a legion of aristocrats, and genuflected before the archbishop of an established church. Even after the Great Reform Act of 1832 washed away the rotten boroughs and the pocket boroughs and doubled the electorate, only one in ten adult males could participate in parliamentary

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elections and they could only vote for representatives to the House of Commons. The House of Lords was a bastion of heredity and privilege (and has so remained until the present day).¹⁰

Just as they celebrated Independence Day and George Washington's Birthday, antebellum Americans commemorated the anniversary of the Constitution, albeit to a much lesser extent. In 1854, Dennis F. Dealy, a young store clerk and partisan Democrat, attended a "Mass Meeting" at Independence Square in Philadelphia in honor of the "adoption of [the] Federal Constitution, A.D. Sept. 17, 1787." It was on that day sixty-seven years earlier that the Constitutional Convention had approved the document and sent it to the states for ratification. Arguably, Dealy and all other Americans should celebrate June 21, 1788, when New Hampshire became the ninth state to ratify the Constitution, which according to its Article VII made it officially supersede the Articles of Confederation. The working-class Philadelphian – like many other Americans of various classes, races, and sections – took great pride that their founding document was the "first one of its kind," i.e., that it was the original written national constitution. Two years later, *Frank Leslie's Illustrated Newspaper* reported that New Yorkers celebrated September 17 as the "anniversary" of the Constitution "in Convention." However, Americans did not honor the Seventeenth of September as consistently as they did the Fourth of July or the Twenty-Second of February. For this reason, the *Baltimore Sun* admonished the laggards to celebrate the day as a "National Anniversary" because it secured the foundation of the Union.¹¹

Antebellum Americans maintained what one Alabamian called a "religious devotion" to the Constitution. The idea that the Founders had been divinely inspired when they drafted the Constitution was widely held in the mid-nineteenth century. George M. Dallas, the former vice-president and Pennsylvania conservative, declared, "no work of human hands has ever been so manifestly blessed by Providence as the federal Constitution." Indeed, Americans had difficulty even saying that proper noun

¹⁰ Joseph O. King to Richard Yates, Jan. 9, 1854, Richard Yates Papers, ALPLM; John Bigelow, Nov. 24, 1843, Diary 1843–1853, NYPL. For more on the Great Reform Bill, see Antonia Fraser, *Perilous Question: Reform or Revolution? Britain on the Brink, 1832* (New York: Public Affairs, 2014).

¹¹ Dennis F. Dealy, Sept. 18, 1854, Diary, Dennis F. Dealy Papers, HSP; *Frank Leslie's Illustrated Newspaper*, Sept. 27, 1856; *Baltimore Sun*, Sept. 19, 1854; Kammen, *A Machine That Would Go*, 127–151, 205, 282–312. Since 1787, Americans have sporadically celebrated various anniversaries – the centennial, the sesquicentennial, and so on – of the drafting of the Constitution or its ratification by various states.



FIGURE 1.2 While not all antebellum Americans staged public celebrations of what is now called “Constitution Day,” Philadelphia did so in the antebellum era. (“The ‘Car of Liberty’ in the Procession as it Passed Logan Square, Philadelphia,” *Gleason’s Pictorial Drawing-Room Companion* 2 [May 29, 1852]: 344.)

without the preceding adjective “blessed.” So convinced was William S. Bodley, a Louisville lawyer, of the holy status of the Constitution that he not only condemned nullification and secession as unconstitutional actions but also damned them as “heresies.” Even critics of the Constitution couched their reservations in religious terms. An Ohio Garrisonian argued that Americans’ unthinking reverence for the Constitution had surrounded it with a “superhuman halo of sacredness,” that blinded them to its proslavery flaws. Joseph Sill, a Philadelphia merchant and Conscience Whig, faulted his compatriots for idolizing the Constitution even when its provisions violated the teachings of Christ.¹²

Despite its mundane, if not profane, purpose – not to mention the fact that it is so relentlessly secular that two recent scholars have described it as a “godless document” – the Constitution was revered by Americans as a sort of civil gospel. Although the *Freedom’s Champion* took a position on the westward expansion of slavery that placed the Kansas newspaper far

¹² Napoleon Lockett to John B. Minor, Nov. 20, 1860, Papers of John B. Minor, UVA; George M. Dallas to Peter Filbert, J. Hagenman et al., July 1, 1850, George Mifflin Dallas Papers, HSP; William S. Bodley to A. Burwell, Nov. 22, 1860, Bodley Family Papers, FHS; Ohio Garrisonian quoted in *Salem (Ohio) Anti-Slavery Bugle*, Jan. 4, 1851; Joseph Sill, Sept. 28, 1851, 1849–1852 Diary, Vol. 9, Joseph Sill Diaries, HSP.

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outside the American mainstream, its call that every American should read the Constitution was a verity that almost all Americans – ordinary and elite, men and women, children and adults, native-born and immigrants, Whigs and Democrats, Republicans and fire-eaters, and abolitionists and slavemasters – cherished. The *Champion's* conceit that to read the Constitution was to love it, however, worked better in theory than in practice. After all, the Constitution was written in esoteric language that requires discipline to read and guidance to understand. For that reason, elected officials have tried to make its praise, if not its reading, compulsory. Just as Baltimore Mayor Jacob G. Davies wanted the schoolchildren in his city to read William Hickey's *The Constitution of the United States* (1854) in the mid-nineteenth century, so Senator Robert C. Byrd, a Democrat from West Virginia, convinced Congress to mandate that all educational institutions receiving federal funds commemorate the document on "Constitution Day" (September 17) in 2005. While such rote demonstrations of patriotism have little educational value and fly against the spirit, if not the letter, of the First Amendment, they have proved irresistible. Of course, to read the Constitution is to interpret it; and to interpret it is to controvert it. As might be expected, antebellum Southerners did not approve of the way Northern textbooks treated the Constitution's protections of slavery. In a typical complaint, John Perkins, a Louisiana sugar planter and Harvard-trained lawyer, charged that books like Hickey's *Constitution* glossed over what he called the "rights of the slaveholder" while at the same time they improperly claimed that the federal government had the power to meddle with the state institution of slave labor.¹³

Opponents of slavery in the North and defenders of servile labor in the South sacralized the Constitution to cross-purposes. Thomas H. Gallaudet, the New England reformer, hailed the Constitution as a "sacred charter of liberties" that trumped slavery. A Tennessee divine decried backsliding from the proslavery dictates of that "sacred instrument." The *Charleston Courier* trumpeted it as the "sacred bulwark" of American civil liberties, including the liberty to own slaves. Away from

¹³ Isaac Kramnick and R. Laurence Moore, *The Godless Constitution: A Moral Defense of the Secular State* (New York: W. W. Norton, 2005), 27; *Atchison (Kans.) Freedom's Champion*, Sept. 3, 1859; Jacob G. Davies to Hiram Johnson, June 6, 1848, Vertical File, MdHS; Kent Greenfield, "Happy Illegal Holiday," *New York Times*, Sept. 17, 2011, A21; Jonathan [sic] Perkins Jr., "Southern Education for Southern Youth," *De Bow's Review* 19 (Oct. 1855): 462–463. For more on the text in question, see William Hickey, *The Constitution of the United States of America with an Alphabetical Analysis*, 6th ed. (Philadelphia: T. K. & F. G. Collins, 1853).

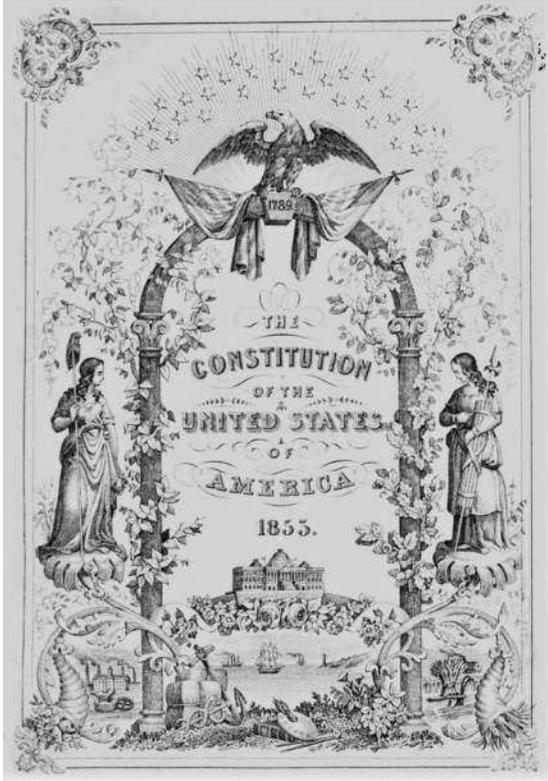


FIGURE 1.3 There was no room for slavery in Northern paeans to the Constitution. Note that the economic prosperity made possible by the Constitution included manufacturing, shipping, and agriculture, but not slave labor. (W[illiam] Hickey, *The Constitution of the United States with an Alphabetical Analysis*, 6th ed. [Philadelphia: T. K. & F. G. Collins, 1853], frontispiece.)

the sectional extremes of abolitionists and fire-eaters, both Northerners and Southerners praised the Union the Constitution created. Indeed, they regarded sectional agitation as apostasy against the “sacred” Constitution that demanded tolerance and forbearance between the free North and the slaveholding South. George M. Dallas, the conservative Pennsylvania Democrat, extolled the Constitution as the “only-sufficient palladium” of the Union. In much the same way, William S. Bodley, the Kentucky lawyer, canonized the “blessed” Union established by the Constitution.¹⁴

¹⁴ Thomas H. Gallaudet to Joshua N. Danforth, Feb. 14, 1832, Joshua N. Danforth Papers, UMich; Tennessee divine quoted in *Louisville Courier*, March 28, 1849; *Charleston*

While antebellum Americans reverently followed the civil religion of constitutionalism, conservatives in the North and the South decried abolitionists' departure from the "strict separation of Church and State." By failing to heed the First Amendment's prohibition against mixing religion and politics, conservatives believed that Northern reformers had fallen victim to religious excess. At an Independence Day oration, John B. Bynum, a North Carolina lawyer and temperance advocate, attributed American exceptionalism to the fact that the United States had properly prevented the state from meddling in matters of religion and the churches from meddling in matters of the state. Established churches, Bynum asserted, invariably lead to religious tyranny. Inveighing against the union of church and state, the *Memphis Appeal* preached that politics and religion should be kept as "wide apart in practice" as the mundane was from the holy in theory. Indeed, white Southerners widely used the term "political preacher" as an epithet for abolitionist. Northern conservatives shared white Southerners' objections to the mingling of religion with the "politicks [*sic*] of the day," as Abraham Smith, an Illinois yeoman farmer and Liberty Man, realized after he had alienated some fifty potential voters on the stump. William S. Messervy, a Yankee who returned to the Bay State after many years as a trader in the Far West, was appalled by the political harangues he heard from the pulpit. The Northern clergy were "stark [raving] mad," he complained to his former colleagues in New Mexico Territory, and their congregations were "catching the disease." In terms that could have easily been uttered by a Southerner, John Allison, a Pennsylvania businessman, dismissed abolitionists as "canting hypocrites." George Douglas, himself a Presbyterian minister from New York City, attributed the political struggle over slavery to the deplorable tendency of some Northern clergy to "preach Abolitionism, instead of the Gospel." Even the *National Era*, a free-soil rather than an abolitionist newspaper, reminded more extreme opponents of slavery that the great majority of antebellum Americans insisted on a "radical distinction" between the spiritual and the secular and they were outraged when anyone "amalgamated" church and state.¹⁵ Of course, this admonition

Courier, July 19, 1849; James R. Doolittle, "Remarks on the importance of celebrating the 4th of July and upon the dangers of joining in denouncing our Southern fellow citizens," July 4, 1837, James R. Doolittle Papers, WHS; George M. Dallas to Muscoe R. H. Garnett, July 5, 1851, Papers of the Hunter and Garnett Families, UVA; William S. Bodley to A. Burwell, Nov. 22, 1860, Bodley Family Papers, FHS.

¹⁵ Joint Resolution of Alabama Legislature, Jan. 30, 1856, Benjamin Cudworth Yancey Papers, UNC; John B. Bynum, Fourth of July Oration, 1849, Northampton, County, NC,