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## Slavery, Sacred Texts, and the Antebellum Confrontation with History

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SLAVERY, SACRED TEXTS, AND THE ANTEBELLUM CONFRONTATION WITH  
HISTORY

By

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Bachelor of Arts in History  
Brigham Young University  
2006

Master of Arts in History  
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2009

A dissertation submitted in partial fulfillment  
of the requirements for the

Doctor of Philosophy – History

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## THE GRADUATE COLLEGE

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**Jordan Tuttle Watkins**

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**May 2014**

## ABSTRACT

### **Slavery, Sacred Texts, and the Antebellum Confrontation with History**

By

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In the first six decades of the nineteenth century, America's biblical and constitutional interpreters waged their hermeneutical battles on historical grounds. Biblical scholars across the antebellum religious spectrum, from orthodox Charles Hodge's Calvinism to heterodox Theodore Parker's Transcendentalism, began to emphasize contextual readings. This development, fueled by an exposure to German biblical criticism and its emphasis on historical exegesis, sparked debate about the pertinence of biblical texts and the permanence of their teachings. In the 1830s, the resurfacing slavery issue increased the urgency to explore the biblical past for answers, which exposed differences between ancient and American slavery. Some still posited the persistence of the Bible as a whole and others rescued a Testament, a text or a teaching, but a few, including Parker, proved willing to let the old canon drift into the past.

Slavery bound these arguments to another debate about a historical text from a more recent past. In the 1840s and 1850s, national observers in an expanding political culture focused their attention on the Constitution in hopes of resolving the growing crisis over the peculiar institution. The passing of the founding generation cultivated great interest in founding-era sources and antislavery readers began debating the interpretive importance of publications like Madison's papers (1840). The Fugitive Slave Law

(1850), the Kansas-Nebraska Act (1854), and the *Dred Scott* decision (1857) further nationalized the issue and put more pressure on constitutional interpreters, who, in turn, scrutinized the founding era for answers. From radical abolitionist Wendell Phillips to southern Supreme Court Chief Justice Roger B. Taney, readers aimed to recover and use the framers' intent to interpret the Constitution. The resulting historical explanations and narrations indicated that much had changed since ratification. Even when antislavery constitutionalists like William Goodell and Lysander Spooner rejected the emphasis on contextual interpretation, their accounts highlighted slavery's presence at the founding and traced the anachronistic rise of the Slave Power since that period. Some upheld the Constitution as an enduring national covenant, others read it in light of the Declaration's egalitarian promises, and a few, including Parker, stood ready to dismiss it as outdated.

More moderate antislavery interpreters, who acknowledged historical distance from the biblical and Revolutionary pasts, formulated readings that allowed them to maintain their religious and legal faith. Biblical scholars like William Channing and Francis Wayland contended that Christ and his apostles had inculcated principles meant to abolish slavery in time, while constitutional interpreters like Frederick Douglass and Abraham Lincoln contended that the framers' had crafted their creation with the expectation that change would remove the national blight. Narratives focused on original expectations cultivated awareness that real historical distances separated Americans from their most favored and familiar pasts, but they also ensured these periods' persistence as usable pasts. In contrast to the traditional view of the shallowness of antebellum historical thought, I argue that historical consciousness in that period took the form of an awareness of historical distance that allowed for and even encouraged the continued use of the past.

## ACKNOWLEDGEMENTS

Ralph Waldo Emerson has convinced me that “our knowledge is the amassed thought and experience of innumerable minds.” The insights and efforts of countless individuals helped me craft this dissertation. However, there are certain people that I can count and specific names that I must name. David Holland deserves immense credit for challenging me to think carefully about the ideas and developments traced herein and for encouraging me to push towards completion. The timely and constructive feedback he offered while at UNLV has continued uninterrupted since his appointment at Harvard. I am grateful for David’s rather expansive understanding of what it means to be a professor and an advisor. I am a better scholar and a better person for having worked with him.

My other committee members also deserve particular mention. In writing and revising the dissertation and throughout my time at UNLV, Elizabeth Nelson pushed me in ways no other professor did. Her penchant for providing incisive critiques is only matched by her capacity to convey deep concern. Colin Loader’s close reading helped me recognize the need to clarify my terms and arguments and Gregory Brown’s insightful suggestions encouraged me to think about the project’s historiographical significance. As an outside reader, Anne Stevens of the English department displayed great patience as my dissertation evolved and provided a fresh perspective to this and other projects.

I am also indebted to a number of archivists at various archives. I am especially grateful to Conrad Wright and Kate Viens and the staff at the Massachusetts Historical Society, Mary Warnement and the staff at the Boston Athenæum, and Frances Pollard and the staff at the Virginia Historical Society. The findings made in these archives gave historical shape to my abstract thoughts. I also found useful and helpful archival direction

and assistance at Houghton Library, the Historical and Special Collections at the Harvard Law School, and the American Antiquarian Society. The kind and knowledgeable individuals at these institutions made for efficient and valuable research experiences.

The faculty members of UNLV's history department provided great intellectual stimulation and academic direction. I had the good fortune to serve as Preserve Nevada's deputy director for three years alongside Andy Kirk. As supportive a mentor as I have encountered, he offered up gems of advice that I expect will serve me well throughout my career. I also had the privilege of working with two wonderfully attentive department chairs. Along with providing scholarly insight, David Wrobel and David Tanenhaus have backed up supportive words with supportive acts. William Bauer, Gregory Hise, Michelle Tusan, and Andrew Bell also have been excellent professorial guides. Deirdre Clement and Miriam Melton-Villanueva provided needed direction and support as well.

My scholarly creditors include those I worked with while completing my MA at Claremont Graduate University. I dreaded attending Robert Dawidoff's Wednesday class during my first semester. I never had a more exacting professor in terms of what and how I contributed in the classroom. I developed a great affinity for his distinctive approach. Janet Farrell Brodie, whose guidance was crucial during the period in which I grew most as a graduate student, graciously acted as second reader for my thesis. Richard Bushman served as my thesis advisor and, aside from David Holland, he has been the single most influential force in my academic career. His early support gave me great confidence. His approach to the past, like his approach to people, inspires imitation. Because of these and other unnamed exemplars, I could not be more proud of my scholarly lineage.



This dissertation was born from loss. Weeks before my qualifying exams, Micah, my youngest sister, took her life. That blow left me reeling. I contemplated postponing my exams and even halting my program. David Holland provided comforting words and freed me from worrying about my schoolwork. After a week of mourning, I decided to return to UNLV, in part to distract my mind from thoughts that had left me spiraling. A fellow student, Nick Pellegrino—who read every word of this dissertation—helped me dive into exam preparation. Other friends also reached out in ways that allowed me to move forward. I will never forget their efforts to mourn with me and provide me a measure of relief. The support that mattered most was that which I have taken for granted most—that of family. The love of siblings, in-laws, and nieces and nephews sustained me. Their love sustains me still. Above all else, the encouragement and affection of my parents, to whom I owe a massive debt that they know I can never repay, gave me the strength to write this dissertation.

## DEDICATION

To Micah,

not because you'd care to read it,

but because I love you so much.

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## INTRODUCTION

On June 26, 1857, in a speech given in Springfield, Illinois, Abraham Lincoln crafted a historical narrative of the American founding that countered the one Chief Justice Roger B. Taney had provided in the *Dred Scott* decision three months prior. Taney had admitted that if “the general words” of the Preamble to the Declaration of Independence “were used in a similar instrument at this day” they would be understood to “embrace the whole human family,” but, as Lincoln explained, the Chief Justice had argued that “the authors of that instrument did not intend to include negroes.”<sup>1</sup> In opposition to the assumption “that the public estimate of the black man is more favorable *now* than it was in the days of the Revolution,” Lincoln argued that “the change between then and now is decidedly the other way.”<sup>2</sup> “In those days,” he noted, “our Declaration ... was ... thought to include all,” but now it was used “to aid in making the bondage of the negro universal and eternal.”<sup>3</sup> The Kentucky-born lawyer conceded that the Declaration’s signers “did not mean to assert the obvious untruth, that all were then actually enjoying that equality, nor yet, that they were about to confer it immediately upon them. In fact,” he stated, “they had no power to confer such a boon.” Instead, he continued, the founders “meant simply to declare the *right*, so that the *enforcement* of it might follow as fast as circumstances should permit. They meant to set up a standard maxim for free society,” he argued, “which should be ... constantly looked to, constantly labored for, and even

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<sup>1</sup> *Dred Scott v. John F. A. Sandford*, 60 US (19 Howard) 393, 410 (1857); Abraham Lincoln, “Speech at Springfield, Illinois, June 26, 1857,” in *The Collected Works of Abraham Lincoln*, ed. Roy P. Basler, 8 vols. (New Brunswick, NJ: Rutgers University Press, 1953-55), 2:405 (hereafter as *Collected Works*).

<sup>2</sup> Lincoln, “Speech at Springfield,” in *Collected Works*, 2:403, emphasis in the original.

<sup>3</sup> *Ibid.*, 2:404.

though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere.”<sup>4</sup> Otherwise, Lincoln explained, if the Declaration was a temporary measure and not meant “for future use,” then the “doings of that day had no reference to the present,” serving only as “an interesting memorial of the dead past.”<sup>5</sup> The premonition of a dead *Revolutionary* past, in particular, never loomed larger.<sup>6</sup> Lincoln harnessed the power of the founding era, but in noting the founders’ expedient approach to slavery, in identifying their original expectation of liberty’s spread, and in lamenting the proslavery betrayal of that expectation, he drew attention to the historical distance from the founding era. Although they fundamentally disagreed on the founders’ intentions, Taney and Lincoln concurred on a crucial point: times had changed. And while interpreters on opposing sides of the slavery controversy valued change differently, their efforts to either reject or privilege the interpretive importance of context underscored the distance that divided their own time from that of the founding generation. As Americans confronted the question of whether slavery was still morally acceptable—as they did so in a culture shaped by sacred texts, mythic pasts and a conflicted present—they awoke to an unprecedented awareness of historical distance.

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<sup>4</sup> Ibid., 2:406, emphasis in the original.

<sup>5</sup> Ibid., 2:406, 407.

<sup>6</sup> I use the term *Revolutionary past* to refer to the period to which Lincoln and many other Americans appealed in calling on the framers of the United States government and its founding documents. This period includes the time between the writing of the Declaration of Independence and the ratification of the Constitution. In this study, then, *Revolutionary past* signifies not only the time in which England and its American colonies struggled for control of the eastern seaboard, but also the periods immediately preceding and following the war, including the founding moment, wherein the colonists formed a new nation. I also use the term *founding* to refer to this period.

Lincoln's response to *Dred Scott*, along with Taney's decision itself, followed from decades of interpretive debates over slavery and represented the culmination of a series of intellectual developments in the antebellum period. The historical nature of Taney's decision and Lincoln's response was symptomatic of the increasingly dominant approach to interpret the Constitution in particular and the founding era more generally through the use of historical exegesis. The potential for such an approach was evident at the founding itself, when the framers crafted national documents and a federal government meant to endure—compasses that their descendants would continue to use as guides even after their crafters had passed on. When the founding generation, and, more specifically, the last of the framers passed from the scene in the 1820s and 1830s, a range of commentators and observers, including historians, orators, newspaper writers, lawyers, and politicians—in hopes of retaining the presence of their now deceased forebears—sought to rescue the framers' writings and apply their original truths to contemporary problems. As the slavery debates reached a fever pitch in the 1840s and 1850s, constitutional interpreters either upheld as paramount or dismissed as extraneous sources such as James Madison's published papers. Soon, those privileging the use of historical evidence carried the day. Interpreters on either side of the slavery issue accepted the historical grounds of debate and crafted historical arguments meant to claim the Revolutionary past as either antislavery or proslavery. Thus, Taney believed that a historically grounded decision would settle the issue. *Dred Scott* affirmed the authoritative nature of historical appeals and critics of the decision, including Lincoln, countered with historical narratives of their own. In the process, these historical arguments—which illuminated historical context and change—uniquely exposed the

temporal distance from the founding era, an era culturally and socially distinct from the United States of the 1850s. And an awareness of historical distance simultaneously called into question the Constitution's relevance and inspired innovative interpretive approaches that began to read it as a flexible text capable of adapting to historical change.

That development depended on the constitutionalization of the slavery issue, whereby politicians and other commentators came to believe that an answer to the national problem over slavery depended on the right interpretation of the nation's supreme source of legal authority. That process peaked in *Dred Scott*, when politicians looked to the Supreme Court to adjudicate the matter. The growing stress on a constitutional resolution developed in relation to the primarily historical debates about the Constitution's relationship to slavery, which gained a wider audience via political developments in the 1850s. Thus, two already related and symbiotic intellectual developments, a then prevalent interpretive approach stressing the use of context and a growing imperative to defer to the Constitution to decide slavery's fate, powerfully converged in *Dred Scott*. This high-level union had a profound potential to spread a new awareness of the kind of historical distance that results from the realization of the temporal dislocation between past and present that accompanies a recognition of profound differences in historical context.<sup>7</sup> Historical debates about the nation's hallowed legal text and its mythic Revolutionary past spread a knowledge of real temporal differences and changes since the founding era, which promised to foster an awareness of

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<sup>7</sup> As explained in greater detail below, "historical consciousness" and "historical awareness" are scholarly terms of art that require some finessing. I most often use them to signify a growing awareness of historical distance between past and present eras, or, in this case, between biblical and Revolutionary times and nineteenth-century America.

historical distance from that period. This development alone warrants explanation in its own right, but a more complete and rich telling depends on a parallel account tracing how intellectual processes historicized another favored past, the biblical era. After all, the Constitution was not the only sacred text—and the Revolutionary era was not the only sacred past—to which antebellum Americans appealed for direction.

The move to privilege historical examinations of the Constitution and the resulting realization of historical distance from the founding era followed from and overlapped with a similar, if more obscure, development in biblical hermeneutics. Indeed, I argue that an understanding of the constitutional debates that culminated on a national stage in *Dred Scott* and in the responses to it depends on an awareness of contemporary biblical debates, which, though somewhat esoteric, also stressed historical readings. Like their constitutional counterparts, antebellum biblical exegetes also prized historical approaches, which had begun to replace conventional interpretive forms in the eighteenth century. Those forms often ignored questions of historical specificity in discerning meaning and tended to flatten out time in making modern applications. The turn to historical explication in biblical interpretation began in earnest in the first two decades of the nineteenth century when the lessons of biblical criticism, and the emphasis on contextual interpretation in particular, infiltrated influential segments of antebellum religious discourse.

Joseph Stevens Buckminster, who was elected as Harvard's first professor of biblical criticism in 1811, explained that "instead of looking into every text, separated from its context, we should be content to understand the apostles, as they meant to be understood by those to whom they wrote. ... They were not," he stated, "on every



occasion, delivering a system of dogmas for the instruction of all succeeding time.”<sup>8</sup> Buckminster’s more theologically conservative contemporary, Andover’s Moses Stuart, agreed. In his lectures on hermeneutics, delivered around the same time, he urged his students to “let every writer be placed in his own age.” Stuart encouraged them “to reject the monstrous exegesis” that treats the apostles’ words as though spoken “but yesterday and with all our feelings and prejudices.”<sup>9</sup> To be sure, Unitarians like Buckminster, Congregationalists such as Stuart, Presbyterians like Charles Hodge, and Transcendentalists such as Theodore Parker differed from one another in their selective incorporations of biblical criticism, but in combination their uses unmistakably, if often inadvertently and indirectly, exposed the Bible’s time-bound characteristics. Parker, who went further than perhaps any of his American contemporaries in engaging and incorporating the principles of German biblical criticism, drew attention to historical distance to privilege conscience and to damn outdated creeds. Even when Buckminster, Stuart, or Hodge partook of traditional approaches by ignoring historical distance in applying scripture on questions such as slavery, their studies highlighted the distance from biblical eras and thus problematized attempts, including their own, to conflate time and assert the continued relevance of certain biblical teachings. These relatively isolated discussions about biblical interpretation had far-reaching implications. The historical nature of these somewhat recondite interpretive discussions informed the constitutional debates that followed or, at least, readied participants in those debates, including some of the same figures, to engage in similar kinds of historical argumentation. Learned

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<sup>8</sup> Joseph S. Buckminster, “Philemon,” in *Sermons by the late Rev. Joseph S. Buckminster*, 2d. ed. (Boston: Wells and Lilly, 1815), 83, 83-84.

<sup>9</sup> Moses Stuart, Lecture 6, *Lectures on Hermeneutics*, quoted in John H. Giltner, *Moses Stuart: The Father of Biblical Science in America* (Atlanta: Scholars, 1988), 54.

conversations about historical readings of the Bible among intellectual elites reverberated in public debates about historical readings of the Constitution. And, in both cases, the growing slavery crisis raised the stakes. It placed an unprecedented amount of pressure on the Bible and the Constitution through relatively rigorous historical examination, which accentuated the historical distance from the biblical and founding eras.

In this dissertation, I demonstrate how the growing slavery crisis in antebellum America heightened the contestations in biblical and constitutional interpretation and brought those interpretive traditions together. And I argue that the parallel interpretive debates about slavery significantly historicized the nation's two most favored and useful pasts. The Bible and the Constitution took on special meaning in the new republic. Many Americans began pointing to the era of Revolution and ratification as the starting point to their history as a Christian nation and singled out the Bible and the Constitution as their founding religious and legal texts. This set the stage for discussions about sacred texts and hallowed pasts with timeless appeal. Americans used these historical eras in ways that made them especially favored and uniquely familiar. However, the textual nature of these pasts also held unique potential to expose historical distance when slavery inspired unprecedented historical investigation of the Bible and the Constitution. This development in American historical awareness coincided with broader intellectual shifts and changes in the Western world, including an understanding of time as progressive and linear, rather than cyclical, a realization of the chronological depth of the earth's history, and the development of more mechanistic and materialistic, rather than providential,

approaches to the natural world.<sup>10</sup> The interpretive debates over slavery, then, contributed to the rise of a more modern historical awareness in American intellectual culture.

This is not a study of the Bible and of the Constitution, or even of slavery, *per se*, but rather an exploration of the role antebellum slavery debates played in historicizing America's sacred religious and legal texts and their venerated pasts. In particular, I aim to explain how the interpretive debates over slavery spread awareness of historical distance among a broad group of interpreters. Some minimized and some maximized the interpretive importance of historical distance, but in either case their debates brought new attention to it. Constitutional arguments like Lincoln's, which stressed the antislavery expectations of the nation's founders, and similar biblical arguments that emphasized the antislavery principles inculcated by Christianity's founders, tended to disclose the historical distance from the very pasts to which Americans looked for answers. The idea that certain historical figures had articulated, in certain historical texts, specific universal promises that they could not realize in their own time but that future generations could and would, encouraged an emphasis on historical difference from and change since the biblical and Revolutionary pasts. I thus contend that biblical and constitutional debates over slavery combined with broader developments in historical thought to deepen and expand American historical awareness in ways heretofore overlooked. And the process of historicizing America's sacred texts and favored pasts—historical documents and eras

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<sup>10</sup> On the realization that the earth's history stretched back well beyond available human records and, especially, on the efforts of eighteenth- and nineteenth-century scientific figures to understand that history, see Martin J. S. Rudwick, *Bursting the Limits of Time: The Reconstruction of Geohistory in the Age of Revolution* (Chicago: The University of Chicago Press, 2005); and Martin J. S. Rudwick, *Worlds Before Adam: The Reconstruction of Geohistory in the Age of Reform* (Chicago: The University of Chicago Press, 2008).

with seemingly timeless appeal—contributed to the a growing sense that nothing existed outside of time and that everything bore the marks of temporal vicissitude. In essence, the crisis over slavery in America became a crisis of historicity. While the deepening awareness of historical distance led some to repudiate the Bible and the Constitution as products of foreign pasts, it also inspired innovative approaches wherein interpreters read them as flexible guides to the present and future. The development would allow Lincoln to assert that the proper circumstances had emerged in which he was duty-bound to fulfill the antislavery promises of the founders. Thus, the antebellum confrontation with history complicated but did not discourage the use of the past; instead, it compelled Americans to adopt new approaches to favored pasts and sacred texts.

### *The Historiographical and Historical Groundwork*

Scholars often attribute the spread of European historical awareness to the failures of the French Revolution and the upheavals of the Napoleonic Wars.<sup>11</sup> Historical

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<sup>11</sup> For an analysis of how the French Revolution and the Napoleonic Wars deepened European historical consciousness, see Peter Fritzsche, *Stranded in the Present: Modern Time and the Melancholy of History* (Cambridge, MA: Harvard University Press, 2004). On the relationship between the French Revolution and German historicism in particular, see Georg Iggers, *The German Conception of History: The National Tradition of Historical Thought from Herder to the Present* (Middletown, CT: Wesleyan University Press, 1968), 3-89. On the complicated relationship between the Enlightenment and German historicism, see Peter Hanns Reill, “Science and the Construction of the Cultural Sciences in Late Enlightenment Germany: The Case of Wilhelm von Humboldt,” *History and Theory* 33 (1994): 345-66; and Jonathan Knudsen, “The Historicist Enlightenment,” in *What’s Left of Enlightenment? A Postmodern Question*, ed. Keith Michael Baker and Peter Hanns Reill (Stanford: Stanford University Press, 2001), 39-49. For ways in which the French Revolution cultivated a new and renewed interest in history in France, specifically, see Andrew Jainchill, *Reimagining Politics After the Terror: The Republican Origins of French Liberalism* (Ithaca, NY: Cornell University Press, 2008), 31-35, 82-84, 264-74; Martin S. Staum, *Minerva’s Message: Stabilizing the French Revolution* (Buffalo: McGill-Queen’s University Press, 1996), 4, 136-37, 218-23; and Tom

consciousness or awareness<sup>12</sup> is often characterized as a belief that all aspects of human experience can best be explained historically, that is, in terms of historical development—a concept frequently labeled as *historicism*<sup>13</sup>—and a concomitant

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Stammers, “The Refuse of the Revolution: Autograph Collecting in France, 1789-1860,” in *Historicising the French Revolution*, ed. Carolina Armenteros et al. (Newcastle, UK: Cambridge Scholars, 2008), 39-63. On the development of European historicism more generally, see Maurice Mandelbaum, *History, Man, and Reason: A Study in Nineteenth-Century Thought* (Baltimore: The Johns Hopkins Press, 1971). Much of the historiography on the spread of European historical consciousness follows from Georg Lukács’s *The Historical Novel* (1937), wherein he argues that “the French Revolution, the revolutionary wars and rise and fall of Napoleon...for the first time made history a *mass experience*, and moreover on a European scale.” Lukács, *The Historical Novel*, trans. Hannah and Stanley Mitchell (London: Merlin Press, 1962), 23, emphasis in original.

<sup>12</sup> While focused on historical distance as a measure of modern historical consciousness, this study is also interested in a number of related ideas associated with the term, including a general realization that past, present, and future temporalities are self-contained and separate fragments of time, that unpredictable change constitutes human existence, and that historical development is a contingent process bound up with human action. These ideas inform and are informed by the historicist belief that societal and cultural forms and, in its more radical form, human nature are best understood as products of non-teleological historical forces. One might also describe historical consciousness as an orientation (e.g. classical, biblical, medieval, Revolutionary). For theoretical discussions about historical consciousness from the perspective of memory studies and psychology, see Peter C. Seixas, ed., *Theorizing Historical Consciousness* (Toronto: University of Toronto Press, 2004). See also, Jürgen Straub, ed., *Narration, Identity, and Historical Consciousness* (New York: Berghahn Books, 2005).

<sup>13</sup> “Historicism,” like “historical consciousness,” is a tricky term with a complicated history. It has been used to signify a variety of historiographical practices, approaches and concepts, both overlapping and diverging from the meanings of historical consciousness. It also holds different if related meanings across scholarly disciplines. In the discipline of history, perhaps most frequently the term has been attributed to a popular strand of nineteenth- and twentieth-century German philosophical and historical thought and practice. Previously, thinkers used the term “historism,” or *historismus*, in reference to this intellectual tradition, but in the latter half of the twentieth century, “historicism” gradually replaced “historism.” Since that time, historicism has picked up more expansive meanings, though ones still tied to the German school of historical thought. For an account and critique of the German historicism of historians such as Wilhelm von Humboldt and Leopold von Ranke and their successors, who believed human existence could be best explained through historically and nationally determined values, see Iggers’s classic text, *The German Conception of History*. For an account that historicizes the crisis of relativism among early twentieth-century historicists by

widespread realization of substantial historical change and contingency. The rise of historical consciousness in the United States—which was insulated from the full intellectual fallout of the French Revolution—seems to have followed a different trajectory than European historical consciousness. Historians have largely assumed that Americans, as opposed to Europeans, did not develop a modern historical consciousness (in which periods of time were seen as shaped by materialist historical contingencies that rendered them fundamentally distinct and temporally distant) until the late nineteenth century. This narrative holds that the success of the American Revolution fueled linear millennial and cyclical republican notions, which combined to delay the incorporation of historicist thinking even among German-educated historians like George Bancroft. Unsurprisingly, the thesis of a delayed shift from the providential, Romantic, and literary approaches espoused by antebellum writers like Bancroft to the objective historicist outlook associated with late nineteenth-century thinkers and historians, first found articulation among the latter group.<sup>14</sup> More recently, the thesis has come to rest on the

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describing it as a spatial issue resulting from historicism's failure to solve the immediate problems of post-World War I Germany, see Colin T. Loader, "German Historicism and Its Crisis," *Journal of Modern History* 48 (September 1976): 85-119. For a brief description of the displacement of the term historicism for historicism, see Carl Page, *Philosophical Historicism and the Betrayal of First Philosophy* (University Park: The Pennsylvania State University, 1995), 11-45. See also, Georg Iggers, "Historicism," in *Dictionary of the History of Ideas*, ed. Philip P. Wiener, vol. 2 (New York: Charles Scribner, 1968), 456-64.

<sup>14</sup> See, for example, James Franklin Jameson, *The History of Historical Writing in America* (Boston: Houghton Mifflin, 1891). In tracing the relationship between nineteenth-century German and American historical thought, one must also attend to different measures. One historian, at least, has challenged the assumption that the professionalization of history in the United States followed the German model. See Eckhardt Fuchs, "Conceptions of Scientific History in the Nineteenth-Century West," in *Turning Points in Historiography: A Cross-Cultural Perspective*, ed. Q. Edward Wang and George G. Iggers (Rochester, NY: The University of Rochester Press, 2002), 147-61. For a discussion of the Pragmatist contribution to a historicist outlook in the late

assumption that historicism was, in Dorothy Ross's words, "closely bound up with the process of secularization."<sup>15</sup> According to this formulation, secular trends advanced and spread a sense among Europeans that real changes divided qualitatively distinct historical eras from each other, while religiosity—with its appeal to ahistorical and unseen forces that united surface level differences—blunted a similar development across the Atlantic.

This narrative fails to identify how the efforts of antebellum historical writers advanced historical methodologies. More importantly for the purposes of this study, by focusing on how religiosity hindered the development of historical consciousness—and assuming that the process was strictly secular—this account overlooks the ways in which religion spurred that development both in Europe and in America.<sup>16</sup> The traditional

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nineteenth century, see Louis Menand, *The Metaphysical Club: A Story of Ideas in America* (New York: Farrar, Strauss, and Giroux, 2001).

<sup>15</sup> Dorothy Ross, "Historical Consciousness in Nineteenth Century America," *American Historical Review* 89 (1984): 909-28, quotation on 910. In her discussion of the Progressives' historical thought, Ross relies on Morton White's, *Social Thought in America: The Revolt Against Formalism*, rev. ed. (Boston: Beacon Press, 1957). For an alternative account that describes historical consciousness—defined as consciousness of historical thinking—as a unique aspect of Western Christian civilization, and which separates historical from scientific thinking, see John Lukacs, *Historical Consciousness; Or, the Remembered Past* (New York: Harper and Row, 1968).

<sup>16</sup> In *The Plain and Noble Garb of Truth: Nationalism & Impartiality in American Historical Writing, 1784-1860* (Athens: The University of Georgia Press, 2008), Eileen K. Cheng has recently challenged the traditional narrative on historical writing in America. She confronts the Whiggish view which posits a clear evolution from the shallow, mythic, and filiopietistic histories of amateur antebellum historians to the objective and critical histories of late-nineteenth-century professional historians. Her analysis of antebellum historical writers demonstrates how their conflicting nationalisms and exceptionalisms cultivated rather than hindered the development of modern methodologies, directing attempts at impartiality, objectivity, and originality. She also evidences that the rise of the novel shaped methodological and topical debates about historical writing, which set the stage for the emergence of history as an autonomous discipline. In a recent review of Cheng's work, Dorothy Ross, a relatively recent purveyor of a more sophisticated version of the traditional narrative, grants that "Cheng makes her point," and writes that "future examinations of nineteenth-century historical consciousness will have to take into account the ability of American exceptionalism to

understanding, then, distorts developments on both sides of the Atlantic. One corrective to this myopia might involve highlighting the religious underpinnings of the historicism of figures such as German historian Leopold von Ranke, which would help remedy the proclivity to see a yawning gap between American and European thought while also correcting the secularist assumptions about the rise of modern historical consciousness.<sup>17</sup>

Taking a related tack, Thomas Howard argues that “theological presuppositions and religious attitudes shadowed and shaped nineteenth-century historicist thinking.”<sup>18</sup> More

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dramatize contingency as well as extrahistorical foundations, to deepen historical awareness as well as annul the perception of historical change.” Dorothy Ross, “A New Look at Nineteenth-Century Historical Consciousness from the Modern/Postmodern Divide,” *Modern Intellectual History* 9, no. 2 (2012): 455-56.

<sup>17</sup> Historians have misinterpreted Ranke’s historicism, which relied on a pantheistic view, wherein the particulars of the past correspond to the totality of God. On the misinterpretation of Ranke, see Georg G. Iggers, “The Image of Ranke in American and German Historical Thought,” *History and Theory* 2, no. 1 (1962): 17-40; Peter Novick, *That Noble Dream: The “Objectivity Question” and the American Historical Profession* (New York: Cambridge University Press, 1988), 21-46; and Dorothy Ross, “On the Misunderstanding of Ranke and the Origins of the Historical Profession in America,” in *Leopold von Ranke and the Shaping of the Historical Discipline*, ed. Georg G. Iggers and James M. Powell (Syracuse, NY: Syracuse University Press, 1990), 154-69. For an example of Ranke’s pantheism, see Ranke, “On Progress in History,” in *The Theory and Practice of History*, ed. George G. Iggers and Konrad von Moltke (Indianapolis: Bobbs-Merrill, 1973), 53. In Cheng’s reading, Bancroft and Ranke displayed important methodological affinities, as both shared an interest in primary sources, impartiality, and providence. Indeed, she contends that Bancroft’s interest in unintended consequences followed from his providential understanding, showing that religious views fostered the development of historical thinking. Cheng, *Plain and Noble Garb*, 143-51.

<sup>18</sup> Thomas A. Howard, *Religion and the Rise of Historicism: W.M.L. de Wette, Jacob Burckhardt, and the Theological Origins of Nineteenth-Century Historical Consciousness* (New York: Cambridge University Press, 2000), quotation on 4. Howard defines historicism as “heightened sensitivity to history and to the ‘constructed’ character of one’s beliefs” (ibid., 1). He distinguishes between two variants of historicism, including “classical historicism,” associated with the scholarly practice of Ranke and his successors, and “crisis historicism,” identified with relativism. Howard allows that the first informed the appearance of the second in some settings, as in the case of Ernst Troeltsch, but argues that “crisis historicism” developed as a theological and hermeneutical problem within Protestantism. While focused on different eras of



specifically, he contends that the historicism of German historian Jacob Burckhardt must be understood as having developed in dialogue with the biblical scholarship of his mentor, the German theologian Wilhelm Martin Leberecht de Wette. Howard proposes that the historical-critical approach to scripture in nineteenth-century Europe “created in large part the preconditions for the emergence of historicism and for the academic independence of secular historiography.”<sup>19</sup> He concludes, then, that European Protestantism served as a “codetermining factor” in the emergence of secularism.<sup>20</sup> This dissertation demonstrates that American Protestant thought, and biblical scholarship in particular, played a similar role in the development of American historical consciousness, and in a growing awareness of historical distance in particular. Antebellum biblical scholarship spread a realization of the qualitative temporal divisions separating biblical from modern times and attuned participants in constitutional interpretation to historical approaches and arguments that led to a similar realization of the historical distance separating the Revolutionary past from mid-nineteenth-century present. Biblical debates

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American historical writing, a number of scholars have argued that religious worldviews stunted and that secularized developments advanced historical methodologies. See, for example, Peter Gay, *A Loss of Mastery: Puritan Historians in Colonial America* (Berkeley: University of California Press, 1966); and Lester Cohen, *The Revolutionary Histories: Contemporary Narratives of the American Revolution* (Ithaca, NY: Cornell University Press, 1980). For more nuanced discussions of the role of religion in the development of American historical thought, which nonetheless take cues from the traditional narrative of American historical awareness, see Caroline Winterer, *The Culture of Classicism: Ancient Greece and Rome in American Intellectual Life, 1780-1910* (Baltimore: The Johns Hopkins University Press, 2002), 89-92; and Eran Shalev, *Rome Reborn on Western Shores: Historical Imagination and the Creation of the American Republic* (Charlottesville: University of Virginia Press, 2009), 91-93, 112-13.

<sup>19</sup> Howard, *Religion and the Rise*, 15.

<sup>20</sup> *Ibid.*, 22.

among religious thinkers, then, had long-term implications for the emergence of a modern American historical consciousness.<sup>21</sup>

A few scholars interested in antebellum biblical criticism have examined the historical nature of such criticism, but they have not explained how this relates to the development of American historical consciousness.<sup>22</sup> As does this dissertation, Michael J. Lee's recent work, *The Erosion of Biblical Certainty* (2013), traces American biblical interpreters' growing emphasis on historical readings. Lee demonstrates that, beginning in the eighteenth century, theologically conservative American interpreters, including figures like Jonathan Edwards, Joseph S. Buckminster, Andrews Norton, and Moses Stuart used historical interpretation to defend the Bible. In the process, Lee argues, these

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<sup>21</sup> More generally, a few scholars posit the importance of religious thought in the development of a modern historical consciousness. For example, Anthony Kemp argues that the continuous rejection of immediate pasts for the purity of primitive pasts in Christian thought created an awareness of supersessive change. Kemp's narrative adds a deep Christian dimension to the revolution in historical consciousness that accompanied the Renaissance thinkers' rejection of the "dark ages" and their appeal to the classical golden age. Anthony Kemp, *The Estrangement of the Past: A Study in the Origins of Modern Historical Consciousness* (New York: Oxford University Press, 1991). Kemp's account provides an alternative to that of J. G. A. Pocock, who argues that a realization of secular time and an understanding of substantial historical change arose in the post-Renaissance period, when Florentine, English, and American civic humanists conceived of the republic as an institution meant to counter the chaos of a seemingly inevitable cyclical historical process. J. G. A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, NJ: Princeton University Press, 1975).

<sup>22</sup> See Jerry Brown, *The Rise of Biblical Criticism in America, 1800-1870: The New England Scholars* (Middletown, CT: Wesleyan University Press, 1969); Richard A. Grusin, *Transcendentalist Hermeneutics: Institutional Authority and the Higher Criticism of the Bible* (Durham, NC: Duke University Press, 1991); and Elizabeth Hurth, *Between Faith and Unbelief: American Transcendentalists and the Challenge of Atheism* (Leiden: BRILL, 2007). In his recent work, *Sacred Borders: Continuing Revelation and Canonical Restraint in Early America* (New York: Oxford University Press, 2011), David F. Holland contends that in their historical examinations of the Bible, liberal and conservative biblical interpreters "drove the historical distance of the ancient scriptures deeper into the center of Americans' religious thought" (ibid., 105). This dissertation seeks to further explore this development.

interpreters undermined the traditional view of the scriptures as infallible divine texts. He thus corrects the impression that Americans did not deal with the problems raised by biblical criticism until late in the nineteenth century. I trace a similar development across an even broader scale of biblical interpreters. I include a discussion of Edwards, and focus on contextual interpretation among both antebellum conservatives like Stuart and liberals like Norton, but I also give sustained attention to more radical thinkers such as Theodore Parker. This inclusive approach introduces narrative complications. Displaying the varieties of approaches among different groups of interpreters can create confusion. However, it allows me to trace actual historical conversations and to highlight both the distinctive interpretive approaches and the shared emphasis on historical explication that emerged from those conversations. While I emphasize the growing emphasis on contextual interpretation and the undermining potential of that interpretive decision, I am most concerned with how these developments created and deepened awareness of historical distance and how the issue of slavery furthered that process.<sup>23</sup>

A number of works on the biblical debates over slavery make mention of the historical nature of these arguments, but, with the recent exceptions of Eran Shalev's *American Zion* (2013) and Molly Oshatz's *Slavery and Sin* (2012), their projects are not concerned with the implications of the historical components of those debates.<sup>24</sup> Shalev

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<sup>23</sup> Michael J. Lee, *The Erosion of Biblical Certainty: Battles over Authority and Interpretation in America* (New York: Palgrave Macmillan, 2013).

<sup>24</sup> See, for example, Mark A. Noll, "The Bible and Slavery" in *Religion and the American Civil War*, ed. Randall M. Miller, Harry S. Stout, and Charles Reagan Wilson (New York: Oxford University Press, 1998), 43-73; Mark A. Noll, *The Civil War as a Theological Crisis* (Chapel Hill: The University of North Carolina Press, 2006), 31-74; and James Albert Harrill, "The Use of the New Testament in the American Slave Controversy: A Case History in the Hermeneutical Tension between Biblical Criticism

outlines the prevalence of “Old Testamentism” in the political culture of the early republic and the antebellum era, explaining how Americans’ Old Testament associations tended to bring together biblical and American times. He also describes the declining appeal of the Hebrew scriptures, which began around 1830, and attributes this development to democratization, the Christ-centered religion of the Second Great Awakening, and the biblical argument over slavery. Shalev explains that “the new historical consciousness that arose as a result of the repeated comparisons between biblical and American slaveries would further render the American Israel as an anachronistic image for exactly those who were its most ardent proponents.” Such comparisons revealed the contrast between the ancient and the new Israel. This dissertation expands on the process of historicizing the Old Testament, showing the role of biblical criticism in setting the stage for this development. It also shows how the slavery debates highlighted historical distance from primitive Christian times and troubled New Testament uses and associations.<sup>25</sup>

In her study, Molly Oshatz more directly focuses on the antebellum slavery debates, which she ties to the emergence of liberal Protestantism. Oshatz traces how moderate antislavery Protestants, including William Ellery Channing, Francis Wayland, and Moses Stuart, began to develop an argument that although slavery was *mala en se*—evil in itself—the revelation of that understanding evolved in relation to the varied circumstances and contexts of human existence. She contends that while these writers

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and Christian Moral Debate,” *Religion and American Culture: A Journal of Interpretation* 10 (Summer 2000): 149-86.

<sup>25</sup> Eran Shalev, *American Zion: The Old Testament as a Political Text from the Revolution to the Civil War* (New Haven, CT: Yale University Press, 2013), quotation on 152.

were unaware of the radical implications of their reasoning—that “individual moral responsibility varied according to social context”—their innovative theological argument for moral progress informed late nineteenth-century liberal Protestant understandings and articulations of the revelatory process as organic and developmental. Oshatz writes that the Civil War and emancipation, which confirmed and made obvious the insight that God’s revelation progressed in relation to historical context, concealed the origins of the insight. Similar to late nineteenth-century historians, post-bellum liberal Protestants failed to acknowledge that their antebellum predecessors had laid the groundwork for their positions. As with Oshatz’s narrative, this study also attends to the ways in which the antebellum biblical debates over slavery deepened historical awareness, but rather than explain that process in terms of the gradual emergence of relativism, it focuses on the related but distinct realization of historical distance.<sup>26</sup>

This dissertation further reconsiders religion’s role in antebellum historical thought by exploring how Transcendentalists Ralph Waldo Emerson and Theodore Parker used biblical criticism to unhinge religious truth from its necessary connection to ancient biblical texts and actors and instead locate it in human intuition. Oshatz adds a neglected and useful context to the development of liberal Protestantism in America, but

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<sup>26</sup> Molly Oshatz, *Slavery and Sin: The Fight Against Slavery and the Rise of Liberal Protestantism* (New York: Oxford University Press, 2012), quotation on 83. Although focused on a later cast of characters, Grant Wacker also examines religious thought to understand the development of American historical consciousness. As with traditional narratives, he focuses on late nineteenth-century figures. He trains his attention on the work of Baptist Augustus H. Strong, in particular, who stood between liberals who understood religious truths as mediated through historical processes and conservatives who asserted that such truths had been ahistorically received. Strong came to the conclusion that religious knowledge was a historical product but that religious truth still stood above and outside of time. Grant Wacker, *Augustus H. Strong and the Dilemma of Historical Consciousness* (Macon, GA: Mercer University Press, 1985).

in doing so she lends credence to the caricature of Transcendentalist thinking as ahistorical by contrasting their ideas with the historical arguments of moderate antislavery advocates.<sup>27</sup> This depiction, only the latest in a long line of similar portrayals, mischaracterizes the Transcendentalists by ignoring the historical components of their projects.<sup>28</sup> Scholars have only recently begun to evidence the more nuanced historical nature of their writings, including their biblical scholarship.<sup>29</sup> For example, Elizabeth Hurth argues that many of them, including Emerson and Parker, maintained that the New

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<sup>27</sup> See Oshatz, *Slavery and Sin*, 4, 61-62, 102-5, 123-27.

<sup>28</sup> For an example of a treatment that identifies Emerson and Parker, in particular, as ahistorical thinkers, see R. W. B. Lewis, *The American Adam: Innocence, Tragedy, and Tradition in the Nineteenth Century* (Chicago: University of Chicago Press, 1955). For a list of other scholars who treat Emerson as an ahistorical thinker, see Eduardo Cadava, *Emerson and the Climates of History* (Stanford: Stanford University Press, 1997), 10.

<sup>29</sup> The historiography countering the ahistorical depiction of Emerson, in particular, is growing. A number of historians contend that an engagement with the past was crucial to Emerson's intellectual project. For example, in demonstrating the influence of European Romanticism on Emerson, Lucy Pearce shows the centrality of history in his worldview. Lucy Pearce, "Re-Visioning History: Countering Emerson's Alleged Ahistoricity," *European Journal of American Culture* 26, no. 1 (2007): 41-56. See also, Patrick Keane, *Emerson, Romanticism, and Intuitive Reason: The Transatlantic "Light of All Our Day"* (Columbia: University of Missouri Press, 2005), 193-97. Similarly, in "The Metempsychotic Mind: Emerson and Consciousness," *Journal of the History of Ideas* 71 (July 2010): 433-55, John Michael Corrigan argues that Emerson's "intellectual engagement with history is...equated with the awakening of the soul's power" (ibid., 437). Eduardo Cadava contends that Emerson understood language as a political and thus historical product, which allowed him to appropriate language and put it to use, as in his tropological associations and natural metaphors. Cadava, *Emerson and the Climates of History*. Others trace how the realization of deep time, through geological findings, created a sense of displacement that led Emerson to focus on the here and now and accept change as a powerful part of modern life. See James R. Guthrie, *Above Time: Emerson's and Thoreau's Temporal Revolutions* (Columbia: University of Missouri Press, 2001), and Thomas M. Allen, *A Republic in Time: Temporality and Social Imagination in Nineteenth-Century America* (Chapel Hill: The University of North Carolina Press, 2008), 186-216. These and similar works provide a useful corrective, though some of them tend to swing the pendulum too far the other way. In their focus on the Transcendentalists' awareness and acceptance of historicity and historical change, they sometimes lose sight of their persistent appeal to religious universals.

Testament texts and the person of Jesus Christ correlated to historical realities.<sup>30</sup> This dissertation shows how they used historical reasoning to escape the problems inherent in a historically grounded belief system and suggests that the critique of what they observed to be their contemporaries' overreliance on certain biblical texts and figures had the potential to deepen attentive Americans' awareness of temporal distinction and distance.

As with the related developments traced in this examination, the deepening of that awareness was not necessarily an intended consequence or a straightforward process. Each of the writers discussed in this study approached historical explication differently, and each approach raised the issue of historical distance in unique ways, but all of them brought new attention to it. Awareness of historical distance helped historicize American Protestants' sacred texts and favored pasts, but that process also called into question the timelessness of the Transcendentalists' presumably ahistorical basis of faith. If Emerson's and Parker's writings indicated that all pasts, even the most useful and sacred, could be historicized, then why not the eternal now as well? As Parker used biblical criticism to exalt what he perceived to be a universal religious sense, his observations led him to conclude that religion progressed over time and in relation to varied circumstances. This position highlighted the contingent nature of divine illumination. Further, holding onto a few permanent truths as existing above time while pointing out the many transient ideas existing in time expanded the sphere of the material, a sphere that threatened to engulf Parker's eternal basis of belief despite his best efforts to escape

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<sup>30</sup> Elizabeth Hurth, *Between Faith and Unbelief*, 31-76. While highlighting the Transcendentalists' historical thought through an examination of their biblical criticism, and thus helping correct the ahistorical label, Hurth contributes to the irreligious depiction in arguing that "the tendencies toward atheism were inherent in Transcendentalist thought" (ibid., 2).

it. In tracing these developments, this dissertation revalues the role of religion in the development of American historical awareness.

Relative to the scholarship on biblical interpretation, there are even fewer studies on the process of historicizing the Constitution and the Revolutionary period in the antebellum era. There are a number of important works examining the role of the Revolutionary past in that period, but most of them focus on the usefulness of the Revolution rather than explore the ways in which historical epistemologies problematized such usage.<sup>31</sup> Eran Shalev's *Rome Reborn on Western Shores* (2009) provides a partial exception. In his final chapter, he argues that the early republic's historians, including Mercy Otis Warren and David Ramsay, classicized the Revolution in their accounts, depicting it as an epic event filled with classical-like heroes. These writers described the Revolutionary era as a kind of classical golden age from which Americans, due to a loss of virtue, had since departed. Their declensionist tales created the perception of greater distance than actually existed. For a time, the Revolution seemed more like an ancient foreign event than a recent American undertaking. But upholding a past as a golden age also implies the possibility of its recovery. In other words, if these accounts introduced a kind of historical distance from the founding era, that perception was diminished by the implication that the nation's citizens could reclaim that period through their virtuous acts.

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<sup>31</sup> See, Michael Kammen, *A Season of Youth: The American Revolution and the Historical Imagination* (New York: Knopf, 1978); Alfred Fabian Young, *The Shoemaker and the Tea Party: Memory and the American Revolution* (Boston: Beacon, 1999); and Sarah J. Purcell, *Sealed with Blood: War, Sacrifice, and Memory in Revolutionary America* (Philadelphia: University of Pennsylvania Press, 2002). See also, Margot Minardi, *Making Slavery History: Abolitionism and the Politics of Memory in Massachusetts* (New York: Oxford University Press, 2010), esp. chaps. 3 and 5; and Harlow Sheidley, *Sectional Nationalism: Massachusetts Conservative Leaders and the Transformation of America, 1815-1836* (Boston: Northeastern University Press, 1998), esp. chap. 5.



Republican views of time were fundamentally cyclical; and those views persisted in the new republic. Such outlooks contributed to a growing sense of corrupting change, but they also lent credence to the idea of virtuous redemption.<sup>32</sup> My dissertation is similarly focused on the emerging perception or awareness of historical distance from the Revolutionary era, but I am most concerned with discovering the ways in which debates over slavery contributed to a realization of distance from that period resulting not from a nostalgic desire to recover the past, but rather from a willingness to acknowledge that recovery might not be possible or even desirable.

Studies examining the relationship between history and law in nineteenth-century America are scarce, and while a few works on specific thinkers, such as Supreme Court Justice Benjamin Robbins Curtis, or certain cases, including *Dred Scott*, attend to the historical components of constitutional interpretation, the relationship between constitutional construction and historical awareness remains largely unexamined.<sup>33</sup> A recent study briefly explores the antebellum origins of originalist thought in America, but it focuses on the twentieth century and is not concerned with the implications of

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<sup>32</sup> Shalev also attends to the Revolutionaries' view that perhaps the new republic would escape the republican cycle of a rise and fall traced in Pocock's *Machiavellian Moment*. Shalev, *Rome Reborn*, 73-113. On a sense of breaking free from history in this period, see also, Joyce Appleby, *Capitalism and a New Social Order: The Republican Vision of the 1790s* (New York: New York University Press, 1984). In *The Elusive Republic: Political Economy in Jeffersonian America* (Chapel Hill: University of North Carolina Press, 1980), Drew McCoy complicates the narrative of an abrupt transition from republican cyclical view to a liberal progressive view, arguing that figures such as Thomas Jefferson and James Madison aimed to restore first principles and increasingly felt that despite the preponderance of available land, America was also subject to the old cycle.

<sup>33</sup> On Curtis's constitutional thought, see Stuart Streichler, *Justice Curtis in the Civil War Era: At the Crossroads of American Constitutionalism* (Charlottesville: University of Virginia Press, 2005). The classic work on *Dred Scott* and its historical aspects is Don E. Fehrenbacher's *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978).

originalism for historical awareness.<sup>34</sup> Two other recent works, David Rabban's *Law's History* (2013) and Kunal Parker's *Common Law, History, and Democracy in America* (2011), attend to the historical nature of American legal thought. Rabban breaks apart the caricature of late nineteenth-century legal thought as dominated by deductive formalism in arguing that historical thinking pervaded legal scholarship in this period. His compendious and convincing study helps bridge the supposed gap between European and American thought. However, his analysis focuses on the post-bellum period, lending itself to the traditional narrative of America's delayed turn to history. Thus, it threatens to obscure the rich historical nature of antebellum legal thought.<sup>35</sup>

In contrast, Kunal Parker uncovers the historical components of legal thinking in America from the late eighteenth century up through the nineteenth century. He aims to look behind the modernist legal tradition that emerged in the work of figures such as Oliver Wendell Holmes, Jr., who rejected what he perceived as law's claim of atemporality and sought to unveil its temporal origins. Parker argues that throughout the nineteenth century, common-law thinkers knowingly subjected law to history even while they found it to embody the direction of history. He includes a discussion of the slavery debates, tracing, for example the thought of antislavery constitutionalist Lysander Spooner, who separated the natural and permanent antislavery laws he found embodied in the Constitution from the unnatural and temporal state laws upholding southern slavery. When he received pushback from Garrisonian Wendell Phillips, who critiqued his position as unrealistic, Spooner suggested that common law conformed to natural law. In

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<sup>34</sup> Johnathan O'Neill, *Originalism in American Law and Politics: A Constitutional History* (Baltimore: The John Hopkins University Press, 2005).

<sup>35</sup> David M. Rabban, *Law's History: American Legal Thought and the Transatlantic Turn to History* (New York: Cambridge University Press, 2013).

response to abolitionist arguments, southerner George F. Fitzhugh characterized slavery as a natural and universal societal law while describing free societies as unnatural and unsustainable. Similar to Spooner, however, he believed that common law embodied determinative societal law. In Parker's account, these figures subjected common law to seemingly unchanging natural and social laws, even while suggesting that those laws aligned with the slow and gradual process of history.<sup>36</sup> I likewise aim to outline the relationship between nineteenth-century legal thought and history, though I am less interested in showing how common-law commentators understood the relationship between law and historical contexts and circumstances than I am with demonstrating how the issue of slavery led constitutional thinkers to discover historical change and distance and to read the Constitution in the light of history.

William W. Wiecek wrote the seminal text on the American constitutional debate over slavery. His narrative, which focuses on the period between 1760 and 1848, traces the development of antislavery argumentation until its concretization in the 1840s, when radical antislavery constitutionalists contended that the Constitution did not simply limit slavery as a state institution but actually made illegal that institution's existence in the American South. Wiecek mentions the constitutionalists' special focus on the Declaration of Independence and, though he emphasizes their dismissal of historical evidence as extraneous to constitutional interpretation, he also notes their attempts to locate antislavery sentiment in the founding era. His narrative demonstrates how even those

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<sup>36</sup> Kunal M. Parker, *Common Law, History, and Democracy in America: 1790-1900: Legal Thought before Modernism* (New York: Cambridge University Press, 2011). In her review of Eileen Cheng's work, Dorothy Ross also attends to Parker's study and concedes that these works in tandem succeed in revising the narrative positing nineteenth-century Americans shallow historical consciousness. See note 16 above.

who downplayed historical sources were drawn into historical argumentation. Wiecek's work provides an important starting point for an analysis of the historical implications of antislavery constitutionalism.<sup>37</sup> Other works, although they too only mention the historical components of antislavery argumentation in passing, help fill out the story of antislavery constitutional discussion in the 1840s and 1850s. For example, James Oakes identifies Frederick Douglass's and Abraham Lincoln's appeals to the framers' antislavery expectations, and John Burt, in a sophisticated reading of the Lincoln-Douglas debates, lends further insight into the Great Emancipator's discussion and application of the founders' implicit promises.<sup>38</sup> Burt offers the pregnant proposal that in the case of slavery's abolition, Lincoln came to a position where "loyalty to the Founders is not expressed by repetition of their practices, but by allowing one's self to be rebuked by the promises they knew they could not keep but made anyway."<sup>39</sup> I demonstrate the presence of such an idea among antislavery advocates in sources that predate Lincoln's speeches. They uncovered an original expectation that historical changes would create the circumstances necessary for the realization of promises that the founders had made but that their eighteenth-century context did not allow them to fulfill. They also argued that historical changes had, in fact, made the nineteenth century an era in which slavery must be abolished, but that the rise of an anachronistic Slave Power had halted the progress of

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<sup>37</sup> William M. Wiecek, *The Sources of Antislavery Constitutionalism in America, 1760-1848* (Ithaca, NY: Cornell University Press, 1977).

<sup>38</sup> James Oakes, *The Radical and the Republican: Frederick Douglass, Abraham Lincoln, and the Triumph of Antislavery Politics* (New York: Norton, 2007), 14-20, 28-37, 47-51, 61-80.

<sup>39</sup> John Burt, *Lincoln's Tragic Pragmatism: Lincoln: Douglas, and Moral Conflict* (Cambridge, MA: Belknap Press of Harvard University Press, 2013), 4.

freedom. This historical narrative, I argue, which came to inform Lincoln's politics in the 1850s, indicated the reality of temporal distance from the founding era.<sup>40</sup>

*Historical Actors, Historical Methodologies, and Historical Distances*

This study moves attention away from the historical writings of self-conscious historians like William Prescott and George Bancroft and toward the biblical and constitutional commentaries of ministers, theologians, lawyers, reformers, judges, and politicians, including, among others, Joseph Stevens Buckminster, William Ellery Channing, Andrews Norton, Charles Hodge, Ralph Waldo Emerson, Lysander Spooner, William Goodell, William Lloyd Garrison, Wendell Phillips, Frederick Douglass, and Benjamin Robbins Curtis. Theodore Parker, Moses Stuart, Roger B. Taney, and Abraham Lincoln, in particular, play lead roles in the narrative. These historical actors weighed in on the slavery controversy from distinct and in many ways opposed religious and political positions and in doing so engaged one another's historical arguments in both direct and indirect ways. The focus on these thinkers and their interpretive debates protects us from the tendency to equate historical consciousness with historical methodology by offering alternative means of gauging antebellum historical thought.<sup>41</sup>

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<sup>40</sup> Eric Foner also traces connections between abolitionist thought and Lincoln's politics. He notes that "Lincoln, after initial opposition, had come to embrace positions first advanced by abolitionists and Radical Republicans." Eric Foner, *The Fiery Trial: Abraham Lincoln and American Slavery* (New York: Norton, 2010), 335.

<sup>41</sup> George H. Callcott's *History in the United States, 1800-1860: Its Practice and Purpose* (Baltimore: The Johns Hopkins Press, 1970), was among the first studies to measure historical consciousness by attending to the work of non-historians. A more recent work that explores non-historical sources is Thomas M. Allen's *Republic in Time*, which examines American conceptions of time through various written genres, objects such as clocks and watches, and images such as Thomas Cole's *The Course of Empire* (1833-1836). Allen contends that time in modern nations is heterogeneous and layered

Because these sources are not straightforward articulations of historical awareness—as few sources are—and because historical consciousness often remains unexpressed or implicit even in historical writings, I read these texts in search of their multivocalities, their unwritten assumptions, and their complex relationships to various contexts, especially other texts. Taking a methodological cue from historian Dominick LaCapra, who writes that “intellectual history should be a history of intellectuals, of the communities of discourse in which they function, and of the varying relations ... they manifest toward the larger culture,” I examine the intersections among these thinkers and their texts, and between them and their antebellum contexts. To use terms employed by LaCapra, I seek to identify the presence of both the symptomatic and the critical, both the representative and the unconventional, in religious, legal, and political texts written by conservative, moderate and radical authors.<sup>42</sup> Within each text I locate the presence of approaches, narratives, ideas, and concepts that reveal awareness of historical distance or that exposed that distance. Measuring an abstract concept like historical consciousness presents numerous challenges, but a careful reading of antebellum biblical and constitutional interpretation reveals much about the development of Americans’ understandings of their favored pasts and their distance from them.

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rather than homogeneous. He argues that religious and natural temporalities persisted even with the emergence of clock time. In a similar treatment, *Archives of American Time: Literature and Modernity in the Nineteenth Century* (Philadelphia: University of Pennsylvania Press, 2010), Lloyd Pratt argues that rather than creating a unique national temporality, antebellum American literature incorporated traditional European genres and bequeathed heterogeneous times. Eran Shalev’s *Rome Reborn* also directs our attention to alternative means of measuring historical consciousness. He examines rhetoric, orations, and plays alongside traditional histories to gauge historical thought in the early republic, which he describes as classical in orientation.

<sup>42</sup> Dominick LaCapra, “Rethinking Intellectual History and Readings Texts,” *History and Theory* 19 (October 1980): 245-76, quotation on 264.

Examining such sources also allows us to get beyond the ideas of a confined group of thinkers. To be sure, this dissertation devotes many pages to the sermons, lectures, speeches, letters and publications of figures like the learned ministers and lawyers and elite judges and politicians noted above, but their interpretations were aimed at and often reached broad audiences who not only believed in their right to engage the debates—and to interpret the Bible and the Constitution on their own—but who accepted the historical terms of those discussions. This is not to suggest that most interested readers actively participated in the debates, much less engaged in a rigorous historical examination of biblical and constitutional passages, but that they understood the nature of the discussion and that those who did participate, especially in dealing with the nation’s founding era, often crafted historical accounts to defend and advance their positions. Further, in an era when American political culture expanded, due in part to advances in communication and transportation technologies, and when issues resting on the margins of that culture came to occupy its center, a growing number of commentators voiced their opinions. That the slavery debate took a historical turn only emboldened them to enter the conversation. A writer for *Putnam’s* magazine wrote that the *Dred Scott* decision “does not rest so much upon any interpretation of the law as it does upon a construction of the facts of history.”<sup>43</sup> The implication was that anyone could learn such facts, and thus anyone could take on Taney’s argument. Even when unaware of these debates or in choosing not to engage them, many Americans were deeply invested in the Bible, the Constitution, and slavery, and thus these discussions had far-reaching implications.

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<sup>43</sup> “History, as Expounded by the Supreme Court,” *Putnam’s Monthly Magazine of American Literature, Science, and Art* 9 (May 1857): 541 (American Periodical Series Online ([www.proquest.com](http://www.proquest.com)), hereafter APSO).

Without question, many antebellum Americans, including many of the thinkers that populate this dissertation, retained traditional simplistic historical views, linking vast periods of time with grand narratives—such as providentialist millennialism or whiggish progressive liberalism. In both of these schemes there was a sacralized moment of creation and a sacred text: the biblical era and the Bible, and the Revolutionary era and the Constitution. In reading these pasts and their texts, many held onto conventional hermeneutical approaches, conflating historical difference and collapsing historical distance in applying canonical imperatives. To the extent that the sacred texts were seen as timeless, they contributed to an intellectual atmosphere in which epochs of time did not seem significantly different; a nineteenth-century American might consider Moses or Madison as contemporaries, uttering truths that were as valid and clear in 1850 or 1857 as they were in 1500 BC or 1787. Such assumptions partook of a long-standing ahistorical view. The Puritans believed that their generation may have broken an ancient covenant, or fallen from a primordial Eden, but obedience to timeless laws could immediately turn back the clock of declension. This was not a matter of time, but of holiness; in their eyes, Puritan New England lay closer to the ancient truth than medieval Rome.<sup>44</sup> Even the generation of American Revolutionaries, who hoped to restore the glories of classical Rome or to recreate the non-feudal Saxon period of the English history, seemed set on measuring their progress in terms of the past.<sup>45</sup> Such historical approaches understood

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<sup>44</sup> On the purchase of the past in Puritan thought, see Theodore Dwight Bozeman, *To Live Ancient Lives: The Primitivist Dimension in Puritanism* (Chapel Hill: The University of North Carolina Press, 1988). On the idea of claiming contemporaneity with the mythical past, see Mircea Eliade, *The Myth of the Eternal Return: Or, Cosmos and History* (New York: Pantheon Books, 1954).

<sup>45</sup> On the Revolutionaries' classical associations, see Shalev, *Rome Reborn*. On the importance of the Saxon past in the Revolutionary imagination, and on the



past and present times as fluid and interchangeable eras of temporal conflation rather than impenetrable and discrete epochs of temporal distinction.

While most scholars see that ahistorical tendency on the wane by the late nineteenth century, an issue at the center of that historicizing process has received insufficient attention. Slavery, above all else, led Americans to rethink their relationship to their favored pasts and to the past as a whole. The most recognized forms of interpretation suggested that the Bible and the Constitution endorsed the institution. However, transatlantic engagements with European historical criticism and the focus on slavery at home raised the level of scrutiny directed at these founding texts and encouraged new interpretive approaches aimed at uncovering their meanings. The resulting historical explications highlighting the context of these texts and narrations tracing changes since their production compelled many Americans to confront the reality of historical difference and distance. When it proved exegetically impossible for antebellum abolitionists to deny that Jesus tolerated slavery in primitive Palestine, or that James Madison sanctioned it in the nascent United States, they faced two choices: 1) reject the Bible and the Constitution as worn out and obsolete (and some did just that) or 2) insist that they were written in fundamentally different historical circumstances and that one must be hermeneutically attuned to that fact (more did this). Even conservative and moderate interpreters, who ignored historical distance and asserted the applicability of Jesus's or Madison's words, inadvertently drew attention to the vast differences dividing biblical and Revolutionary pasts from the present through their contextual

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Revolutionaries efforts to revise the Whig history to match their American experiment, see Trevor Colburn, *The Lamp of Experience: Whig History and the Intellectual Origins of the American Revolution* (Chapel Hill: The University of North Carolina Press, 1965).

explications. In addressing slavery, then, American interpreters became aware of historical distance to a degree unmatched by their predecessors.

This kind of examination of the biblical and constitutional debates over slavery reveals the rise and development of historical awareness in antebellum America and gives historical shape to an often broad and loose notion of historical consciousness. It demonstrates that some Americans in the national period did, in fact, think historically and shows that their historical thinking took the form of an awareness of the qualitative historical distance that results from a confrontation with distinct historical contexts and qualitative historical distances. This dissertation, then, corrects the assumption about the shallowness of antebellum historical thought by outlining the specific nature of that thought, which resulted from biblical and constitutional debates over slavery.

The overlap traced in antebellum hermeneutical approaches to the Bible and the Constitution signals one of the most important insights of this analysis. Both interpretive traditions were preoccupied with uncovering the “original meanings” of sacred texts from hallowed historical eras. Jaroslav Pelikan, who has explored this relationship in general terms, notes that “both the New Testament and the Constitution are set within historical periods that are endowed with a special aura by their traditions and that carry a unique authority for their communities.”<sup>46</sup> This examination adds historical specificity to Pelikan’s discussion, showing how slavery brought together distinctive interpretive practices at a certain moment and demonstrating how that process gradually revealed the time-bound nature of presumably timeless eras. Historians have yet to adequately demonstrate the centrality of slavery in the complicated but clear intellectual processes by

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<sup>46</sup> Jaroslav Pelikan, *Interpreting the Bible and the Constitution* (New Haven, CT: Yale University Press, 2004), 85.

which the biblical and Revolutionary pasts were historicized in antebellum America. In outlining these processes my dissertation will shed light on the emergence in America of the kind of historical thinking that we take for granted in the twenty-first century.

*Context and Change: Realizing the Pastness of Antebellum America's Favored Pasts*

While slavery, more than any other antebellum issue, inspired a growing awareness of, and demanded responses to, the challenges of historical distance, the eventual realization of that distance through biblical and constitutional interpretation first depended on the usefulness and importance of founding texts and pasts. The realization of historical distance occurs with the recognition that profound and irrevocable changes separate one period from another and that, as a result, people from different eras inhabit fundamentally different worlds, exhibit distinct cultural and societal characteristics, and hold unique mentalities and worldviews. Paradoxically, the potential for this development is greatest when pasts with assumed cultural and ideological affinities with the present receive sustained attention. In other words, awareness of a past's pastness (i.e. its cultural distinctness in terms of human experiences, attitudes, and mentalities) depends first on its emergence as a useful past. A past becomes useful as individuals and groups appeal to a certain historical era to address present social, cultural, and political issues. To be sure, pasts are useful in terms of both affinities and contrasts, but in each case such use assumes correspondence in presupposing that lessons from a past apply in the present. Some useful pasts obtain shape as favored pasts through consistent and meaningful use. In such cases applicants make the chosen past more familiar than foreign. Thus, a past's persistence as an object of attention, and thus as a potential object of historicization, rests

on its presentness (i.e. its apparent affinity with the present in terms of human experiences, attitudes, and mentalities).

Discussion of neglected or unfamiliar pasts can also fuel historical awareness. To a certain extent, one assumes historical distance with pasts receiving little notice. For example, to the extent that they were aware of them at all, most antebellum Americans likely assumed historical distance from the ancient Asian and African pasts. But minimal engagement with those pasts, combined with the existence of more useful and familiar historical periods, would have made that a surface level realization only. An awareness of temporal distance is most complete when favored pasts are understood as past due to an increased historical recognition of the different historical contexts and circumstances of past eras and not only because other pasts have taken their place. Depicting a past in a negative light, as in the case of the so-called Dark Ages or the centuries of supposed corruption from Christianity's origins, created a sense of temporal distance and change, but that realization was mitigated by simultaneously appealing to pure pasts or golden ages, like the classical period or Puritan New England. Even when erstwhile favored pasts, including the classical and colonial eras, lost some of their usefulness, other pasts, such as primitive Christianity and the American founding, replaced them and thus reduced the potential realization of historical alienation.<sup>47</sup> Thus, the most profound form of historical distance results with the recognition that unbridgeable historical divisions and irreversible historical changes separate even the most favored pasts from the present.

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<sup>47</sup> In the Christian West, the development of religious thought corresponded to a continuous rejection of immediate pasts for the purity of primitive pasts, which had the result of reversing the Western comprehension of historical time as “an image of syncretic unity” and “essential sameness” to “one of dynamic and supersessive change.” Kemp, *Estrangement of the Past*, quotation on vi.

It is the shock of realizing that those pasts that feel closest, those that seem most worthy and capable of recovery, are deeply different and perhaps best left behind that pushes the process of historicization most violently forward. And so, although the enduring textual basis of both the biblical and the Revolutionary pasts promised to make them most favored, it also set the stage for sustained historical investigation of their texts, which threatened to historicize them and expose a certain archaism. And when those pasts were characterized as archaic, it suggested that no historical era could claim to transcend time.

Historical eras, including the classical and colonial periods, competed with the biblical and Revolutionary pasts for Americans' favor in the antebellum era. Americans drew a number of political lessons from the classical past and while Revolutionary uses of that past tended to collapse time, antebellum uses highlighted historical differences as Americans increasingly found greater use in Greece as an antidote to, rather than Rome as a mirror of, their current situation. Historical criticism also contributed to the estrangement of the classical period. In the 1820s American classicists like Edward Everett used contextual explication to address issues raised about the authorship of the *Iliad* and the *Odyssey*. The realization of historical distance began to undermine direct appeals to, and challenge the prominent place of, the classical world in American culture and higher education.<sup>48</sup> The potential anxiety associated with the realization of the classical period's pastness was mitigated by the usefulness of another favored ancient period: the biblical past. The Bible's religious significance to generations of Christians

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<sup>48</sup> On the place of classicism in America during the nineteenth century and on the reasons for its decline, see Winterer, *Culture of Classicism*. In upholding the slave society, southerners continued to draw on the classical, and also the medieval, pasts during this period, see Eugene Genovese and Elizabeth-Fox Genovese, *The Mind of the Master Class: History and Faith in the Southern Slaveholders' Worldview* (New York: Cambridge University Press, 2006), 247-406.

placed it and its past on a higher plane than the classics and the classical period, seeming to offer a greater level of protection from historicization. To an extent, the time separating the sacred biblical past from the present ensured its persistence as perhaps the antebellum period's most important historical point of reference. And yet, when scholars began to illuminate the biblical past with historical research, when they dug up the details of culture and geography and language, the vast temporal distance between biblical and modern times seemed to widen rather than contract.

Antebellum Americans also found important uses for more recent historical periods, including colonial times. Colonial experience was vital to the new republic's political instruction, though often refracted through the lens of an antislavery Revolutionary epoch. Puritans became proto-Revolutionaries and antislavery advocates in the era's histories. Further historical research questioned such representations. For example, in response to the first volume of John Gorham Palfrey's hagiographic *History of New England* (1859), fellow Harvard alumnus Francis Bowen informed the author that the Puritans "were mortal men; they made blunders, they shared the errors of their times."<sup>49</sup> Similarly, Moses Stuart responded to abolitionist claims by locating slavery in New England's past, which he explained as understandable given their temporal setting. Such explanations could expose historical distance between the progressive present and the Puritan past, working against efforts, including Stuart's, to draw lessons from an earlier era. Furthermore, in depictions stressing the gradual development of democratic principles toward epochal revolution, either as fulfillment of or departure from the period of Puritan settlement, the Revolution became the historical starting point in the national

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<sup>49</sup> Francis Bowen to John G. Palfrey, 30 January 1858, Palfrey Family Papers, MS Am 1704, Houghton Library, Harvard University.

drama.<sup>50</sup> At once, the founding era seemed to signal the culmination of colonial historical development and to promise permanent relevance. The establishment of an unprecedented point of historical departure placed intense scrutiny on a fixed point in time, a development that held great potential to draw attention to historical distance when later generations looked back for instruction.

Similar to representations of the colonial period that traced progress toward the Revolution, the common law emphasis on the accumulation of legal wisdom stretching back into the British past stressed the value of historical development. Some antebellum Democrats dismissed common law as a product of the dark ages, while Whigs like Supreme Court Justice Joseph Story argued that because it was based in custom and grounded in a deep legal tradition, common law possessed the capacity to adapt to changing circumstances and specific cases even as precedent promised to check arbitrary judicial application. The emphasis on incremental advances accentuated continuity over change.<sup>51</sup> In contrast, the Constitution, upheld as the nation's supreme legal source, demanded that America's legal minds focus their gaze on a static historical document from a fixed founding period when addressing the most pressing legal and political questions of the day. Though it did not replace common law, the Constitution illuminated precedential decisions. The post-founding canonization of that document, which applicants valued as the nation's founding text above other possible choices, such as the Articles of Confederation, raised the favored founding era to rival the importance of the

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<sup>50</sup> On antebellum historians' portrayals of the Puritans in relation to slavery and the Revolution, see Cheng, *Plain and Noble Garb*, 153-207.

<sup>51</sup> On custom law and its relation to historical development in antebellum period, see Parker, *Common Law*, 117-218; and Streichler, *Justice Curtis*, 18-22.

biblical past, while also initiating a unique historical conversation.<sup>52</sup> The development directed adherents to look to a set historical era—the period of Revolution and ratification—for the nation’s political and legal direction, a process that promised to raise far-reaching questions about how events, people, and documents from a specific era in the past spoke to the needs of the present, and thus carried a unique potential to instill awareness of historical distance.

The nation’s preeminent religious and legal texts, the Bible and the Constitution, directed Americans’ attention to certain historical periods, particularly in their attempts to resolve issues of great moral and political importance. As this study demonstrates, slavery brought together two distinct interpretive practices in unprecedented ways, despite the unique nature of the sacred texts and favored pasts under examination. The number of years dividing the present from the Revolutionary era was, of course, very brief compared to that separating it from the biblical past, but the dominant Protestant hermeneutic, which stemmed from an *ad fontes* epistemic determined to lay aside traditions and focus on the Bible itself, was largely uninterested in the nearly two millennia that divided the present from the biblical past. Many Christians read the Bible as if the nineteenth century had followed the first. However, when scholars began to illuminate the biblical past with historical research, it signaled the presence of the intervening centuries that separated biblical from modern times. A deep study of the erstwhile familiar and favored biblical era illuminated the immediate historical contexts

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<sup>52</sup> On the legal nature of the new republic and the sacralization of the Constitution in early America, see David Ray Papke, *Heretics in the Temple: Americans Who Reject the Nation’s Legal Faith* (New York: New York University Press, 1998), 1-23. On the sacralization of the Declaration of Independence in the antebellum era, see Pauline Maier, *American Scripture: Making the Declaration of Independence* (New York: Knopf, 1997), 154-208.



of biblical passages, which drew attention to historical particularity and suggested that much had changed in the period between primitive Christian times and modern America.

In comparison to the erstwhile familiar biblical times of Jesus and Paul, or of Moses and Abraham or Adam and Eve (not to mention the much less useful archaic periods), the nation's founding era seemed more present than past, a fact that might protect it from historicization. History, for many, was ancient and classical, not modern and American. The new nation's historians introduced some distance by draping the period in classical terms and lamenting the loss of classical virtue since that time, but that brought the classical past forward as much as it pushed the founding era backward. Further, that the Constitution was relatively untested actually fostered its sacralization as a timeless text. And yet, precisely because relatively little time had passed since the originating era, knowledge about the period was accessible and widespread, and thus historical differences and transformations could be easily demonstrated. As with historical distance from biblical times, an awareness of historical distance from the founding era depended on contextualizing constitutional clauses, but also on evidencing changes since their creation. The sense of historical change that resulted from a study of the nation's short history loomed large. Perhaps the relatively short time between the two periods discouraged Americans from listening to abolitionist cries of the Constitution's obsolescence, but even efforts to dismiss historical insight and change as irrelevant to constitutional construction raised questions about the founding document's relationship to temporal evolution. Arguing that historical context and change should not affect interpretation only reified their reality. Denying the interpretive relevance of slavery's presence in the founding era highlighted context and dismissing as inconsequential to

construction the rise of antislavery sentiment drew attention to change, both of which signaled the existence of an unbridgeable historical distance. Those who used historical distance or denied its interpretive importance spoke of its presence. The potential for a widespread realization of such distance resulting from a fixation on periods of religious and political founding remained suppressed until events pushed slavery to center stage during the nineteenth century's middle decades. In antebellum era, this development above all others fostered a realization of historical distance and fueled conversations about the place of the Bible and the Constitution in the American present.

### *Chapter Summaries*

The narrative that follows offers a chronological account of these developments. Rather than separate out antebellum thinkers into groups based on the rigor of their historical investigations or the depth of their historical consciousness, I trace the emergence of their historical awareness in relation to their interpretive contestations. In other words, because these thinkers displayed historical awareness through biblical and constitutional debates about slavery rather than by providing abstract articulations of historical consciousness, I examine their historical thought by narrating their interpretive debates over slavery. Grouping thinkers according to the sophistication of their contextual readings, the depth of their historical awareness, and the degree to which they used historical distance in interpretation would have resulted in a neater narrative. At some points this account demands that the reader exhibit some patience with sections that detail important ideational distinctions between the thinkers discussed. However, this organizational choice allows me to give some flavor of the intellectual discussions and

debates among antebellum historical actors and, more importantly, it reveals the central argument of this dissertation: that the immediate context in antebellum America—and the issue of southern slavery in particular—created awareness of historical distance.

The first two chapters focus on the transatlantic development toward viewing the Bible as a historically situated set of texts in need of historical explication. The first chapter begins by briefly tracing European biblical scholarship in the seventeenth and eighteenth centuries. It outlines the emerging view of the Bible as a historical text. This short discussion examines how that development influenced the thinking of American theologian Jonathan Edwards. The bulk of the chapter outlines the growing attention to biblical criticism in America in the early nineteenth century and explains the implications for how scholars viewed the Old and New Testament pasts. I demonstrate that thinkers across the antebellum religious spectrum, from Charles Hodge's orthodox Calvinism to Andrews Norton's liberal Unitarianism, variously appropriated the lessons of biblical criticism and accepted history as the discursive currency of choice in debates about the canon, religious truth, and pressing social issues. These approaches challenged the proclivity to collapse the temporal distinctions between ancient and modern times and to conflate the moral imperatives of different historical eras. Even as more conservative Protestants used biblical criticism to defend the biblical canon's timelessness and to assert its relevance in addressing modern problems such as American slavery, their contextualized readings inadvertently contributed to the Bible's historicization.

The rise of biblical criticism in America led prominent religious thinkers to stake their claims on historical grounds and it also directed some of the nation's more heterodox figures to abandon those transient grounds in favor of what they understood as

a transcendent moral sphere. The second chapter focuses on Transcendentalists Ralph Waldo Emerson's and Theodore Parker's engagement with biblical criticism, which nourished their sense that the fount of religious truth flowed directly to the human soul. It also highlights how such engagement inspired Parker's distinction between permanent religious truths and their transient biblical bearings. Although he believed that the Gospels and their Jesus rested on a historical foundation, Parker severed the Unitarians' evidentialist tie between Christian truth and what he perceived as the unstable basis of historical texts, persons, and events. The move to disconnect religious truth from historical facts informed his identification of certain biblical teachings as outdated. As slavery gained political prominence on the national stage, Parker dismissed proslavery biblical teachings as antiquated. A similar approach allowed him to interpret the nation's sacred legal document—the Constitution—as a flawed text with temporary proslavery features. In this way, biblical discussions prepared the way for constitutional debates, and slavery brought together two distinct interpretive traditions.

The third chapter highlights the rhetorical affinities in antislavery readings of the Bible and the Constitution and describes the role of historical reasoning in shifting the grounds of the debate from one ancient favored past—Old Testament times—to a more recent, but still ancient, favored past—New Testament times—and finally to the most proximal favored past—the Revolutionary era. This chapter explores the arguments of figures such as William Ellery Channing, Albert Barnes, William Lloyd Garrison, and William Goodell to demonstrate that historical argumentation began to dominate biblical and constitutional interpretation in the debates over slavery, and to show how the publication of Madison's papers in 1840 led interpreters such as Lysander Spooner and

Wendell Phillips to either deny or affirm the use of historical sources in constitutional interpretation. Regardless of how one valued contextual readings, in both biblical and constitutional debates, antislavery interpretations emphasized that Christ and his apostles, in the case of the biblical past, and the founding fathers, in the case of the founding era, had planted the seeds of slavery's abolition. They thus posited that Christian and national founders had thought historically in expecting time to cultivate the antislavery principles they had inculcated. Such readings blamed the rise of the Slave Power, which they characterized as an anachronistic development, for Christian Americans' failure to realize those expectations. These interpreters highlighted historical distance in arguing that unique figures had carefully inculcated universal principles meant to flower in a future period and in suggesting that the time for fulfillment had arrived but had been thwarted by outdated thinking and archaic institutions.

The fourth chapter traces how the above approaches commingled, developed and spread in the furor surrounding the Fugitive Slave Law (1850) and its enforcement. It explains how respondents, including Daniel Webster, Moses Stuart, and Theodore Parker debated the role of both the Bible and the Constitution in determining the justice of the new law. It also examines the writings of Frederick Douglass, Benjamin R. Curtis, and Abraham Lincoln to explain the ways in which, during the 1850s, a public and political constitutional debate took precedence over the relatively isolated biblical debate that it paralleled and drew strength from. This process suggested that the nation's legal and political rather than its religious texts held more importance in determining slavery's fate, while also subjecting the founding era to new levels of examination and scrutiny.

When political efforts failed to resolve the growing sectional problem, Americans turned to the Supreme Court. And in constitutionalizing slavery in a period wherein constitutional interpreters emphasized contextual readings, America's political and legal thinkers made slavery primarily a historical issue. The fifth and final chapter examines the *Dred Scott* decision (1857), the apogee of slavery's constitutionalization, which turned Americans' attention to the most recent favored past and carried unprecedented potential to unveil historical change since and distance from that period. This chapter explains the historical implications of the both the decision and the dissenting opinions. Chief Justice Roger B. Taney formulated his argument in the wake of decades of interpretive emphasis on historical explication. He believed that a historical argument would settle the issue and thus rested his argument on historical grounds. He contended that because the framers had designated blacks as non-citizens at the founding, he could not now declare them citizens in 1857, despite the alternative construction that the spirit of abolitionism, which he found obscuring and deviating, might provide. In response, dissenting Justices John McLean and Benjamin Curtis echoed decades of antislavery articulation in their counter-narrative of founding and of post-founding-era developments. They argued that some blacks had voted as citizens during ratification and uncovered, behind the Slave Power's cloak, the founders' expectations of change in the form of developing egalitarian sentiment. This allowed the dissenters to call for constructions that valued historical change. These public readings incited further debate and brought increased attention to historical distance from the founding era.

Such arguments also helped Abraham Lincoln articulate his political position. In the conclusion, I will suggest ways in which the antislavery reading of the founding era

informed his antislavery response to *Dred Scott*, further demonstrating that historical consciousness did not preclude the use of the past. The deepening of historical awareness resulting from biblical and constitutional hermeneutics led many Americans to reconsider both the biblical and Revolutionary pasts as distinct and distant periods of historical time, but it also led a substantial number of them to reinterpret both the Bible and the Constitution as malleable texts meant for use in various historical contexts. The Civil War, along with the assumption, planted by late nineteenth-century thinkers, that antebellum Americans failed to reason historically, obscured this development. I aim to get behind that occlusion by tracing how slavery led American interpreters of the Bible and the Constitution to recognize that historical distances divided them from even their most favored pasts. In short, this work explains the process by which antebellum Americans began to realize that, to invoke L. P. Hartley's famous line, "the past [was] a foreign country."<sup>53</sup>

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<sup>53</sup> L. P. Hartley, *The Go-Between* (London: Hamish Hamilton, 1953; New York: The New York Review of Books, 2002), 17. Citation refers to the New York edition.

## CHAPTER 1

### “RECOURSE MUST BE HAD TO THE HISTORY OF THOSE TIMES”: THE ARRIVAL OF BIBLICAL CRITICISM AND THE HISTORICAL LESSONS OF ACCOMMODATION

In the first decade of the nineteenth century, Unitarian minister Joseph Stevens Buckminster encouraged his congregants to adopt a “historical explication” of the Bible. He warned against “looking into every text, separated from its context” and insisted that the biblical authors “were not, on every occasion, delivering a system of dogmas for the instruction of all succeeding time.”<sup>1</sup> Biblical criticism led prominent American religious thinkers like Buckminster to stake their claims on historical grounds. I argue that while they incorporated the lessons of biblical criticism in different ways, thinkers across the antebellum religious spectrum, from Charles Hodge’s orthodox Calvinism to Andrews Norton’s liberal Unitarianism, accepted history as the favored discursive currency in debates about the canon and religious truth. They defended canonical choices with historical arguments, grounded their hermeneutics in historical analysis, and centered their epistemologies in historical knowledge. As a result, these scholars were confronted with evidence that profound contextual differences separated their world from the biblical world that they looked to for inspiration and guidance. Unlike their hermeneutical predecessors, they came to realize that the biblical authors did not always write “for the instruction of all succeeding time.” However, a priori assumptions about the nature and word of God informed their canonical choices and shielded them from historical criticism’s threat of textual and moral relativism. Ultimately, most antebellum religious

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<sup>1</sup> Buckminster, “Philemon,” 83, 84.



scholars, including Buckminster, continued to rely on the Bible's perceived atemporal features despite their exposure to historical distance. Nonetheless, their engagement with biblical criticism, which included both the rejection and incorporation of certain hermeneutic principles, left a new and indelible imprint on their understanding of the Bible as a historical text from an ancient past.

Most historians have left unexamined the engagement with biblical criticism among more orthodox thinkers such as Charles Hodge. In a recent publication, Michael Lee provides an important corrective to the narrative of biblical scholarship in America by explaining the ways in which theologically conservative thinkers accepted the empirical grounds of debate prepared by the Bible's critics, including and especially deists. He demonstrates how figures like Joseph Buckminster, Moses Stuart, and Andrews Norton followed their eighteenth-century predecessors in using historical reasoning and argumentation to defend the Bible and to affirm their religious beliefs. Lee argues that in the process these biblical defenders inadvertently undermined the divine stature of the scriptures.<sup>2</sup> The next two chapters trace a similar development among these and other antebellum religious thinkers while also highlighting the implications of that development for the potential realization of historical distance from biblical times. While it took a civil war to resolve a question that theologians could not—whether American slavery was indeed anachronistic—these pre-war rhetorical engagements along religious lines nourished, if in uneven and inadvertent ways, an emerging historical consciousness, while also setting the stage for a constitutional debate with similar implications.

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<sup>2</sup> Lee, *Erosion of Biblical Certainty*.

*“Though They Are Histories”: The Revaluation of Historical Knowledge in Seventeenth- and Eighteenth-Century Hermeneutics*

The rise of biblical criticism in early nineteenth-century America followed from prior developments in European hermeneutics. Christianity originated as a faith centered in historical texts and figures, but the shakiness of those foundations began to appear only in relation to seventeenth- and eighteenth-century epistemological and methodological evolutions that privileged historical knowledge and a historical explanation of the Bible. The major thinkers of the Reformation, including Martin Luther and John Calvin, had believed that the Bible’s content directly corresponded to actual historical realities and that substantive religious truths bound together its two Testaments, despite clear differences in the presentations of moral teachings and the forms of religious rituals between the Old and the New. In both literal and figurative interpretations, readers assumed that the words of the sacred texts bore a close relation to historical truths. The Bible could be received as the sole source of divine revelation and trusted as an authentic, accurate, and embracing historical account of God’s workings with humankind.<sup>3</sup>

This reading persisted in the eras that followed, but a few seventeenth-century thinkers began to challenge some of these suppositions. For example, early modern English philosopher Thomas Hobbes questioned the authenticity of certain Old Testament texts. Hobbes used the Bible to promote the idea that to ensure the safe exercise of human liberty, that liberty had to be limited. Paul D. Cooke argues that he replaced the biblical law of God with the laws of nature, though, aware of his Christian

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<sup>3</sup> See Hans W. Frei, *The Eclipse of Biblical Narrative: A Study in Eighteenth and Nineteenth Century Hermeneutics* (New Haven, CT: Yale University Press, 1974), 18-37. I rely on Frei’s study in tracing these and subsequent developments in biblical interpretation.

audience, he artfully aligned the latter with the former. In the process, Hobbes challenged the received authorship of the first five Old Testament books. In 1651, near the end of the chaotic and bloody English Civil War, he published *Leviathan*, wherein he emphasized the need for an absolute sovereign. In the text, he denied the Mosaic authorship of the Pentateuch, as would a number of his contemporaries. He also distinguished between the original writings of the apostles and the books of the New Testament as they were then constituted. Even Christ, in Hobbes's work, became a promoter of natural rights rather than the singular savior of humankind. Despite such strictures, he accepted the biblical texts as accurate historical accounts of God's word based on the determinative word of the civil sovereign. In raising issues with the biblical record, then, Hobbes demonstrated the potential dangers of using historical analysis to scrutinize the Bible without the supervision and direction of an autonomous ruler.<sup>4</sup>

Baruch Spinoza went further than Hobbes in historicizing the Bible. Samuel J. Preus argues that the Dutch philosopher also used the Bible to advance his political purposes. That process involved displacing the authority of the canon itself through a rigorous historical-critical approach, wherein Spinoza interpreted the Bible as historical in terms of its creation, transmission, and content. Like Hobbes, in his *Theological-Political Treatise* (1670), Spinoza rejected the Mosaic authorship of the Pentateuch. And, as the English thinker had disassociated Israel's theocratic government from both Puritan and Catholic rule in England, Spinoza dismissed affinities between Israelite wars and Dutch struggles for independence, positing rather that the former demonstrated the problems of theocratic rule. Rather than assume that past prophets had spoken to people

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<sup>4</sup> Paul D. Cooke, *Hobbes and Christianity: Reassessing the Bible in Leviathan* (Lanham, MD: Rowman and Littlefield, 1996), esp. chaps. 6-7.

in all ages, an assumption that produced anachronistic readings, he contended that the biblical texts must be understood in terms of the historically conditioned intentions of their authors. In turn, while Hobbes placed the power of interpretation in the civil sovereign, Spinoza aimed to wrest authority from the public purveyors of biblical understanding and exalt individual readers to the status of interpreters. He did not mean to suggest that the Bible contained no truth or that all truth was relative. Rather, he used reason to measure the truth of all ideas, including biblical teachings. Preus contends that Spinoza's efforts have been overlooked because, unlike later German thinkers who "domesticated" historical exegesis, he did not aim to derive religious value from them.<sup>5</sup>

Regardless of how far Spinoza carried his historical approach, most biblical readers remained oblivious to these isolated discussions and, for the most part, continued to assume that the Bible faithfully recounted actual historical occurrences, conveyed a cumulative story, and stretched to include all of human existence. However, by the late seventeenth century, English philosopher John Locke challenged those assumptions when he began incorporating narrow biblical narratives into a much more expansive human story, rather than cramming world history into a presumably all-encompassing Bible. Locke did not question the Bible's historicity and he continued to uphold it as an exceptional work, but he read it in terms of a much more embracive idea of human experience. In the eighteenth century, deism, empiricism, and historical criticism began to raise new questions about the nature of the Bible and the connection between biblical stories and historical realities. For instance, in addressing the relationship between the

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<sup>5</sup> Samuel J. Preus, *Spinoza and the Irrelevance of Biblical Authority* (New York: Cambridge University Press, 2001), quotation on 33. See also, Frei, *Eclipse of Biblical Narrative*, 42-46.

Old and New Testaments, deist Anthony Collins dismissed scripture's factuality when read literally and its meaningfulness when read typologically. Literal and figurative approaches began to clash once thinkers separated religious meanings from their erstwhile historical referents. In response to these interruptive arguments, inheritors of the figurative approach, who continued to interpret the Bible as a cumulative text, propagated providentialist readings to establish a bridge of religious meaning across the chasms of historical difference that divided biblical texts. Meanwhile, successors to the literalist approach strove to capture the original sense of specific passages and to determine their relationship to historical facts. While conservative interpreters accepted biblical narratives as factually reliable sources of revealed truth, their liberal counterparts began to doubt that reliability. In short, as Hans Frei notes, "Everything conspired to confine explicative hermeneutics to meaning as references—to equate meaning with knowledge of potential or actual reality—and to make the primary reference historical rather than ideal." Historical reasoning began to control biblical interpretation.<sup>6</sup>

Historians often assume colonial America's isolation from the more unsettling pulls of these intellectual currents, but recent scholarship has illustrated how Calvinist preacher and theologian Jonathan Edwards was drawn into them in a number of ways. In contrast to Hobbes and Spinoza, who, like deists and Quakers, had derived religious knowledge from a priori understandings rather than historical texts and traditions, Edwards assumed that the Bible's historicity related to its moral function. He broadened Locke's sensationalism to include *divine* intuition, which he believed the Bible cultivated, but after internalizing the critique of revelatory epistemology from deists such

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<sup>6</sup> See Frei, *Eclipse of Biblical Narrative*, 66-104, quotation on 103.

as Collins and Matthew Tindale, Edwards came to believe, as Robert Brown states, “that historical religious knowledge was the only source of *human* ideas about religion.”<sup>7</sup> It became paramount for Edwards to defend the Bible and the Christian religion on historical grounds.

In one of his notebooks from the mid-1750s, which a later editor titled “Defense of the authenticity of the Pentateuch as a work of Moses and the historicity of the Old Testament narratives,” Edwards upheld Hebrew scripture with historical arguments. In general, he accepted the Bible’s historical authenticity simply because it presented itself as historical. For example, because “some of the STATUTES of the Law [of Moses] are delivered in the FORM OF HISTORY,” he accepted those statutes as an accurate account of past events. But Edwards also followed English apologists in using external and profane knowledge to confirm the Bible’s truth. He drew on the history of pagan religions to verify its historical accuracy and to favorably compare its contents. He wrote that “the history of Moses, though it be full of things more wonderful, yet are nothing akin to the fables of man’s inventing in old times about deities and invisible beings, and their intercourse with men, which were agreeable to the carnal dispositions and taste of mankind. . . . But these facts of Moses are extremely diverse and of a quite opposite

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<sup>7</sup> Robert E. Brown, *Jonathan Edwards and the Bible* (Bloomington: Indiana University Press, 2002), 27-87, quotation on 55, emphasis mine. Much of my discussion of Edwards’s approach to the Bible relies on Brown’s analysis. Edwards’s expansion of sensationalism seems less radical in light of the argument that an intuitive strain of Enlightenment thought informed the subsequent epistemological emphasis on imagination among German historicists. See Reill, “Science and the Construction.” Recent scholars also contend that the Enlightenment was as much an Age of Sensibility as it was an Age of Reason. See, for example, Jessica Riskin, *Science in the Age of Sensibility: The Sentimental Empiricists of the French Enlightenment* (Chicago: University of Chicago Press, 2002); and Lynn Hunt, *Inventing Human Rights: A History* (New York: Norton, 2007).

nature, all pure, holy and spiritual.”<sup>8</sup> Similar statements and the same kind of reasoning abounds in Edwards’s “Notes on Scripture” and his “Miscellanies.” In the latter, for example, he included the entry, “History of the Old Testament from Moses’ time confirmed from heathen traditions and records.”<sup>9</sup> In his “Catalogue” of books one finds lists of numerous historical sources, both ancient and modern, which further attest that although he remained apologetic in his reasoning, Edwards accepted the historical grounds of the biblical debate that had been prepared by figures such as Hobbes, Spinoza, and Locke.<sup>10</sup>

Although his religious orthodoxy would not allow him to be as unflinching in his reading of the sacred canon, in a sense Edwards valued historical reasoning much more than the Bible’s critics for the very reason that he believed the Bible to be the primary repository of divine revelation and the measuring stick of religious truth. Edwards believed that tradition had brought ancient truths down to his time, and he also believed in the book of nature, but in terms of religious and moral instruction he used the Bible to gauge those truths and thus, once he accepted the historical approach to scripture, he focused on using historical arguments to back the Bible. So while his use of extra-biblical sources shows that he took very seriously the deists’ stricture of revelatory knowledge, he scoffed at their objection “against a book’s being divine merely because it is historical.”<sup>11</sup>

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<sup>8</sup> Jonathan Edwards, “Defense of the Pentateuch as a Work of Moses,” in *Works of Jonathan Edwards Online, Volume 28, Minor Controversial Writings* (Jonathan Edwards Center at Yale University, 2008), n.p.

<sup>9</sup> Jonathan Edwards, *Works of Jonathan Edwards Online, Volume 13, The “Miscellanies,”* ed. Harry S. Stout, 136.

<sup>10</sup> See Brown, *Edwards and the Bible*, 88-163.

<sup>11</sup> Jonathan Edwards, *Works of Jonathan Edwards, Volume 9, A History of the Work of Redemption*, ed. John F. Wilson (New Haven, CT: Yale University Press, 1989), 284 (hereafter *WJE*).

Edwards made this statement in *A History of the Work of Redemption*, a collection of sermons that he first delivered to his Northampton congregation in the spring and summer of 1739 and revised for publication throughout the remainder of his life, though it only reached the press in 1774, nearly a decade and a half after his death. In this expansive project—although in inchoate form, it represented the crystallization of his thought in many ways—Edwards contended that the historical nature of the Bible confirmed its revelatory status.

The colonial theologian interpreted history through his conception of the “Work of Redemption.” This work focused on Christ’s salvific providences—revivals in particular—which, to Edwards’s understanding, functioned as the motor of historical change. Avihu Zakai argues that in outlining his “theological teleology of history” in *Work of Redemption*, Edwards rejected the Enlightenment’s mechanical philosophy of time and its anthropocentric concept of progress toward a millennium. Instead, argues Zakai, Edwards stressed God’s sovereign control over historical development through continual redemptive workings and contends that it was in this light that Edwards understood the revivals of the Great Awakening, which, he believed, effected change toward denouement within time, although redeemed souls only would enjoy the full fruits of those workings outside of and beyond time. This conception of history informed Edwards’s readings of the Bible.<sup>12</sup>

Even while he used extra-biblical sources and acknowledged ancient human experience not recorded in the Bible, Edwards maintained that all human existence, past

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<sup>12</sup> Avihu Zakai, *Jonathan Edwards’s Philosophy of History: The Reenchantment of the World in the Age of Enlightenment* (Princeton, NJ: Princeton University Press, 2003), quotation on xiv. On *The Work of Redemption*, see also, Brown, *Edwards and the Bible*, 164-96.



and present, fit within the biblical framework. As he summarized in his first sermon in the series, the Work of Redemption “‘tis all but one work, one design. The various dispensations and works that belong to it are but the several parts of one scheme.”<sup>13</sup> In his tenth sermon, he further explained that “there are two ways of the Scripture giving an account of the events by which the Work of Redemption is carried on: one is by history and another is by prophecy. And in one or the other of these ways,” he asserted, “we have contained in this holy book an account of how the Work of Redemption is carried on from the beginning to the end.” Cognizant of new historical information about extra-biblical peoples and settings, Edwards had to admit that “the Scripture don’t [*sic*] contain a proper history of the whole, yet,” he maintained, “there is contained the whole chain of great events by which this affair has been carried on from the foundation soon after the fall of man to the finishing of it at the end of the world.”<sup>14</sup> And even in those cases where the Bible did not offer a “proper history” of its own historical subjects, such as the period between the Babylonian captivity and the coming of Christ, “God in his providence took care that there should be authentic and full accounts of the events of this period preserved in profane history.”<sup>15</sup> Edwards proposed that these accounts, which “wonderfully agree with the many prophecies that we have in Scripture of these times,” further attested to the accuracy of the biblical account.

Having confirmed the Bible’s factuality from extra-biblical historical sources, Edwards recognized the need both to account for the historical nature of the Bible and to distinguish it from other historical sources. This, he set out to do, in his thirteenth

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<sup>13</sup> *WJE*, 9:118.

<sup>14</sup> *Ibid.*, 9:242

<sup>15</sup> *Ibid.*, 9:243.

sermon. In response to the view that the historical nature of the biblical texts placed them alongside other histories and thus desacralized them, Edwards posited that “though they are histories, yet they are no less full of divine instruction ... than other parts of the holy Scriptures that are not historical. To object against a book’s being divine merely because it is historical is a silly objection,” he supposed, “just as if that could not be the word of God that gives us an account of what is past.”<sup>16</sup> Indeed, he went on to argue, “so far from being a weighty objection against the historical parts of Scripture being the word of God that ‘tis a strong argument” in its favor. If reason led “all civilized nations to keep records ... how much more may we expect that God gives the world a record of the dispensations of his divine government.”<sup>17</sup> Edwards held that this record offered unique insight into the ancient past, stating that “the times of the history of the Old Testament are times that no other history reaches up to.”<sup>18</sup> But the Bible was not only unique because of what Edwards considered its historical depth, but also because it alone gave “an idea of the grand scheme of divine providence.”<sup>19</sup> The “Work of Redemption” distinguished the Bible and it also ensured the present usefulness of all its parts.

“Some,” Edwards bemoaned, “are ready to look on the Old Testament as being, as it were, out of date and as if we in these days of the gospel had but little to do with it.”<sup>20</sup> Historical research had revealed an insurmountable historical distance to certain readers—that segment of readership would expand greatly in the nineteenth century—but they failed to recognize that “all parts of the Old Testament have their places in terms of

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<sup>16</sup> Ibid., 9:284.

<sup>17</sup> Ibid., 9:285.

<sup>18</sup> Ibid., 9:285-86.

<sup>19</sup> Ibid., 9:284.

<sup>20</sup> Ibid., 9:290.

the scheme of redemption,” for “Christ and his redemption are the great subject of the whole Bible.”<sup>21</sup> The difference in presentation between the testaments led to this failure to find Christ throughout the Bible. “The whole book,” Edwards declared, “both Old Testament and New, is filled up with gospel, only with this difference, that the Old Testament contains the gospel under a veil.”<sup>22</sup> Based on this premise, Edwards continued to read the Bible typologically and maintained the relevance of even the Old Testament, despite the strictures of modern scholarship. Indeed, he had become convinced that extra-biblical sources confirmed and the Bible’s historical nature confirmed the authenticity of the Christian canon. Over the course of a few generations, American exegetes would all but contend that far from being less divine because historical, the Bible’s divinity rested on its historicity. That move placed the Bible in a precarious position.

As deism helped direct America’s preeminent Protestant theologian to prize historical knowledge, so it also contributed to the rise of biblical criticism as an autonomous academic discipline in eighteenth-century Germany. In the 1770s, Gotthold Ephraim Lessing, a lead figure in the German Enlightenment, published portions of a work by deist Hermann Samuel Reimarus that dismissed Jesus’s miracles and denied the historical accuracy of the New Testament texts. In response to such arguments, Johann Saloma Semler asserted the factuality of the events there recorded but posited that those events, including the miracles, were best explained in the light of historical context. It was in works such as Semler’s critical analyses of the received canon, Johann David Michaelis’s historical introductions to the New Testament, and Johann Gottfried Eichhorn’s historical introduction to the Old Testament that Spinoza’s, Hobbes’s, and

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<sup>21</sup> Ibid., 9:288-89.

<sup>22</sup> Ibid., 9:290.

Locke's anticipatory questions received their first thorough treatments. Using philological and historical tools to ascertain the origin, context, and factual veracity of the Bible's narratives, these German critics maintained that the textual content was of a historical nature, and while they did not draw a straight line from historical content to religious meaning, these scholars sought to recover the cultural conditions in which biblical texts were produced so as to determine their religious value. To their way of thinking, applicable religious meaning was not indistinguishable from historical facts or wholly explainable through reference to historical contexts, but those facts provided a basis for belief and those contexts served an important function in weighing truth. Such efforts raised questions about the canon's unitary meaning. Indeed, even before the publication of Reimarus's strictures, Semler had separated out biblical books based on their religious value. Unlike Edwards, he did not think that each book preached of Christ equally. These arguments opened the door to Johann Phillip Gabler's contention that religious meaning was derived from textual referents in the form of authenticated historical facts.<sup>23</sup>

Developments in America also leaned towards an emphasis on applying historical reasoning to biblical interpretation and even if that hermeneutic was in many ways less critical in approach than the German scholarship, it was often even more invested in the historical nature of the biblical texts. As the seeds of a bible-based historical theology

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<sup>23</sup> See Frei, *Eclipse of Biblical Narrative*, 60-65, 105-64. See also Michael C. Carhart, *The Science of Culture in Enlightenment Germany* (Cambridge, MA: Harvard University Press, 2007). Carhart explains how moderate German scholars of human science, including biblical critics like Semler, Michaelis, and Eichhorn articulated the concept of culture in the 1770s and, in doing so, championed contextual interpretations of biblical and classical texts and demonstrated awareness of historical distance from ancients such as Plato, Homer, and Moses.

took root in Germany, Scottish Realism spread its branches across the Atlantic.<sup>24</sup> Glasgow native Thomas Reid, who revised Locke's sensationalist epistemology to combat David Hume's skepticism, asserted that ordinary experience revealed the universal presence of internal first principles, which attested to the existence of the self and the reality of objects perceived via the senses. When radical deists like Thomas Paine exalted reason and battered the Bible as irrational, proponents of evidential Christianity like College of New Jersey (later Princeton) President Samuel Stanhope Smith borrowed the empiricism of Francis Bacon and relied on the bolstered sensationalism of Scottish Realism to stress the limits of reason even as they marshaled internal and external evidences to defend the reasonableness of biblical revelation. While orthodox belief guarded most American biblical scholars from the kind of rigorous examination of the biblical texts found among their German contemporaries, the effort to evidence the truth of Christianity uniquely drew together historicity and religious meaning. Historical reasoning became a principal concern for American exegetes and evidential Christianity set the stage for the qualified introduction of biblical criticism in antebellum America.<sup>25</sup> Thus began the exegetical march in America toward reading the Bible as a historical text, followed soon after by a budding realization that could not assume historical transference between the biblical past and the American present.

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<sup>24</sup> Sometimes the transatlantic migration of ideas was a literal one, as with Presbyterian minister John Witherspoon, sixth president of Princeton, who had left Scotland for the colonies in 1768. See Daniel Walker Howe, "John Witherspoon and the Transatlantic Enlightenment," in *The Atlantic Enlightenment*, ed. Susan Manning and Francis D. Cogliano (Burlington, VT: Ashgate, 2008), 61-80.

<sup>25</sup> On evidential Christianity and its place in the early republic, including its relationship to the introduction of biblical criticism, see E. Brooks Holifield, *Theology in America: Christian Thought from the Age of the Puritans to the Civil War* (New Haven, CT: Yale University Press, 2003), 174-95.

*The Introduction of Biblical Criticism and Joseph S. Buckminster's "Historical Explication"*

The institutional arrival of biblical criticism in America and the corresponding appeal to contextual exegesis owed much to the same sources (i.e. "deistical publications") that directed German developments.<sup>26</sup> Convinced that older and newer deistic works obscured the truths of Christianity, Samuel Dexter set aside \$5,000 in his will for Harvard to promote "that most useful branch of learning, the critical knowledge of the holy scriptures." He proposed that the testators acquire relevant scholarly works, purchase and support the production of new translations of the Bible, and fund learned lectures "for the purposes of *critically* explaining either the *history, doctrines, or precepts, of the gospel.*" Even when not mentioned specifically, *history* figured prominently in Dexter's discussion, as in his emphasis on the "usefulness of explaining idioms, phrases, and figures of speech, which abound in the scriptures; and the usages and customs therein referred to; and of clearing up the difficulties in sacred chronology and geography."<sup>27</sup> Biblical criticism was often a historical endeavor, as Dexter and the first Dexter Lecturer knew well.

In 1811, the year after his death, Dexter's trustees elected New Hampshire native Joseph Stevens Buckminster as Harvard's inaugural Dexter Lecturer, the first American

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<sup>26</sup> "Intelligence," *General Repository and Review* 1 (January 1812): 203-9, quotation on 204 (APSO). The *General Repository* lasted less than two years, but a perusal of its contents clearly demonstrates the Unitarian editors' interest in biblical criticism. Among other things, it provided readers with an English translation of Eichhorn's biography of Semler, discussions about critical editions of the Bible, and reviews of historical and geographical studies of the New Testament.

<sup>27</sup> *Ibid.*, 205, emphasis in original.

academic appointment dedicated to biblical criticism.<sup>28</sup> Upon receiving official notice of the election, Buckminster wrote to Harvard President John Thornton Kirkland of the “unexpected appointment to the office of first Lecturer on the Dexter foundation.” The young but capable minister expressed his conviction that perhaps the lectureship should be “entrusted to some one whose age and acknowledged merits in theology will gain for them more consideration than will probably be secured by the present appointment.” However, in the event that those in charge of making the appointment already had addressed that question, Buckminster stood ready “to execute as well as the time allows and my own health will permit.”<sup>29</sup> Neither time nor his health complied. In 1812, before he could start lecturing, the promising twenty-eight-year old succumbed to epilepsy. However, as minister of the Brattle Street Church and as Boston’s foremost orator, Buckminster had already displayed a respectable understanding of German biblical scholarship and had attempted to encourage historical exegesis. He upheld the Bible as the final authority on religious truth, but used historical insight to explain its teachings.

Buckminster developed an interest in both history and biblical criticism at an early age. He had learned Greek and Latin as a child and had graduated from Harvard with a bachelor’s and a master’s degree at sixteen. As a student in Cambridge, he wrote various pieces on history and the Bible, including an essay on “Biblical Criticism.” The essay showed very little of what Buckminster would soon learn from German scholars—it contained copied passages from Herodotus and Thucydides and extracts from evidentialist Samuel Clarke’s notes on Homer, and also discussed Hebrew grammars—

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<sup>28</sup> Ibid., 208-9. On Buckminster’s role in propagating the principles of biblical criticism in America, see Brown, *Rise of Biblical Criticism*, 10-26.

<sup>29</sup> Joseph S. Buckminster to John Thornton Kirkland, n.d., Joseph Stevens Buckminster Papers, Boston Athenæum (hereafter BA).

but, along with hinting at the close relationship that existed between classical works and the Bible in the period, the piece shows his early interest in biblical scholarship.<sup>30</sup>

In a more illuminating and original, though preliminary and brief student essay entitled “Study of History,” Buckminster demonstrated a youthful fascination with the utility of the past. Granting that studies such as metaphysics provided delight and others, such as poetry and oratory, ornamentation, he wrote, “To History alone can we resort in circumstances the most intricate and situations the most hazardous. Here is collected in one vein the universal experience of human nature, ever employed on similar subjects of investigation, and successively exhibited in parallel situations. Here we survey a map of the human heart.” Buckminster’s emphasis on history as a guide to all human endeavors echoed the apparently classical idea, famously expressed by Lord Bolingbroke and repeated throughout the eighteenth and nineteenth centuries, that “history is philosophy teaching by examples.”<sup>31</sup> History gave to the present the collective wisdom of generations past. Buckminster proposed that “the utility of the study of history results from the truth of this principle, viz. that human nature remains throughout all ages essentially unaltered.” The universality of human nature ensured history’s continued usefulness. Thus, while Buckminster acknowledged that “precisely the same circumstances can never twice occur, and consequently precisely the same line of conduct can never be wisely attempted,” he proposed that “where a strong analogy or resemblance can be traced we are justified in similar conduct of sentiment.” Without

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<sup>30</sup> Joseph S. Buckminster, “Biblical Criticism,” Joseph Stevens Buckminster Papers, BA.

<sup>31</sup> Bolingbroke attributed the idea to the Greek historians Dionysius of Halicarnassus. See Henry St. John, Viscount Bolingbroke, *Letters on the Study and Use of History*, 2 vols. (London, 1752), 1:15.



reading too much into a short student essay, here we find a traditional belief in human nature as static, but also a more modern awareness of the differences in historical circumstances that resulted from contingencies; we find the coexistence of interest in the universal and recognition of the particular. The attention to historical particularity and the emphasis on recovering atemporal truths from past eras resurfaced in Buckminster's later writings, specifically in those focused on biblical texts.<sup>32</sup>

In 1805, Buckminster, who was in his early 20s, became minister of the Brattle Street Church. In 1806, he left his flock behind for a time to travel to Europe, as was common among Harvard graduates. He collected various works, including studies of the Bible. An 1810 letter to New Testament scholar Herbert Marsh, an English bishop who had studied with Michaelis in Germany and had translated his mentor's introduction to the New Testament, *Einleitung in die göttlichen Schriften des Neuen Bundes* (1750), reveals that Buckminster obtained works such as Johann Jakob Griesbach's manual edition of his two-volume work on the Greek New Testament, *Novum Testamentum Graece* (1774-1775), which, according to his letter, Buckminster persuaded Harvard to reprint and use as a textbook.<sup>33</sup> Such works informed the sermons that he delivered to his Boston congregants, which again display Buckminster's interest in the past and also demonstrate his emphasis on a historical approach to the Bible.

The text of one undated sermon in particular, marked "On Studying the N.T. as a historical record," encapsulates Buckminster's approach to the Bible as a historical text,

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<sup>32</sup> Joseph S. Buckminster, "Study of History," Joseph Stevens Buckminster Papers, BA.

<sup>33</sup> Joseph S. Buckminster to Herbert Marsh, 13 May 1810, Joseph Stevens Buckminster Papers, BA. Marsh provided an English translation of Michaelis's fourth edition (1788), which differed significantly from the first edition, as *Introduction to the New Testament*, 4 vols. (Cambridge, 1791-1801).

while also suggesting its prevalence among at least some of his fellow ministers. Writing in shorthand, Buckminster noted,

To many xtens [Christians] it appears superfluous and vain to insist so much as we do on the study of the books of the N.T. as historical records. We do this not only because the importance of the facts there recorded justifies and demands the closest attention, but because this is the only method by wih [which] we can arrive at the understanding of the primitive simplicity of xtinity [Christianity], and correct there mistakes into wih [which] we are continually led by the sound of words and phrases taken out of their connexion, and by the mis application of phrases appropriate to certain times and circumstances to the all ages, and all the world.

Understanding the texts as historical and aware, at in least to some degree, of the contextual nature of biblical language, Buckminster aimed to avoid anachronistic readings and applications even as he strove to recover religious truth. He held that “the study of the N.T. is the first duty of a xtn [Christian] minister, the understanding of its primary meaning his most essential knowledge, and it is only so far as his hearers take an interest in the same inquiries and are furnished with similar information that his discourses can be truly profitable.” Buckminster hoped that his congregants would recognize the importance of historical exegesis and listen to his sermons with that mode of interpretation in mind. In particular, he believed that “the circumstances of the first chhs [churches] of xt [Christ], to wih [which] Pauls epistles are directed, make a very interesting and profitable subject of inquiry.” He thus made the epistles the subject of his historical explications.<sup>34</sup>

Buckminster’s sermon “Philemon,” in particular, which he likely delivered sometime in the summer or fall of 1809 or the spring or summer of 1810, evinces his understanding of biblical criticism as a historical endeavor. Following Michaelis in

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<sup>34</sup> Joseph S. Buckminster, “On Studying the N.T. as a historical record,” Joseph Stevens Buckminster Papers, BA.

drawing distinctions between the two testaments, Buckminster received the Gospels as canonical based on apostolic authorship, which was confirmed by internal consistency and external evidences, such as miracles and fulfilled prophecies. Certain that inter-textual analysis ensured historical accuracy, extra-textual historical evidence could confirm but not unsettle the canon. While allowing that criticism might alter his beliefs, Buckminster's reliance on textual evidence alone as historically authenticating limited the extent to which extra-biblical evidence could shape his canonical and theological positions. He measured the authenticity of other New Testament texts against the Gospels, and Paul's epistle to Philemon passed the test.

After a verse-by-verse examination of the epistle, including a discussion of Paul's direction that Onesimus, a slave, return to Philemon, his master, Buckminster proposed that "in an historical explication of the writings of the New Testament, such as we have now given of this short letter, would be found the most interesting and satisfactory mode of studying them."<sup>35</sup> What did "historical explication" signify? Buckminster explained that "instead of looking into every text, separated from its context, to find something which may bear upon a favourite system, we should be content to understand the apostles, as they meant to be understood by those to whom they wrote. ... They were not," he insisted "on every occasion, delivering a system of dogmas for the instruction of all succeeding time."<sup>36</sup> Historical context rather than present concerns should direct biblical interpretation. This emphasis marked a departure from traditional readings that assumed the timeless nature of the Bible's words. Rather than interpret the text as if contemporaries of biblical peoples, readers should focus on the intentions of historical

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<sup>35</sup> Buckminster, "Philemon," 78-92, quotation on 83.

<sup>36</sup> Ibid., 83-84.

authors and the reception of historical audiences to determine meaning. Buckminster noted that “Paul, in particular, consulted the circumstances of his correspondents, reasoned with them sometimes on their own assumptions, and sometimes upon prevailing hypotheses, now according to their peculiar habits of interpretation, and then upon suppositions and accommodations of his own.”<sup>37</sup> The apostles’ writings must be read, first and foremost, as historically situated records, produced in “particular circumstances,” written “in a popular style,” and “influenced no doubt, by the prevailing notions of their own age and nation.”<sup>38</sup> In some ways, the New Testament belonged to a peculiar, unfamiliar, and foreign past.

Buckminster used works such as Michaelis’s studies on the New Testament as historical helps to assist in orienting the reader during his sojourn to this foreign country. Like Dexter and most of biblical criticism’s foremost proponents, Buckminster used new insights to illuminate and affirm rather than complicate and undermine the chosen canon. His mode of historical explication followed from rather than drove toward the establishment of historicity. Inter-textual examination helped to establish the canon, but once established, Buckminster turned his attention to how the texts illuminated the biblical past. The texts throw “light upon the early history of the gospel,” enable “us to enter into the character of the apostles and converts,” and assist “us in judging of the probability of the principle facts mentioned ... in one word,” Buckminster summarized, “they are documents, which awaken an interest in, and add confirmation to the wonderful history of Jesus and his apostles.” While this approach could assist in authenticating the canon, it could also draw attention to historical distance by identifying the historically

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<sup>37</sup> Ibid., 84.

<sup>38</sup> Ibid., 86.

conditioned nature of much of the text. The Brattle Street minister supposed that “it would ... be a subject of curious inquiry to ascertain, if we could, what the apostles thought upon some subjects of modern speculation; but” he acknowledged that “it is likely that few, perhaps none of them, ever once entered their minds.” As with their ideas, so too the apostles’ style of writing is “by no means nicely accommodated to the metaphysics of our times.”<sup>39</sup> Buckminster stressed to his congregants that in most instances temporally located concerns shaped the content and form of the apostles’ teachings and language.

Buckminster’s reading raised the question: if the authors and their writings were subject to the same constraints as other humans and texts, how could one be sure of the historical accuracy of the canon or the truth of its teachings? Buckminster rejected the notion of plenary inspiration. Though the apostles’ writings constituted the word of God, he did not inspire their authors in every particular. Still, Buckminster thought that God “would not suffer them, in writing on any occasion in which his revelation was even remotely concerned, to give a false or mistaken statement of his truth.”<sup>40</sup> While at pains to explain that the apostolic authors responded to specific circumstances in time-bound ways, Buckminster assured his congregation that an eternal God chose his temporal servants wisely and guarded them from factual errors. In fact, divine guidance made the Gospels the most accurate of ancient texts. To a degree, Buckminster privileged recovering historical understanding above uncovering clear instances of divine inspiration: the apostles’ “testimony to facts is all that is of indispensable importance.”<sup>41</sup>

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<sup>39</sup> Ibid.

<sup>40</sup> Ibid., 85.

<sup>41</sup> Ibid., 86.

Struggling against a firmly entrenched non-contextual approach to scripture, Buckminster's emphasis on historical explication at this stage stood little chance to spread awareness of historical distance in ways that might raise serious concerns. He worried about winning over an audience that might be skeptical of his historical approach, rather than warning them about the skepticism that might follow historical exegesis. Even still, his efforts and those like them set the stage for when the increasingly incendiary slavery crisis would raise the stakes and fostered the Bible's historicization. At this point, Buckminster drew on historical facts to confirm religious truths, but even his early efforts address the issue of slavery, which, in time, would make the challenges of historical distance difficult to ignore.

Returning his attention to the content of Paul's letter, Buckminster illustrated how comparing New Testament texts could confirm their histories and truths. He asked his listeners to imagine the executor of Philemon's estate, having read Acts, perusing Paul's letter to Philemon and then listening to a public reading of his letter to the Colossians. Such experiences, he suggested, would verify the "history of the apostle" and his relationship with Philemon, while also attesting to Paul's greatness.<sup>42</sup> In a move reminiscent of Edwards, Buckminster appealed to a contemporaneous non-biblical text to elevate Christianity above other belief systems and to confirm the plausibility of Paul's decision to return the slave Onesimus to his master Philemon. He cited an extant letter written by Pliny, "who lived in the same age with the apostle," which the Roman "addressed to one of his friends, upon an occasion precisely similar to this of Paul,

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<sup>42</sup> Ibid., 88.

interceding for the pardon of a runaway slave.”<sup>43</sup> Having used the letter to corroborate Paul’s account, Buckminster noted that Pliny’s epistle, though written by a man of literary learning, “is altogether inferiour, not merely in affection, in dignity, and the spirit of christianity, of which Pliny was ignorant, but also in the subordinate beauties of style.”<sup>44</sup> The classical past attested to both the factuality and the superiority of the New Testament past. Given the text’s historical accuracy and superior literary value, the author’s magnanimity, and Christianity’s greatness, “what ideas would the reader of this letter form of the nature and spirit of christianity?”<sup>45</sup>

Christian universalism was among the religious truths Buckminster extracted from Paul’s letter. Here the reader “would learn, that the soul, even of a fugitive slave, is not unworthy of being rescued from the tyranny and misery of sin; that the gift of eternal life, in the sight of Jesus and of Paul, is no less important to Onesimus, than to his master.” But freedom from sin did not signify freedom from slavery. Buckminster explained that the reader, “in remarkable coincidence with the doctrine of the apostle in other epistles . . . would find, that Christianity made no alterations in the civil or political relations of the converts, for Paul demands not the emancipation of the slave, but, on the contrary, returns him to the service of his master.”<sup>46</sup> Buckminster highlighted congruencies between apostolic texts to authenticate Paul’s letter, marshaled extra-biblical historical evidence to confirm its history, and then made Paul speak for “all succeeding time” on the present question of slavery and fugitive slaves.<sup>47</sup> Using an epistle

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<sup>43</sup> Ibid., 89, 89-90.

<sup>44</sup> Ibid., 90.

<sup>45</sup> Ibid., 91.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid., 91-92.

that dealt directly with slavery to illustrate the idea of historical explication was not an arbitrary decision on Buckminster's part. Section 9 of Article 1 of the Constitution had protected the slave trade up until 1808, a year or two before his speech, when Congress passed an act that prohibited the importation of slaves. Between the start of the Revolution and 1804, every northern state had passed antislavery laws and by 1810 most slaves in the North had been manumitted. Although anticipated, illegalizing the transatlantic slave trade worried some southern slaveholders, whose dependence on the internal slave trade, the policing of slaves, and the return of fugitives increased. In light of these developments, Buckminster used his historical insight to chide overzealous antislavery northerners while easing the fears of anxious proslavery southerners.

In his reading, Buckminster had repeatedly referenced the historical distance separating modern present from ancient past, but once he uncovered an apparently timeless teaching—"the attachment of a master and his domestics"—he critiqued his age's failure to collapse that distance and live as Paul had, exclaiming, "how unlike the customs and the spirit of modern society!"<sup>48</sup> Certain human relations, along with human nature, remained constant despite historical distinction and change. This interpretation and application of Paul's epistle to Philemon, made consistent with the Constitution's fugitive slave clause and the Fugitive Slave Act of 1793, would echo loud and clear in subsequent decades, culminating in southern and northern defenses of the Fugitive Slave Act of 1850. Like those interpreters, present concerns constrained Buckminster's view of Christian freedom and encouraged him to set aside historical difference.<sup>49</sup> However, in drawing attention to the temporal and transient nature of the Bible's content, his historical

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<sup>48</sup> Ibid., 92.

<sup>49</sup> Ibid.



explication, like the ones that followed, could also be used to insist that the ancient scriptures had little relevance in addressing contemporary issues like American slavery, or that their relevance depended on interpreting them in light of historical change.

Buckminster's biblical criticism was synonymous with his historical explication. He began with the contention that Christianity as presented in the New Testament "is conveyed to us in the historical form."<sup>50</sup> Internal and external evidences and inter-textual analysis confirmed an apostolic text's historicity. The authenticated text, divinely protected from errors, functioned as a uniquely accurate historical account of the times. An attention to historical context, captured within the text itself and uncovered in extra-biblical sources, illuminated an ancient era. On the basis of a text's historicity and an understanding of the historical situation in which it was produced, timeless religious truths could be extracted from transient temporal facts. Buckminster's emphasis on the need to recognize the historical situatedness of an apostolic author, his text, and his audience and the historical distance between said author, his text, and the present yielded to the idea that, on crucial issues such as the relationship between a master and his slave, the canon transcended time. But while Buckminster conceived of historical understanding and religious truth as allies, making that truth epistemologically dependent on "an historical explication" had the potential of arming historical understanding against religious truth. Armament for such a conflict depended on the spread of the principles that Buckminster espoused. Over the next few decades, as slavery maintained and then increased its hold on the national consciousness, it created the conditions for a much more consequential biblical debate over slavery and for a greater realization of historical

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<sup>50</sup> Joseph S. Buckminster, "Acts 10:34-35, February 1812," Joseph Stevens Buckminster Papers, BA.

distance. Meanwhile, a greater number of biblical scholars began to emphasize the same kind of historical explication that Buckminster had promoted.

*“Rules of Interpretation Modified by the Special Circumstances”: Religious Liberals and Conservatives in the Battle for the Elevated Grounds of History*

As America’s foremost proponent of biblical criticism, Buckminster’s influence remained mostly limited to his Brattle Street congregation. His appointment as Dexter Lecturer promised the extension of his principles to a wider and more engaged audience. Death robbed him of the opportunity, but it also propelled the spread of biblical criticism in ways that a lifetime as Dexter Lecturer might not have. Indeed, it might be said that two deaths, Samuel Dexter’s and Joseph Buckminster’s, gave life to American biblical criticism. Other students of the Bible, who knew of Buckminster’s European travels and acquisitions, attended the public sale of his library that followed his death. The auction placed works of biblical scholarship known for “their rarity in our country” into the hands of those who became some of the period’s foremost advocates of biblical criticism, at least in a qualified form.<sup>51</sup> We might expect that attendees included Unitarians such as William Ellery Channing, Edward Everett, and John Thornton Kirkland, but Congregationalists, including Jeremiah Evarts and Moses Stuart, also turned up for the event. When Stuart outbid his friend Everett for Eichhorn’s five-volume introduction to the Old Testament, *Einleitung ins Alte Testament* (1780-1783), he ensured that defenders

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<sup>51</sup> “Sale of the Library of the Late Rev. Mr. Buckminster,” *General Repository and Review* 2 (October 1812): 392-94, quotation on 392 (APSO).

of orthodoxy would challenge promoters of liberal religion in debating canonical choices and doctrinal positions on biblical criticism's elevated historical grounds.<sup>52</sup>

Still, Unitarians figured most prominently among the antebellum religious groups that promoted historical explications of scripture. William Ellery Channing, whose relatively conciliatory approach to biblical criticism mirrored a rather cautious handling of the slavery question, briefly succeeded Buckminster as Dexter Lecturer from 1812-1813. He most successfully publicized the Unitarian approach to scripture in the sermon he later gave at Jared Sparks's ordination in 1819. In "Unitarian Christianity," Channing stated his preference for apostolic texts and upheld reason as the indispensable interpretive tool in examining them. He asserted that because God conformed to human language, "every word and every sentence must be modified and explained according to the subject ... the purposes, feelings, circumstances and principles of the writer, and ... the genius and idioms of the language which he uses."<sup>53</sup> One hears Buckminster in Channing's caution that "the different portions of this book, instead of being confined to general truths, refer perpetually to the times when they were written, to states of society, to modes of thinking, to controversies in the church, to feelings and usages which have passed away, and without the knowledge of which we are constantly in danger of extending to all times, and places, what was of temporary and local application."<sup>54</sup> Like the first Dexter Lecturer, Channing encouraged readers to avoid anachronistic

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<sup>52</sup> On the auction, see Brown, *Rise of Biblical Criticism*, 27-29; and Holifield, *Theology in America*, 191.

<sup>53</sup> William Ellery Channing, *A Sermon Delivered at the Ordination of the Rev. Jared Sparks* (Boston: Wells and Lilly, 1819), 5. On Channing's role in propagating the principles of biblical criticism in America, see Brown, *Rise of Biblical Criticism*, 28-29, 60-74.

<sup>54</sup> Channing, *A Sermon*, 6-7.

applications. His understanding of inspiration and interpretation also matched Buckminster's. "That the Holy Spirit did not so guide the Apostles as to suspend the peculiarities of their minds," Channing instructed, "and that a knowledge of their feelings, and of their influences under which they were placed, is one of the preparations for understanding their writings."<sup>55</sup> One must first recover the historical context in which the apostles operated and then use such knowledge to separate general truths from particular facts. Historical distance required, and historical knowledge informed, a reasonable reading of scripture. This approach allowed Channing later to posit that the apostles had taken expedient measures to start the process of slavery's abolition.

Channing's sermon provoked responses from conservative religious scholars and Andrews Norton's appointment to succeed Channing in 1813, which placed a much more militant defender of liberal Christianity in the position of Dexter Lecturer, had already ensured the continuance and deepening of canonical and interpretational debates. Whereas Channing had healthy interactions and exchanges with more conservative religious figures such as Moses Stuart and more liberal religious figures such as Theodore Parker, the contentious Norton often found himself embroiled in heated debate with those outside the fold as he battled to position Unitarianism against Calvinism on the right and Transcendentalism on the left. In 1812, he had opened the *General Repository* with an attack on orthodox interpreters of scripture, who, he argued, "do not expect to find the meaning much disguised by peculiarities of expression of the writer or of the age or country to which he belonged; they pay but little regard to the circumstances in which

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<sup>55</sup> Ibid., 7.

[the writer] wrote, or to those of the persons, whom he addressed.”<sup>56</sup> In contrast, Norton posited, liberals attend “to all these circumstances.”<sup>57</sup> He believed the Bible, and the New Testament in particular, to be the source of Christian truth, but he stressed the importance of historical explication in attempts to grasp the meaning of sacred texts.

In 1818, due to Norton’s pleadings and President Kirkland’s efforts, the Dexter Lectureship became the Dexter Professorship of Sacred Literature with Norton as its first occupant. This marked the beginning of a serious and prolonged engagement with biblical interpretation that culminated in his *The Evidences of the Genuineness of the Gospels*, published in three volumes between 1837-1844. These later publications displayed Norton’s attempt to use historical evidence to defend the authorship, general accuracy, and relevance of the Gospels from scholarship, purveyed by radicals such as Parker, which threatened to undermine their canonical status. Much of his prior work, however, aimed to distinguish liberal from orthodox interpretation along lines of historical explication. Indeed, Norton believed that the historical peculiarities of the New Testament texts reinforced their genuineness; their archaic components signaled their historicity. Only later, when Parker and others used historical insights to question the historical basis of Unitarian faith, did scholars began to recognize that highlighting historical particularities could threaten the Gospels’ relevance just as easily as it might evidence their authenticity.

A number of Norton’s notebooks and the manuscripts of his Harvard lectures display his emphasis on reading the scriptures in relation to historical circumstances and

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<sup>56</sup> Andrews Norton, “A Defence of Liberal Christianity,” *General Repository and Review* 1 (January 1812), 2 (APSO). On Norton’s role in propagating the principles of biblical criticism in America, see Brown, *Rise of Biblical Criticism*, 29-35, 69-93.

<sup>57</sup> Norton, “A Defence,” 3.

contexts. One notebook contains a section labeled “Materials for Lectures on Biblical Criticism,” wherein Norton included references to scriptures to measure “the character of the Evangelists as historians,” to illustrate their “figurative language,” and to identify “precepts to be explained by a consideration of circumstances.”<sup>58</sup> He fleshed out these ideas much more fully in his lecture notes. In one lecture in particular, numbered “Lecture 5,” Norton stressed the need to interpret the New Testament writings in relation to the circumstances in which their authors wrote them. He outlined three kinds of knowledge necessary to understanding the scriptures, beginning with “a knowledge of the circumstances under which the discourses of our Saviour were delivered, and the writings of the evangelists and apostles [were] composed.” The second and third forms of knowledge referred to an understanding of the style of their writings and the meanings of their words and phrases, which, as Norton made clear, were also questions of historical research. Throughout the manuscript, he emphasized the need to “acquire ... a distinct conception of those more temporary and transient circumstances, of those particular incidents and situations, which gave occasion to many passages in the discourses of our Saviour or the writings of his apostles.”<sup>59</sup> Norton contended that the reader could apprehend the truths of the sacred texts in no other way.

Like Buckminster, Norton held that “the fundamental principles of religion and virtue are always the same,” but, like Buckminster, he also affirmed that “the particular rules derived from these vary with the varying circumstances of men.” Norton

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<sup>58</sup> Andrews Norton, “Materials for Lectures on Biblical Criticism,” Notebooks of Andrews Norton, Andrews Norton Papers, MS Am 1089, Houghton Library, Harvard University.

<sup>59</sup> Andrews Norton, Lecture 5, Notebooks of Andrews Norton, Andrews Norton Papers, MS Am 1089, Houghton Library, Harvard University.

emphasized that “we must know the situation and character of those to whom any particular rules are addressed, before we can judge of their reasonableness, of the extensiveness of their application to others.” Focusing on the particular would reveal the universal. Otherwise, Norton explained, “we shall interpret all these [scriptures] very erroneously if we neglect their original application, and suppose them to have a direct relation to ourselves.” Failing to take note of errors and controversies “which have become long since wholly obsolete,” and supposing that the apostles wrote “with the express design of affording instruction to all Christians in all ages,” blinded readers from comprehending original and universal Christian truths.<sup>60</sup> Christ and his apostles, Norton believed, addressed the particular needs and problems of particular audiences.

Norton proposed that “the whole preaching of our Saviour and his apostles must have been accommodated to the understandings, to the character, and to the situation of those whom they addressed.” “Accommodation” became a popular term among American interpreters in this period. While some of them damned the German born “theory of accommodation,” which was often used to dismiss certain biblical passages and teachings that conflicted with modern sensibilities, an expanding group of American biblical scholars accepted and advanced at least a variant on that theory. Norton spotlighted accommodation to the apostles’ audiences, and even he went so far as to suggest that “we have indeed no reason to believe that the minds of the apostles themselves were unaffected by the intellectual character and prevailing opinions of the age and nation.” Apparently, even Christ’s most intimate disciples could not help but be influenced by contemporary ideas and notions. Regardless, he continued, “they must still

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<sup>60</sup> Ibid.

have taught with reference to [the prevailing opinions of the age], and conformed themselves as far as possible to the apprehension of their disciples.” While noting that the “great truths of our religion ... are of permanent and universal interest,” Norton reemphasized that “the manner of their exhibition was conformed to temporary and local circumstances.” The sacred writers “had in mind no readers but their contemporaries” and anticipated “none of those difficulties which would occur to other men than those in their own age.” As a result, Norton insisted, in a directive reminiscent of Johann Gottfried Herder’s historicism, the reader must “leave behind him and forget our modern doctrines, and prejudices, and associations. He must make himself familiar and contemporary with men” from New Testament times. Norton, in essence, challenged Christian Americans’ assumed affinities between biblical and modern times by emphasizing the historical situatedness of New Testament authors and audiences, and then posited that one could indeed become familiar with them, but only by recovering and participating in their ancient mentality through historical research.<sup>61</sup> However, the attempt to familiarize readers with a foreign past exposed the historical distance from that most sacred historical era and threatened to undermine the very familiarizing project that Norton had outlined and advocated. This gradual turn in American exegesis from assumed contemporaneity with biblical figures to a stress on historical sympathy, contributing to a broader realization of historical particularity.

Norton again stressed the particular and peculiar nature of the New Testament in discussing the style of Christ’s discourses and the evangelists’ and apostles’ writings. Citing the ancient Jews’ “oriental modes of expression” and noting their “comparatively

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<sup>61</sup> Ibid.



rude and uncivilized” state, Norton again argued that the reader must take note of “temporary, and local causes.” In analyzing specific words and phrases of the New Testament, Norton, more than Buckminster, displayed an awareness of the evolutionary nature of language. Noting the changing signification of words, he warned that readers “must be careful to understand” a text’s “words in their original sense, and not that which they have acquired in modern times.” Norton earnestly believed that as the “meaning [of a text] appears more distinctly” through this approach, “we shall see more reason to admire the simplicity, the purity, and the sublimity of it’s [sic] moral precepts and it’s [sic] religious doctrines.” Rigorous and sophisticated historical research revealed straightforward and simple eternal truths.

Further, and of growing interest to Norton, he maintained that the peculiar historical nature of the New Testament offered a strong proof of the genuineness of its texts. Human wisdom might assume that the scriptural canon had been written for “Christians in all ages and countries; and of course should contain little or nothing of a merely local or temporary nature.” However, if such had been the case it would have raised questions about the authenticity of the New Testament texts. But God, in his providence, allowed the sacred writer to have “nothing in view, but to be understood by the person or persons whom he is addressing.” The presence of peculiar historical features also marked the authenticity of ancient texts such as Cicero’s letters. Norton’s comparison between biblical and classical texts, similar to Buckminster’s, served to confirm the authenticity of the New Testament, though it could also demote the Bible as one among a number of historical texts. Norton believed that the New Testament’s archaic features attested to its historicity, but that historicity might also indicate the

historical distinctions and distances that separated biblical from modern times, especially when antislavery writers contrasted ancient with American slavery.<sup>62</sup>

Norton later advanced such arguments in defending the genuineness of the Gospels in print, but he also used these ideas to publically promote what he viewed as the liberal attention to circumstances against what he understood as orthodox interpretations that read the texts in isolation. In 1819, responding to an exchange occasioned by Channing's ordination sermon between Channing and Congregationalist Moses Stuart, Norton reiterated that liberal Christians rightly explored the ways in which contexts and circumstances shaped the meaning of words and texts. He argued that an interpreter must account for a writer's "habits of thinking and feeling, his common style of expression, his settled opinions and belief, the extent of his knowledge, the general state of things in which he lived, the particular local and temporary circumstances present to his mind while writing, the character and conditions of those for whom he wrote, [and] the opinions of others to which he had reference." Norton's instructions stressed the need to recognize the foreign nature of the biblical past. To understand biblical passages, he argued, the reader must learn the cultural languages of particular times and places. In a note, Norton drew attention to Stuart's use of certain German scholars, but found them "defective in the most essential particular necessary to qualify them for the work. ... *It is necessary to have just notions of the intellectual and moral character of our Saviour and his apostles, and of the circumstances under which they spoke or wrote.*"<sup>63</sup> As with Buckminster and Channing, Norton championed a historical explication of the scriptures,

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<sup>62</sup> Ibid.

<sup>63</sup> Andrews Norton, *A Statement of Reasons for Not Believing the Doctrines of the Trinitarians Respecting the Nature of God and the Person of Christ* (Boston: Wells and Lily, 1819), 41-43, quotations on 42 and 43, emphasis in original.

while deriding Stuart for his apparent neglect of context in emphasizing grammar. He failed to notice that Stuart, not to mention the German critics that Stuart had referred to in his pamphlet, also stressed the historical situatedness of biblical texts, which again signaled the historical distance that resulted from a realization of contextual difference.

Perhaps Norton perceived similarities between his cherished Unitarian and condemned German modes of interpretation. In a vigorous disassociation effort he vociferously contested Stuart's claim that Channing was traveling down the heretical path staked out by figures such as Semler, Eichhorn, and De Wette, and quickly rejected the invitation to imbibe German offerings if only for the purpose of casting aside their more unsavory opinions, as Stuart had done. Perhaps antebellum religious thinkers' contempt for all things German can be attributed to what Sigmund Freud later described as the "narcissism of small differences," which posits that "it is precisely the little dissimilarities in persons who are otherwise alike that arouse feelings of strangeness and enmity between them."<sup>64</sup> This also might help explain the darts that Norton directed at the increasingly heretical Theodore Parker, who seemed to confirm everything that conservatives feared liberal religion would lead to and everything Norton assured them it would not. Nonetheless, real doctrinal differences did exist both on the left and the right, and regardless of the reasons for his distrust of German scholarship, Norton's reading of Stuart led him to the erroneous conclusion that in emphasizing grammar Andover's principal biblical scholar had neglected context.

Stuart was, in fact, the nation's most competent Hebrew and Greek grammarian. But, as Norton well knew, grammatical issues were tied to historical questions. As

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<sup>64</sup> Sigmund Freud, *Sexuality and the Psychology of Love* (New York: Touchstone, 1997), 66-67, quotations on 66.

Professor of Sacred Literature at Andover Theological Seminary, Stuart taught grammar and a form of biblical criticism. In 1807, in partial response to Harvard's appointment of the liberal Henry Ware to the Hollis Chair of Divinity at Harvard in 1805, a group of orthodox New England Congregationalists, including Eliphalet Pearson, Jedidiah Morse, and Leonard Woods, founded Andover, the second American academic institution promoting a brand of biblical criticism. Within three years they appointed Stuart to help stem the tide. In the letters he wrote in response to Channing's ordination sermon, which he published in 1819, Andover's eminent appointee demonstrated a keen awareness of German scholarship, to which he had applied his facility with the German language, and showed his interest in distilling biblical criticism's more benign principles. He focused on doctrinal differences and noted canonical distinctions. He agreed that the New Testament more clearly delineated gospel truth, but worried that Channing had too easily dispatched the Old Testament, which, according to Stuart, the Gospels authenticated. Still, he found similarities between his and Channing's rules of interpretation, embracing "with all [his] heart" the Unitarian's directive to modify biblical language according to the specific subject, motivations, principles, and "special circumstances" of the author.<sup>65</sup> Seeming to agree with Norton's approach to the Bible as a historical text, in a later letter Stuart noted, "I read John, and interpret him just as I do any other author, ancient or modern, by the general rules of interpretation modified by the special circumstances and dialect in which he wrote."<sup>66</sup> Stuart placed emphasis on the rules of interpreting words in their historical

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<sup>65</sup> Moses Stuart, *Letters to the Rev. Wm. E. Channing, Containing Remarks on His Sermon Recently Preached and Published at Baltimore* (Andover, MA: Flagg and Gould, 1819), 23. On Stuart's engagement with biblical criticism, see Giltner, *Moses Stuart*; and Brown, *Rise of Biblical Criticism*, 43-59, 64-73, 94-110.

<sup>66</sup> Stuart, *Letters to the Rev.*, 143.

context, which included an investigation of their “relation to the context, and (of course,) of their *local* meaning,” but differentiated these rules from extra-biblical knowledge about peculiar circumstances, writing that “whatever aid I may get from other sources ... must be that which is superadded to the explanation that these rules will afford.”<sup>67</sup> Norton recognized this distinction and argued that Stuart, like other orthodox interpreters, ignored historical peculiarities and circumstances in his grammatically based interpretation.

Perhaps in an attempt to satisfy Norton, or at least to defend himself from his attacks, Stuart added a few sentences in the third edition of his *Letters* to Channing, also published in 1819, which further exhibited his appreciation for historical knowledge. In place of the above statement on “other sources,” Stuart wrote, “I may obtain aid from many sources, to throw light upon the meaning of words and sentences. From a knowledge of the geography of any country ... as well as of the manner, customs, laws, history, &c. of its inhabitants, I may obtain assistance to explain its language, and must obtain it, if I mean to make out a satisfactory interpretation.” Correct interpretation required the use of all available historical knowledge. “But,” and this was Stuart’s central point, “I can never dispense with the laws of grammatical analysis.” He granted primacy to grammatical rules in part because they could be universally applied to scriptural passages independent of extra-biblical findings, which were relatively scarce and often unverifiable. “Admitting these rules to be the best and surest guide to the meaning of language,” Stuart wrote, “we cannot supersede them, by *supposing*, or *conjecturing* peculiarities in a writer. It is only when these peculiarities are proved, or, at least,

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<sup>67</sup> Ibid., 50.

rendered probable, that they can be admitted to influence our interpretation of any passage.”<sup>68</sup> Although interpreters in the antebellum era began to stress contextual readings, some also pointed out the difficulties involved in accurately recreating historical contexts. Stuart’s caution here anticipated arguments in both the biblical and the constitutional debate over slavery, when some interpreters found it useful to point out the conjectural nature of a historically grounded reading. Despite his careful approach, Stuart did not value ahistorical grammatical rules over historical explication, but rather, as the period’s preeminent popularizer of the grammatical-historical method he prized a demonstrable inter-biblical and language-based historical explication above a dubious extra-biblical one.

In fact, Stuart was defending this approach against a presentism that he associated with the German-born theory of accommodation advanced by Semler, who proposed that Jesus and the Gospel writers had accommodated their teachings to the ignorance of the Jews, which accounted for their obvious misapplication of the Old Testament. Stuart held that some German critics, including Semler, Eichhorn, and Bauer, relied on this approach to explain away stories like the Genesis account of the Creation and the Fall as poetical, naturalize miracles, including those ascribed to Christ, and dismiss doctrines that failed to align with their present philosophical and theological positions. But, as far as Stuart could tell, “*Accommodation* has been sifted, attacked, defended, explained, moderated, modified, itself *accommodated*; so that at last it is nearly driven from the ground.”<sup>69</sup> Now, rather than assigning unacceptable teachings and supposed miracles to Jewish

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<sup>68</sup> Stuart, *Letters to the Rev. Wm. E. Channing, Containing Remarks on His Sermon Recently Preached and Published at Baltimore*, 3d. ed. (Andover, MA: Flagg and Gould, 1819), 57, emphasis in original.

<sup>69</sup> Stuart, *Letters to the Rev.*, 1st ed., 155, emphasis in original.

ignorance, some critics explained them according to “the idiom and ignorance of antiquity in general, and in particular of the sacred writers themselves.”<sup>70</sup> New Testament audiences *and* authors held outdated and thus dismissible beliefs. Some abolitionists would soon make similar claims about the framers and their audience. These readings depicted the past as a whole, rather than in part, as bound up in time. Stuart believed that if one accepted the theory of accommodation, then this was the more historically sound approach. He differed from the German critics “in sentiment” and found their views “subversive of Christianity,” but was “under great obligations to them ... for convincing me that we need nothing more than the simple rules of exegesis, and a candid, believing heart, to see in the Scriptures ... all the substantial and important doctrines, which have commonly been denominated *orthodox*.”<sup>71</sup> Stuart wrote that “if the sentiments that I espouse will not stand the test of investigation, then I will abandon them,” but, echoing Jonathan Edwards, he felt that “the real truth and importance of evangelical doctrines ... are greatly strengthened” by this method.<sup>72</sup> Stuart worried that Channing had incorporated the presumed historicist principle of accommodation to twist ancient and authoritative writings in support of newly propounded Unitarian teachings. In truth, Norton, at least in his lecture notes, had expressed the idea that the apostles could not escape their historical setting. Stuart held that the Unitarians neglected the Germans’ redeeming interpretive methods while seeming to embrace their damning liberal sentiments. Their efforts, it seemed, threatened to banish the canon as a whole to the past.

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<sup>70</sup> Ibid., 151-67, 151-52.

<sup>71</sup> Ibid., 158, emphasis in original.

<sup>72</sup> Ibid., 159, 162.

Stuart maintained that “we are agreed as to *principles* of interpretation, in most things that are of importance.”<sup>73</sup> While real departures came in the application of interpretive principles, he and his Harvard counterparts shared an interest in the historical situatedness of the scriptural authors and, presumably, a consequent awareness of the historical distance separating biblical from modern times. Unwittingly echoing Norton’s lectures, Stuart instructed his Andover students to “let every writer be placed in his own age, and if possible, transfer yourself back there, with him.” He urged ascription “to every sacred writer, views on such subjects consonant with his character and his age—and to reject the monstrous exegesis which explains him as though he spoke but yesterday and with all our feelings and prejudices.”<sup>74</sup> Stuart’s orthodoxy limited his willingness to historicize the biblical past, even as he believed the Unitarian’s liberalism hampered their interpretations, but he held that “on all subjects, not pertaining directly to the development of moral or religious truth ... the sacred writers [express] the common view of their age & time.”<sup>75</sup> Stuart asserted the Bible’s primacy and unity, defended plenary inspiration, and assigned accommodation to God rather than his scribes. As with Buckminster, on issues of moral truth he spoke of Paul “as though he spoke but yesterday.” Indeed, Stuart would later echo Buckminster’s reading of Philemon to criticize those opposed to the Fugitive Slave Law. But, also like Buckminster and his successors, Stuart upheld historical explication as the premier exegetical mode. In doing so, together these American exegetes inadvertently backed into an awareness of the kind of qualitative historical distance from biblical times that emerged through contextual

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<sup>73</sup> Stuart, *Letters to the Rev.*, 3rd ed., 56, emphasis in original.

<sup>74</sup> Stuart, Lecture 6, Lectures on Hermeneutics, quoted in Giltner, *Moses Stuart*, 54.

<sup>75</sup> *Ibid.*, 52.



readings. In turn, that distance became difficult to ignore in their applicative efforts, especially when it helped arm more radical readers, including abolitionists who were willing to question the contemporary value of an ancient text.

Some colleagues grew suspicious of Stuart, in part due to his engagement with German scholarship, but he was not the only Congregationalist to value historical explication. Jeremiah Evarts, for example, was also present at the landmark auction, where he purchased works on the New Testament by Göttingen scholar Johann Friedrich Schleusner and Semler disciple Johann Griesbach. Best known for his later opposition to Andrew Jackson's Indian Removal Act (1830), Evarts served on the American Board of Commissioners for Foreign Missions from 1812-1831 and edited the *Panoplist* from 1805-1820. Compared to the Unitarian's *General Repository*, the Congregationalist-run *Panoplist* gave little space to biblical criticism except to counter its potentially destabilizing efforts to historicize the canon's creation and transmission.<sup>76</sup> But in the same year that Buckminster became Dexter Lecturer, the missionary-minded magazine diverted attention from its evangelical emphasis to praise Englishman Thomas Scott's *A Commentary on the Whole Bible*. "Scott's Family Bible," introduced to the American market in 1804, anticipated a burgeoning book trade of bibles with commentaries, introductions, illustrations, and maps, new translations from first texts, and geographical studies like William Thomson's *The Land and the Book* (1858). In an important way, the deepening of historical awareness in antebellum America depended on technological advances in the publication and dissemination of historical knowledge, including works

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<sup>76</sup> The historical figures discussed in this study occasionally attended to this aspect of biblical criticism, but I am most interested in their emphasis on contextual explications of the texts rather than in their understanding of the creation and transmission of those texts.

containing information about the most esteemed of ancient texts. Those who upheld the Bible as “the standard, and only standard, of truth,” might view such works with suspicion.<sup>77</sup> And yet, even orthodox figures such as Evarts and the *Panoplist*’s publisher Jedidiah Morse, famous American geographer and father to painter and inventor Samuel F. B. Morse, recognized “that the Bible abounds with allusions to manners, customs and facts” the explication of which requires “some knowledge, drawn from other sources, of the general history of the ages and countries in which the Scriptures were written.”<sup>78</sup> Even religious stalwarts like Morse, a lifelong critic of liberalism, believed that the historical distance separating ancient and modern necessitated the use of scholarly guides and helps to illuminate the Bible’s past environments for present readers. While intended to expand the Bible’s reach and appeal, these works contributed to its historicization and, as historian Paul Gutjahr puts it, “While many still believed it to be ‘the book of books,’ it was equally true that the Bible was increasingly a book among books.”<sup>79</sup>

Calvinists also contributed to this development. More leery of biblical criticism than the either the Unitarians or the Congregationalists, Charles Hodge’s *Biblical Repertory* nonetheless aimed to “excite a spirit for Biblical Studies.”<sup>80</sup> Hodge, described as “the Pope of Presbyterianism” by his biographer, was a product of Princeton, which

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<sup>77</sup> “Reviews,” *Panoplist, and Missionary Magazine* 4 (September 1811): 161-69, quotation on 163 (APSO).

<sup>78</sup> *Ibid.*, 162. For an example of the *Panoplist*’s response to biblical criticism, see “On the Canon of Scripture,” *Panoplist* 2 (May 1810): 559-60 (APSO).

<sup>79</sup> Paul C. Gutjahr’s *An American Bible: A History of the Good Book in the United States, 1777-1880* (Stanford: Stanford University Press, 1999), 2. Gutjahr traces the historicizing effect of the production and dissemination of Bible commentaries and translations in nineteenth-century America. On “The Threat and the Promise of History” in the early republic’s canonical debates, see Holland, *Sacred Borders*, 104-14.

<sup>80</sup> Charles Hodge, “Proposals for the Periodical Publication of a Collection of Dissertations, Principally in Biblical Literature,” *Biblical Repertory. A Collection of Tracts in Biblical Literature* 1, no. 1 (1825): 1.

was a more conservative institution than the Congregationalist institutions of Andover, and, especially Yale.<sup>81</sup> In 1820, before Hodge began teaching at Princeton, he traveled to New England where he visited with figures such as Nathaniel Taylor, Edward Everett and Moses Stuart. Stuart encouraged his orthodox Presbyterian counterpart to learn German to combat the Unitarians. Hodge followed his direction and when he formed the *Biblical Repertory* in 1825, which he edited for nearly five decades, he did so to counter the writings coming out of Cambridge. He envisioned the quarterly “as a substitute, for the possession or perusal of works, which ... it may neither be easy nor desirable to put into general circulation.”<sup>82</sup> Although Unitarians such as Buckminster seemed more willing to encourage the spread of biblical criticism, more conservative religious figures like Stuart and Hodge also desired, at least selectively, to distill and then disseminate that knowledge by publishing “interesting articles on the manners, customs, institutions, and literature of the East—on various points in Biblical Antiquities—and on the Literary History of the Sacred Volume.”<sup>83</sup> Stuart hoped to use biblical criticism’s more benign principles to counter its more lethal lessons, but he maintained the essential neutrality of critical study and the usefulness of historical knowledge to biblical interpretation.

The *Repertory*’s opening issue included partial translations of German philologist Christian Daniel Beck’s work on the New Testament, *Monogrammata Hermenueticas Novi Testamenti* (1803), and German theologian Charles Christian Tittmann’s commentary on the Gospel of John, *Meletemata Sacra* (1816), works that grounded

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<sup>81</sup> Paul C. Gutjahr, *Charles Hodge: Guardian of American Orthodoxy* (New York: Oxford University Press, 2011), 3. This portion of this study relies on Gutjahr’s biography, which highlights Hodge’s religious orthodoxy in his biblical scholarship and other endeavors.

<sup>82</sup> Hodge, “Proposals for the Periodical,” 1.

<sup>83</sup> *Ibid.*, 1-2.

biblical exposition in historical explication. Hodge wrote of the lengthy Beck selection that it “was to give an account of the character, age, origin, and history of each particular book, and the commentaries upon each.”<sup>84</sup> Beck informed readers that “those passages which are inconsistent with the Christian religion or history ... are to be regarded as spurious” and the teachings and style of the New Testament texts are to be judged “according to the opinions and manner of writing prevalent in the times of the sacred penmen.”<sup>85</sup> As “much belongs to the means of determining the *historical sense*,” Beck encouraged the acquisition of “the knowledge of history and antiquities of the Jews, Greeks, and Romans, especially of the age in which the Sacred Writers lived.”<sup>86</sup> All of these insights would allow one to better understand the language and content of the New Testament’s authors, who, Beck explained “were obliged to accommodate themselves, in some measure, to the character of their readers, and to the object which they wished to accomplish.”<sup>87</sup> Although Beck seemed to reject the more radical accommodation theory that Stuart had deplored and that Norton seemed open to, which posited that then prevalent notions had even constrained the apostles’ attempts to proclaim gospel truths, he proposed that of necessity the “Sacred Writers” had to speak the language of their historically situated audiences.

Tittmann, in his selection, sought to dismantle the theory of accommodation as he understood it, which, he wrote, aimed to discover “not what [the New Testament authors] taught, but what the measure of light then in the world, and their own talents, enabled

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<sup>84</sup> Charles Hodge, “Introduction,” *Biblical Repertory* 1, no. 1 (1825): vi.

<sup>85</sup> Christian Daniel Beck, “Outlines of Hermeneutics,” *Biblical Repertory* 1, no. 1 (1825): 1-122, quotations on 53 and 54.

<sup>86</sup> *Ibid.*, 77, 99.

<sup>87</sup> *Ibid.*, 19.

them to teach.”<sup>88</sup> Similar to Stuart, Tittmann upheld the grammatical mode of interpretation as the best, though he also recognized that “grammatical interpretation is for the most part Historical.” The interpreter must attend to the *usus loquendi*, or the customary manner of speaking, which “is a matter of history” as it reveals “the import of every expression, at every different period ... with each particular author and nation, and in each specific connexion or passage; all which are historical facts, which history only can teach us.”<sup>89</sup> Tittmann asserted that in deciphering both doctrinal and historical passages, “recourse must be had to the history of those times ... and in this way, and in no other, can the true meaning of the passages be evinced.” While renouncing the purely “historical mode of interpretation” as presentist and ahistorical, he conceded “that the Sacred Writers ... so accommodated themselves to the genius of their age, as to use a style and language which they would not have used, had they written for different people, and at another time.”<sup>90</sup> Tittmann granted accommodation in form rather than content, writing that “the peculiar mode of exhibiting these doctrines was adapted to the condition of those who had been Jews” and directing the interpreter to “discover in what instances Sacred Writers have accommodated themselves to the genius of their age, as to the mode of discussion, and the import of figurative language.”<sup>91</sup> Regardless of how they accommodated, the New Testament authors lived in a different world, the historical comprehension of which was a prerequisite to understanding their words. Historical

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<sup>88</sup> Charles C. Tittmann, “C. CHS. Tittmann, on Historical Interpretation,” *Biblical Repertory* 1, no. 2 (1825): 123-51, quotation on 136-37.

<sup>89</sup> *Ibid.*, 130.

<sup>90</sup> *Ibid.*, 131.

<sup>91</sup> *Ibid.*, 132, 133.

knowledge proved useful in establishing authenticity and, coupled with an awareness of historical distance, in explicating meaning.

Hodge's own writings show that he incorporated the focus on contextual biblical readings that he found in the portions of the German works he made available for public consumption. While those incorporations appear in a number of his works beginning in the 1820s and 1830s, the clearest articulation of his emphasis on historical interpretation came in his magnum opus, *Systematic Theology* (1871-1873), which he published near the end of his life. There Hodge used words similar to those in the Beck translation, writing that "the fundamental principle of interpretation of all writings, sacred or profane, is that words are to be understood in their *historical sense*; that is," he explained, "in the sense in which it can be historically proved that they were used by their authors and intended to be understood by those to whom they were addressed." Again, historical readings of the Bible stressed the importance of original audiences. Hodge continued, "Unless words are taken in the sense in which those who employ them know they will be understood, they fail in their design. The sacred writings being the words of God to man, we are bound to take them in the sense in which those to whom they were originally addressed must inevitably have taken them."<sup>92</sup> Similar to Stuart, Hodge believed that proper interpretation demanded that readers recognize the ways in which God had accommodated to biblical audiences when inspiring his prophets. Such recognitions implied an awareness of distinct historical contexts.

Hodge's statement, along with his reproductions of Beck and Tittmann showed much of the same historical awareness that Unitarians and Congregationalists exhibited,

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<sup>92</sup> Charles Hodge, *Systematic Theology*, 3 vols. (New York: Charles Scribner, 1871-1873), 1: 376-77, emphasis mine.

while similarly ignoring historical distance when it came to core truths. Indeed, in the Tittmann piece, the German theologian urged that “we cannot too severely reprobate the sentiments hence deduced by some of our contemporaries, that what we find thus communicated is not to be considered as pertaining to all Christians, and that the doctrines thus revealed are by no means common, and necessary to every age, in such a manner as to be a perpetual rule of faith and practice.”<sup>93</sup> On the contrary, he affirmed that religious truth “is equally applicable to all men, in every age.”<sup>94</sup> While fully acknowledging the differences between biblical past and modern present in terms of language and modes of thought, these interpreters insisted that the Bible remained relevant and could not be dismissed simply as a product of the ancient past. These varied efforts to ward off attempts to completely historicize the Bible and its teachings were largely successful in the short term, but even in attempting to minimize the interpretive importance of the historical distance their research uncovered, these interpreters contributed to a new understanding that the text to which Christians looked had been produced in a very different time amongst a very different people.

### *Conclusion*

Important doctrinal and canonical differences separated antebellum Unitarians, Congregationalists, and Presbyterians, and each of the above figures promoted unique modes of historical explication. The liberal Unitarians accepted as canonical certain New Testament texts, authenticated and illuminated through internal and external evidences and a reasonable use of inter-biblical and extra-biblical historical knowledge. They

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<sup>93</sup> Ibid., 131.

<sup>94</sup> Ibid., 132.

emphasized the historical situatedness of authors, texts, and audiences to better understand the scriptures and to guard against ahistorical applications. Differences existed even among the Unitarians. They all denied plenary inspiration, but while Buckminster upheld the canon as a uniquely accurate historical text, Norton received it as an occasionally flawed historical text, owing in part to the Gospel writers' accommodations, if not their failure to escape the characteristic ideas and notions of their times. The orthodox Congregationalists and Presbyterians affirmed, with some exceptions, the traditional canon, and often appealed to internal and external evidences to assert its unity, historicity, and historical accuracy. They emphasized the historical situatedness of authors to better comprehend the Bible's universal meaning. While they rejected the theory of accommodation to protect against presentist readings, Stuart and Hodge allowed for God's accommodation to human language. Stuart privileged inter-biblical to extra-biblical historical knowledge, but both he and Hodge accepted historical insight from extra-biblical sources.

Many more nuances separated these thinkers' ideas on how to best explain the scriptures through appeals to historical knowledge, but that each of them accepted history as the grounds of debate, and that all of their efforts drew attention to historical distance in one way or another, bears emphasizing. Both liberals and conservatives recognized the need for an historical exegesis of one kind or another. Edwards's affirmative answer to the question of whether the Bible could be historical and divine had been replaced by the assumption that its divinity rested, in some sense at least, on its historicity. More than ever, America's pious biblical scholars valued the canon as historical texts in need of historical illumination, even when they remained focused on grammatical interpretation.



The unprecedented focus on the historical nature of the biblical texts in canonical debates between liberals and conservatives drew new attention to the historical distance separating its ancient setting from its modern audience. As David F. Holland writes, “In making their case, both sides committed themselves to careful examinations of the Bible’s history—and in the course of their conflict, they drove the historical distance of the ancient scriptures deeper into the center of Americans’ religious thought.”<sup>95</sup> Questions about eternal truths inspired a greater interest in the historical facts that had come to serve as the foundation for knowledge about those truths, and the recognition of historical distance that resulted reinforced the value of and desire for historical knowledge. In turn, the historical research that followed made historical distance more apparent as the search for the universal exposed the vastness of transient.

Some of these figures used the historical lessons of biblical criticism to reject the historicity of certain biblical texts and, in the case of the more liberal minded, to dismiss certain teachings as antiquated instructions meant for ancient audiences. The process of separating out specific biblical books and principles expanded the sphere of the temporal and shrunk that of the timeless. The biblical debates over slavery would further encourage interpreters to make canonical distinctions and to differentiate transient from permanent principles. But even attempts to challenge certain texts and teachings most often prefaced the more urgent effort of establishing a canon and presenting its timeless truths. History was more often used to reveal rather than question a text’s meaning. Once the Unitarian, Congregationalist, and Presbyterian expositors had established their versions of the canon, historical knowledge became a crucial component to understanding

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<sup>95</sup> Holland, *Sacred Borders*, 105.

God's eternal verities. Even the Unitarians, who accepted that most of the Bible's content applied to a now irrelevant past, asserted that once the canon was established, its universal truths were just as applicable in the present as in the past. Rational supernaturalism was, in many ways, historical supernaturalism. The temporal revealed the eternal. But, as Transcendentalist Theodore Parker made clear, the transient could also undermine the textual source of the permanent.

## CHAPTER 2

### “THE GROUND WILL SHAKE”: TRANSCENDENTAL APPROACHES TO THE BIBLE AND THE BIBLICAL PAST

In a February 1839 letter addressed to his mentor and fellow Transcendentalist Convers Francis, Theodore Parker freely expressed his views of the Bible. “Let any sober man read *de Wette’s* Biblical Dogmatics,” he wrote to his friend, “and he will be astonished to see how many doctrines are taught in the Bible which enlightened men cannot believe. I must think that by and by, centuries hence, the O.T. will be dropped out from the church, then the N.T. will follow, or only be used as we now use other helps. I cant [*sic*] but wish with you, that Jesus had written his own books, but even then, they must have contained some things local and temporary.” The passage of time and the development of religious views made sacred historical texts obsolete and not even Jesus could have ensured their timelessness. In this letter, Parker articulated the difference between traditionalist and Transcendentalist interpreters of scripture, writing that “the orthodox place the Bible above the Soul. We the Soul above the Bible.” Parker believed that the soul, unlike the Bible with its myriad mediations, enjoyed a direct connection with the divine. Thus, Transcendentalists answered the questions of whether “the canon was closed” and “revelation is at an end” with a resounding no.<sup>1</sup> While biblical criticism dictated that America’s biblical scholars rest their arguments on historical grounds, it also directed one of the nation’s most heterodox figures to abandon those transient grounds in favor of what he understood as a transcendent moral sphere.

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<sup>1</sup> Theodore Parker to Convers Francis, 9 February 1839, Theodore Parker Papers, Massachusetts Historical Society (hereafter MHS).

Parker used historical knowledge to replace transitory biblical texts and figures with a divine intuitive sense as the source of unchanging religious truth. As with his contemporaries, theological understandings shaped his historical sensibilities. However, his rather abstract and minimalist belief—“no master but God, no creed but Truth, no service but Love”—along with his privileging of permanent truths and principles over mutable doctrines, ceremonies and structures, and his distinction between those truths and transient texts, meant that the undermining potential of historical criticism that Hodge, Stuart, and Norton avoided or attacked, posed no threat to Parker.<sup>2</sup> Sure of his direct connection with a timeless God, he could afford to use historical arguments to unchain eternal truths from temporal facts. American proponents of evidential Christianity placed the Bible and its teachings on a presumably firm historical footing. Parker revealed the cracks and breaks in the footing and highlighted its susceptibility to wear and tear. Just as quickly as historical evidence might authenticate a sacred text it might also falsify that text and thus render it banal. Rather than rest his faith on those unstable grounds, Parker centered his belief in an atemporal and innate religious sense. Thus, when evidence established that a text rested on a faulty historical foundation, he painlessly dispatched it as inauthentic. And when historical distance demonstrated the temporariness of an authentic text’s teachings, he dismissed the teachings as antiquated. While orthodox and liberal religionists used historical texts to set aside historical change, Parker used historical change to disregard the teachings of historical texts.

To be sure, Parker believed that portions of the Bible remained useful as the historical expression of true religion and often used it to evidence the universality of an

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<sup>2</sup> Theodore Parker, *A Discourse of Matters Pertaining to Religion* (Boston: Little, Brown, 1842), 377.

innate religious sense, but his beliefs freed him from allegiance to literalist and static meanings and allowed him to posit the text's malleability. The debates over slavery, in which Parker became embroiled in the 1840s and 1850s, cemented his position. He could accept as historically accurate Buckminster's contextual reading of Paul's epistle to Philemon, which affirmed that Paul had directed a slave to return to his master, and then replace that outdated original meaning, formulated in a world quite different from his own, with a universal meaning that had emerged due to what he understood as the development of religion and the progress of freedom. While Parker's religious opponents used historical stasis, grounded in a founding religious text, to combat change, he used historical change, informed by an illuminated conscience, to combat stasis. In the process, both sides brought new attention to historical distance. One did so inadvertently in an attempt to dismiss the use of that distance in interpretation and the other explicitly in an attempt to use it. Historical distance made it easier for Parker to privilege what he identified as present imperatives over outdated past teachings. This approach, which extended to other favored pasts, including the Revolutionary era, became most clear in his contention that whatever the position of the prophets and apostles or the founders and framers on slavery, the present age, as an age of freedom, demanded slavery's abolition. Historicity, it turned out, was a double-edged sword, and in this Transcendentalist's hand, one edge seemed sharper than the other.

Like most antebellum biblical scholars, Parker sought the eternal. Norton, Stuart, and Hodge asserted their canon's transcendence and the timelessness of certain biblical truths, which trumped historical change. Parker, on the other hand, asserted the transcendence of conscience and the timelessness of intuited truths, which trumped the

historical canon and changed the meaning of biblical texts. Both sides used historical insight to reveal the eternal, but because those more orthodox than Parker rested their faith on the increasingly historical foundation of the Bible, discussions focused on that text especially threatened to expose apparently permanent truths as transient facts. To an extent, even Parker's position was suspect. When contextual exegesis exposed the local and transient nature of sacred biblical teachings, it suggested the potential transiency of all truth. Even if Parker's temporally transcendent position protected his truths from the same level of historicization for a time, the discussion contributed to the development toward the idea that all truth is temporally constructed. Distinct paths led to the same destination. Regardless of where these thinkers centered religious truth, each of their approaches to the Bible cultivated historical awareness. Their contextual interpretations exposed the historical differences and distances separating peculiar biblical pasts from the nineteenth-century American present, while creating the intellectual conditions for a similar process that indicated historical dislocation from the Revolutionary era.

Scholars of Transcendentalism have too often emphasized the movement's ahistorical nature without identifying how historical arguments freed heterodox thinkers such as Ralph Waldo Emerson and Theodore Parker in their attempts to build atemporal worlds.<sup>3</sup> As traced in the first chapter, historical argumentation became standard among thinkers across the antebellum religious spectrum. Most used it to ground universal truths in a biblical past, and a few, including some Transcendentalists, to unmoor such truths

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<sup>3</sup> In one recent study, for example, Richard A. Grusin contends that an analysis of their engagement with higher criticism shows that rather than arriving at an anti-institutionalist position, the Transcendentalists came to realize that the self was a historical product resulting from social institutions. Grusin, *Transcendentalist Hermeneutics*.

from that temporal setting. In the process, an awareness of historical distance emerged among these antebellum biblical scholars and religious thinkers, most using it to separate out historically grounded and biblically based eternal truths from temporal facts, and a few, including Parker and Emerson to detach less precarious and permanent atemporal truths from a mutable and transient biblical past.

Transcendentalism's break with New England orthodoxy was not a wholesale renunciation of the past and its lessons, but rather a deep historical critique of the ancient book and world on which Trinitarians and Unitarians grounded their beliefs. Emerson and Parker used historical reasoning to call into question the singular status of the Bible and biblical figures. While the level of their critique was unique, it followed a long tradition of rejecting the authority of one historical era for that of a purer past. During the Reformation, Protestants dismissed the traditional authority that Catholics placed in historical continuity, finding instead change and corruption, and replaced it with the Bible and the primitive church. New England Puritans, in turn, found corruption in Protestant England, and claimed for themselves the early Christian past. Later American restoration movements, such as the Disciples of Christ and the Latter-day Saints, repeated this narrative of corruption and renewal, repudiating the elongated immediate past and seeking union, or at least correspondence, with a distant biblical one.<sup>4</sup> While the above displacements aimed to reclaim the primitive Christian and, in the case of the Mormons, even the ancient Old Testament pasts, Transcendentalists preferred, as Emerson put it, an

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<sup>4</sup> See Leonard Allen and Richard T. Hughes, *Discovering Our Roots: The Ancestry of Churches of Christ* (Abilene, TX: ACU Press, 1988), 94-97; and Samuel Brown, "Mormonism as Restoration," in *Mormonism: A Historical Encyclopedia*, ed. W. Paul Reeve and Ardis E. Parshall (Santa Barbara, CA: ABC-CLIO, 2010), 365-71. See also, Jordan T. Watkins, "Early Mormonism and the Re-Enchantment of Antebellum Historical Thought," *Journal of Mormon History* 38 (Summer 2012): 195-201.

“original relation to the universe.”<sup>5</sup> The primitive past the Transcendentalists sought seemed to extend backward and upward beyond a temporal timeframe. Although their appeal seemed to follow a long tradition interested in restoration and renewal, Transcendentalists broke from that tradition in their emphasis on the present moment. They were not claiming contemporaneity with a pure past or golden age, but rather positing that the present, the eternal now, was pregnant with promise. Still, they did not dismiss as fiction what their intellectual predecessors had upheld as fact; Emerson and Parker maintained that the New Testament and its Jesus corresponded to a historical reality.<sup>6</sup> Though imperfect historical accounts, the Gospels rested on a foundation of some historical truth, making their passages and personages useful. Historicity, however, signified temporal limitation and attempts to evidence authenticity revealed historical distance. Thus, once America’s Christian theologians tied universal religious truth and authority to what was an increasingly historical text, it was left to thinkers such as Emerson and Parker to point out how temporal constraints made that foundation inevitably unstable. Drawing attention to the remoteness and the shiftiness of historical evidence and the limitations of historical time revealed the transience of the historical grounds on which Americans based their faith.

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<sup>5</sup> Ralph Waldo Emerson, *Nature*, in *The Collected Works of Ralph Waldo Emerson*, ed. Robert E. Spiller and Alfred R. Ferguson, 5 vols., (Cambridge, MA: Belknap Press of Harvard University Press, 1971-94), 1:7 (hereafter *Collected Works*). On these developments, see Kemp, *Estrangement of the Past*. I contend that this development reached a new level in the antebellum period when some Americans found distance with even the most pure and useful pasts without recourse to other pasts.

<sup>6</sup> See Hurth, *Between Faith and Unbelief*, 31-76.



*“Peculiar” Old Testament “Usages” and a Gospel for “All Countries and Times”: The Particular and the Universal in Emerson’s Vestry Lectures*

Transcendentalists confronted biblical criticism with a vigor unmatched by any other collection of individuals in the antebellum period. An examination of Ralph Waldo Emerson’s and Theodore Parker’s writings on the topic highlight the variety in Transcendentalist approaches to biblical scholarship and demonstrates the varying implications of those approaches for realizing historical distance. Their interest in biblical criticism’s historical critique emerged within a faithful tradition, as seen in their early uses of biblical scholarship, but the potential for disillusion with that tradition was present from the start. Emerson’s brother William, along with fellow Massachusetts men George Ticknor, George Bancroft, and Edward Everett, encountered Johann Eichhorn’s biblical criticism first-hand as students at Göttingen, a hub of German biblical scholarship. Although Eichhorn was constructive in his approach to the canon, many of his American students perceived the undermining potential of his criticism for a faith grounded in historical fact, which informed their decision to forego careers in the ministry and instead find occupations as literature professors, orators, statesman, and historical writers. Emerson also gave up the ministry after dismissing the necessity of the Lord’s Supper, but not before a short stint (1829-1832) as a pastor in Boston’s Second Church.<sup>7</sup>

The sermons Emerson delivered as pastor included his Vestry Lectures, a series of nine discourses on the Gospels delivered in the spring of 1831. He presented the first lecture at the dedication of the Second Church Vestry on March 1, and the last he gave

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<sup>7</sup> Ibid., 5-30, which includes a discussion of Emerson’s vestries.

two months later on May 3. The lectures focus on the authors of the first three Gospels (Matthew, Mark, and Luke), outline the transmission of their accounts, and provide background and analysis of the early chapters of Matthew. They demonstrate Emerson's early apologetic use of figures such as Johann Michaelis and his students like Eichhorn and Marsh, while also showing the awareness of historical distance that was characteristic of scholars attentive to recent developments in biblical criticism.

Emerson's brief discussion of the synoptic authors shows his grasp of their historical situatedness. He noted, for example, that, "as St. Mark wrote for the immediate use of the Romans, he sometimes gives explanations which were necessary for foreigners though not for the inhabitants of Palestine."<sup>8</sup> Similar to his contemporaries, Emerson recognized that the biblical writers wrote to historically situated audiences. In turning to the transmission of the biblical texts, he traced a neat line from the creation of the King James Bible backward through the efforts of William Tyndale and Myles Coverdale to Saint Jerome and early Church Fathers Origen and Ireneaus. He supposed that "an unbroken chain of evidence" connected "the books from which we now draw our rule of faith and duty with the books first written by the four apostles 1800 years ago." Criticism focused on the transmission of the biblical text soon problematized such streamlined accounts. At this stage, though, Emerson held that God protected the Christian canon, which "outlasted the barbarous institutions of the middle ages—and have now come down safe to our eyes and our ears and our hearts across the vast tract of so many ages of

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<sup>8</sup> Ralph Waldo Emerson, "Emerson's Six Vestry Lectures of 1831," in *Transcendental Epilogue: Primary Materials for Research in Emerson, Thoreau, Literary New England, the Influence of German Theology, and Higher Biblical Criticism*, ed. Kenneth Walter Cameron, 3 vols., (Hartford, CT: Transcendental Books, 1982), 2:722.

war and ignorance.”<sup>9</sup> Emerson asserted the preservation and transmission of the sacred text in spite of decline, corruption, and the passage of so much time. His historical narration, wherein he posited that the canon retained its integrity, paralleled biblical scholars’ historical explications, wherein they asserted that its teachings retained their relevance. In both cases, though, either to insist on the salience of biblical ideas or assert canonical continuity, the use of historical scholarship brought new attention to historical context, change, and distance. Emerson attended to both the history of the text and historical distinction, mentioning, for example, that Ireneaus wrote “very much in the mystical style of the age.”<sup>10</sup> The interest in contextual understanding, more than the review of textual transmission, had the potential to reveal historical distance in a nation where Christians trained their attention on the words of the Bible rather than its creation and life as a text.

Turning to the synoptic Gospels, in particular, Emerson outlined various theories put forth to explain the similarities between the three accounts, citing arguments that the authors had the various texts in their possession or that they drew from a common written source. He preferred, though, the alternative explanation provided by Johann Karl Ludwig Gieseler, another Göttingen scholar, which drew attention to an important “difference of circumstances,” including the fact that “not books but *oral instruction* was the great mode of communication in that age.” Emerson held that an examination of this approach “will show satisfactorily why any darkness hangs over this history and why the microscopic criticism that has been directed towards it has served to confirm rather than

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<sup>9</sup> Ibid., 2:727.

<sup>10</sup> Ibid., 2:726.

shake the faith of inquirers.”<sup>11</sup> The prominence of an oral tradition in the period accounted for both the similarities and the differences between the accounts. The early Emerson, like his predecessor Edwards and his contemporary Stuart, believed that historical criticism confirmed the Bible’s authenticity. But, as with Norton, pointing out historical particularities to authenticate the text tended to historicize the biblical past.

In turning his attention toward the background to Matthew’s Gospel, Emerson retained his apologetic tone, writing of the Jews that “the unbeliever in vain throws doubts on their miraculous history.” While noting “usages so peculiar” to that people, he found in their laws the foundation of modern legal codes. “Whence came those [laws],” he stated, “wonderful and connected with strains of religious poetry the most sublime, if the history is not true—[laws] which presuppose the truth of the history and connected too with historical actions and confirmed by [the] concurrent history of other nations, which were done in the belief of this history.” The endurance of Jewish law, the historical writings of Josephus, and accounts of modern travelers attested to the veracity of Hebrew scripture.<sup>12</sup> Historical research authenticated biblical texts, but it also drew attention to the historical peculiarities of their ancient peoples.

While using recent scholarship to authenticate the Bible, Emerson also showed an interest in identifying permanent religious truth, again highlighting how historical criticism directed America’s biblical scholars to acknowledge and account for historical difference through an appeal to accommodation. In his discussion of the first few chapters of Matthew, Emerson posited that “the human mind is the same when it opens itself to the light in Judea or in Greece [or in] Rome or in America.” This interest in a

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<sup>11</sup> Ibid., 2:727-30, quotation on 729, emphasis in original.

<sup>12</sup> Ibid., 2:730-34, quotations on 730.

universal nature of religious sentiment fast became a central pillar of Transcendentalist thought and would soon support the idea that though historical and useful, the New Testament and its Christ were unessential in the search for salvation, and Philemon and its author Paul were irrelevant in addressing the slavery crisis. At this juncture, however, Emerson focused on the universal meaning of the words ascribed to Christ.<sup>13</sup>

Although his message was universal in meaning, Emerson explained that “Jesus adopted [the Jews’] language to impart a new and a sounder sense,” and thus one should guard against a strict literal reading of the text, and, even further, one should allow that through such accommodations mistaken beliefs found their way into the text.<sup>14</sup> As an example, he cited Matthew 4:24, which makes reference to demonic possession.

Anticipating discussions surrounding the miracles controversy that would break apart American Unitarianism, Emerson attributed the presence of such an idea to then prevalent understandings. “It is maintained,” he wrote “that this was a popular superstition of the Jews which they received when they were in captivity ... and that Jesus accommodated his words to the usual modes of speech.” Emerson noted that “the apostles and evangelists” also used “these expressions which in their time were in common use.” As with Unitarians like Channing and Norton, Emerson found accommodation in both language and meaning, and asserted the truth and relevance of those meanings perceived to be timeless, but he also seems to have anticipated his later stance on the other side of the debate over New Testament miracles, when he regarded

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<sup>13</sup> Ibid., 2:730-38, quotation on 731.

<sup>14</sup> Ibid., 2:731.

the Unitarian investment in those miracles, which historical evidence might disprove, as misplaced.<sup>15</sup>

Indeed, Emerson's early transcendentalist leanings, as much as his Unitarian faith, informed his early search for permanent truths. In an addendum to the lectures, he referenced the love at the heart of Christ's beatitudes and wrote that "it is this sense that fits the Gospel to all countries and times." Perhaps speaking of the Mosaic Law in particular, rather than the later Jewish law that he had previously lauded, he stated that "the Jewish code is not only a burdensome ceremony but a local code fit for that particular region—fit only for a small country." In contrast, he contended that, "With the law of *love* at the bottom, [the Sermon on the Mount] is as good at Rome as [at] Jerusalem—at Boston as at either. It is for all places where the human heart beats. . . . It is for the soul. If this whole system of worlds, this universe of matter, should pass away it would still be eternally true that purity and love and wisdom would be heaven or the right and happy state of the soul as it was nineteen centuries ago to the little company of poor Jewish peasants whom Jesus Christ addressed."<sup>16</sup> Again, Transcendentalists such as Emerson and Parker also sought the eternal, but reducing the permanent and universal component of the Bible to a basic element of Christian love signaled the surfacing of a minimalist position that designated the rest of the Bible's content as local, transient, and forgettable. It cultivated greater cognizance of temporal distance and robbed the Gospels and Christ of their exceptional historical roles.

Emerson publically articulated a more advanced formulation of these ideas in his Harvard Divinity School Address (1838), years after he had resigned from the pulpit and

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<sup>15</sup> Ibid., 2:735.

<sup>16</sup> Ibid., 2:738.

left behind much of his interest in biblical scholarship. As with his brother and other Harvard graduates who had studied in Germany, biblical criticism informed Emerson's choice of a career outside the ministry as an orator and his decision to turn from biblical topics. Emerson's philosophical stance in the late 1830s and early 1840s assumed historical distance from the biblical past, but he was no longer concerned with providing close contextual analysis of biblical passages. While he chose to turn from the ministry, Theodore Parker struggled to preserve his place at the pulpit and retained a keen interest in biblical studies. In his writings and speeches, the potential to uncover and highlight historical distance from the biblical past was especially pronounced.

*“Not Common Historical Ground”: Theodore Parker and the Transience of the Testaments*

Similar to Emerson, Parker's early writings on biblical topics show a rather orthodox understanding of scripture giving way to a more critical approach. Within the period of a decade, he moved far beyond the exegetical positions of the Unitarians. One way to trace this development is through his engagement with the biblical criticism of two German scholars: Wilhelm Martin Leberecht de Wette and David Friedrich Strauss. De Wette showed Parker historical problems with the Old Testament texts, while reinforcing his belief in an essential inner religious sense, and Strauss unveiled to him historical issues with the Gospels. The biblical debate over slavery, which tested canonical loyalties among a number of antislavery readers, would further cement this approach to the testaments. Parker held some reservations about German biblical scholarship, including Strauss's reading of the Gospel accounts as myths representative

of the time in which they were written, but his religious convictions allowed him to uniquely engage some of the period's most devastating biblical critiques without fear of losing his faith. In turn, he became less attached to more of the Bible, which allowed him to dismiss most of its texts and teachings as relics of a bygone era.<sup>17</sup>

But in the early 1830s, even after Unitarians such Andrews Norton and William Ellery Channing had left behind the Old Testament and promoted contextual interpretations of the New, Parker viewed the Hebrew Bible as an accurate historical account. In 1832, he wrote a text for student use entitled, "A History of the Jews," in which he presented a straightforward narrative that showed an orthodox approach to Old Testament miracles. Soon, though, Unitarian minister Convers Francis introduced Parker to biblical criticism and within two years he began a seven-year project of translating De Wette's historical introduction to the Old Testament, *Lehrbuch der historisch-kritischen Einleitung in die kanonischen und apokryphischen Bücher des Alten Testaments* (1817), which demonstrated a shift in his thinking to a more critical approach.

Informed by Immanuel Kant's religion of reason, Friedrich Schelling's view of the Bible as the expression of the Absolute, and Jakob Friedrich Fries's distinction between understanding (reason) and revelation (Reason), De Wette aimed to unhinge the religious significance of the Bible from historical facts. He viewed Old Testament miracles as mythic expressions of ancient Hebrew faith. This protected the ancient scriptures from the unsettling historical criticism of scholars such as Eichhorn and Bauer,

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<sup>17</sup> On Parker's prolonged engagement with biblical criticism, including the writings of figures such as De Wette and Strauss, see Dean Grodzins, *American Heretic: Theodore Parker and Transcendentalism* (Chapel Hill: University of North Carolina Press, 2002), a source that I rely on for general information about Parker's thought and biblical scholarship.



who, in search for historical information brushed aside supernatural embellishment and discarded central narratives with deep symbolic meaning. In contrast, while De Wette dismissed the historical value of the Pentateuch, he accepted much of the Hebrew scriptures as religious poetry representative of ancient thought. Perhaps the Old Testament did not constitute an accurate account of past events but did capture ancient instantiations of divine revelation. De Wette approached the New Testament in a similar manner, preferring to measure the religious value of the ideas expressed therein according to the religious ideal—or Reason—rather than in terms of their relationship to historical events. Contending that faith resulted from Reason distinguished him from the supernaturalists and the naturalists, both of whom measured revelation according to reason. Still, he asserted that the Gospels rested on enough of a historical foundation and believed Christ to be the historical expression of the ideal. So, when Strauss's *Das Leben Jesu, Kritisch bearbeitet (Life of Jesus, Critically Examined)* was published in 1835, De Wette granted that his compatriot had raised important questions about the historicity of the Gospels, but argued that the scarcity of extra-synoptic and extra-biblical contemporary accounts arrested Strauss's critique. De Wette believed that a lack of historical evidence undermined the mythological approach and thus remained confident in Jesus's role as Christianity's founder. This time, historical skepticism undermined the work of the skeptic.<sup>18</sup>

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<sup>18</sup> On De Wette's thought and his biblical criticism, see John W. Rogerson, *W.M.L. de Wette, Founder of Modern Biblical Criticism* (Sheffield, UK: Sheffield Academic Press, 1992). On the relationship between De Wette's biblical criticism and the emergence of historical consciousness in the West through the works of historian Jacob Burckhardt, see Howard, *Religion and the Rise*.

Parker's "Report on Germany Theology," which he read before the Philanthropic Society at Harvard in 1836, shows an early attachment to De Wette and an awareness of the German intellectual context. Parker had begun attending the Divinity School in the spring of 1834 and in the fall of 1835 he began editing the *Scriptural Interpreter*, which fed subscribers a steady diet of biblical criticism and further exposed Parker to German writings. In contrast to American attacks on German thinkers as infidels and atheists, which his countrymen would soon direct at him, Parker believed that history showed that the Germans possessed a natural inclination toward religiosity.<sup>19</sup> He narrated the history of German theology and biblical scholarship from Luther up to the more recent writings of Reimarus, Michaelis, Semler, Kant, Herder, Eichhorn, Fichte, Schleiermacher, Schelling, De Wette, and Bauer. He separated strains of contemporary German religious thought into four categories: deists and freethinkers; naturalists; rationalists; and supernaturalists. Dedicating most of his space to those he labeled rationalists, which he divided between thinkers who argued that religion originated in understanding from those who posited that it originated in feeling, Parker showed his affinity with the second group, which included De Wette. He wrote, "the fact that religion does originate in the feelings is one of the grandest discoveries of modern times." But in this report, Parker remained focused on the first group and their scriptural hermeneutic. He referenced Bauer on the Old Testament and Paulus on the New, and explained how both scholars accounted for biblical miracles by referring to the age of the world in which the texts

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<sup>19</sup> Hurth's *Between Faith and Unbelief* attends to the fears of German religious thought exhibited among a number of antebellum America's religious thinkers. See also, Lee, *Erosion of Biblical Certainty*, 111-72.

were written, for “what are miracles to one age are not so to another.”<sup>20</sup> The mythical nature of biblical passages attested to the antiquity of the biblical texts, but it also highlighted the historical distance between biblical pasts and the present.<sup>21</sup>

Reading, translating, and editing De Wette likely informed Parker’s separation of the Old from the New Testament. Contemporaries like Channing and Norton had already made that canonical distinction without the German’s help. Parker outlined problems with the Hebrew scriptures in various writings from the period, including a pair of sermons he formulated on “The Contradictions in Scripture,” which he wrote in 1837, but did not deliver until 1839. In the first sermon, he challenged the Old Testament’s narration of the creation as a six-day event, its early depictions of God in physical form, and its moral contradictions, including its presentation of the Canaanite massacre as a divinely commanded and sanctioned act. He would soon fix his attention on the moral contradiction of ancient slavery, but in the second sermon, he described the Bible itself as a contradiction, privileging the New over the Old Testament, as was common among liberal Christians. He believed that historical evidence required him to distinguish the Greek from the Hebrew scriptures, but his emphasis on internal religion, which he found clearly articulated in the teachings and example of Jesus, directed that distinction. Soon, though, Parker began to wonder if the New Testament might be a collection of myths as well, and another German scholar guided him down that path.<sup>22</sup>

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<sup>20</sup> Theodore Parker, “A Report on German Theology Read Before the Philanthropic Society in Divinity College, Harvard University,” in *Transcendental Epilogue*, 2:706-20, quotations on 709 and 712.

<sup>21</sup> On Parker’s studies, writings, and thought from this period, see Grodzins, *American Heretic*, 41-74.

<sup>22</sup> On “The Contradictions of Scripture” and Parker’s other writings from this period, see Grodzins, *American Heretic*, 150-65.

Parker first read Strauss's *Life of Christ* in 1837 and the critiques that the German theologian raised soon began to weigh on the American theologian's mind. As Dean Grodzins writes, "If some in New England saw Schleiermacher and De Wette as infidels thinly disguised, most thought that Strauss had torn off the mask."<sup>23</sup> The supernaturalists interpreted scriptures literally and the rationalists explained them naturally, but both believed in the historicity of the Gospels. Strauss, on the other hand, contended that the narratives emerged through an unconscious myth-making process and thus reflected the beliefs of the times in which they were produced. This reading suggested that the Gospels revealed more about the mindset of the writers than the actions and teachings of a figure named Jesus. The question Strauss raised was not how much Christ had accommodated to the traditions and customs of the Jews, but rather how much the authors of the Gospels had unintentionally used local beliefs and mentalities to create myths around a historical figure identified as Jesus. This kind of historicization undercut the historicity of the Gospels, leaving those who had dug in their heels on historical grounds sinking in quicksand. It also exposed the cultural differences separating New Testament and modern times by pointing out the peculiar historical nature of the biblical past.

By the time William Ellery Channing urged him not to translate, and William Ware, editor of the *Christian Examiner and General Review*, asked him to critique, Strauss's controversial publication in 1839, Parker, who had demonstrated a keen interest in the historical accuracy of the Gospels, began doubting the reality of the miracles depicted within its pages. However, warned that Ware would not publish a controversial review, Parker repressed his private thoughts. Seeming to don the cap of an apologist, he

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<sup>23</sup> Ibid., 187.

informed readers that Strauss's publication would have been more adequately titled, "A Fundamental Criticism on the Four Gospels," and labeled it a "conjectural history."<sup>24</sup> Like Stuart and De Wette, Parker could play apologist in pointing out the conjectural nature of historical research.

However, he would not hide the difficult problems the work raised. Indeed, in summarizing its introduction, Parker made a statement that represents one of the antebellum era's clearest articulations of the idea that historical distance resulted from a historical explication of sacred texts from favored pasts. Neatly encapsulating the inevitable problem that temporal distinction created for Christianity, he wrote that "if a form of religion rest on written documents, sooner or later, there ensues a difference between the old documents and the modern discoveries and culture shown in works written to explain it."<sup>25</sup> This statement not only highlighted the problem of historical distance for Protestants, but it also anticipated a similar development among Americans who looked to a document from a set period in the past for legal guidance. Modern historical investigation of historical texts drew attention to the dissonance between past and present cultures. Parker wrote of the distance from the biblical past that the critic may acknowledge the dissonance or "blind himself to this inconsistency, and seek merely to unfold the original meaning of the text."<sup>26</sup> He would later highlight this dissonance to condemn proslavery readings of the Constitution, which, in his opinion, aimed to uncover original meaning without a proper understanding of the founding era or of developments

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<sup>24</sup> Theodore Parker, review of *Das Leben Jesu, Kritisch bearbeitet*, by David Friederich Strauss, *Christian Examiner and General Review* 28 (July 1840): 273-316, quotation on 274.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid., 275.

since then. In the review, he proceeded to trace developments in scriptural interpretation, noting instances in which readers had used non-literal readings to account for inconsistencies. He referenced the work of Eichhorn and Heinrich Paulus on the Old and New Testaments, respectively, and outlined the mythical response of De Wette and others. This brought Parker to Strauss, who applied the mythical interpretation to the Gospel accounts of Jesus's last three years, which even De Wette assumed were authored by eyewitnesses. Strauss regarded them "as spurious productions of well-meaning men, who collected the traditions that were current."<sup>27</sup> He made the Gospels historical not by evidencing their historical accuracy, but by showing how the texts reflected the mentality of a specific time and place.

Strauss defined myth as an unhistorical and fictive account. In his view, witnesses' accounts are unhistorical if they counter the known laws of causality and contain circumstantial contradictions, and are fictive if they are poetical in form and agree in substance "remarkably with the preconceived opinions of the community where [they] originate."<sup>28</sup> Parker explained how Strauss applied this approach to the narrative of John the Baptist, Jesus's birth, his public ministry, his miracles, his death and resurrection. Of the appearance of a "miraculous star," for example, Parker summarized Strauss's position that "the whole story is mythical, and is derived from ideas and opinions commonly held at the time. The ancients," he summarized, "believed a heavenly body sometimes appeared on great occasions, for example, a comet, at the birth of Mithridates, and at the death of Julius Caesar. ... In ancient times, it was supposed stars

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<sup>27</sup> Ibid., 281.

<sup>28</sup> Ibid., 283.

guided men.”<sup>29</sup> An understanding of the ancient mythic mindset explained the miraculous. The same was true with accounts of possession: “It was a common opinion of the Jews, that certain diseases were caused by demons; Jesus himself seems to have shared this opinion.”<sup>30</sup> In his Vestry Lectures, Emerson proposed that Jesus had accommodated to the opinions of the times on this point but Parker seemed to agree with Strauss’s idea that even Jesus had held these outdated views. Parker would later advance this position more explicitly. This approach could authenticate teachings, as Bauer, and even Jonathan Edwards, had shown with the Old Testament, or as Norton had demonstrated with the New. Parker noted, for example, that “Strauss thinks the controversial discourses of Jesus are genuine, because they correspond so closely to the spirit and tone of rabbinical explanations of Scripture, at that time.”<sup>31</sup> But referencing the “spirit and tone” of the time to authenticate certain teachings undermined their present relevance. In a sense, Parker finished what Edwards’ had started, but rather than use historical proofs to confirm the Bible’s divinity, he admitted historical evidence that demonstrated its temporality. Still, although Parker recognized that Strauss’s approach rested on an awareness of historical distance, a position he was sympathetic with, he remained invested in the permanent he found in the Gospels.

Before offering a brief critique, Parker attended to Strauss’s concluding treatise, noting his Hegelian-informed philosophical position that the ideal rested in humanity rather than in the figure of Jesus. This immanent interpretation of Hegel’s concrete universal set the stage for Feuerbach to completely unhinge Hegelianism from its

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<sup>29</sup> Ibid., 287-88.

<sup>30</sup> Ibid., 300.

<sup>31</sup> Ibid., 297.

Christian bearings.<sup>32</sup> The anthropomorphizing move paved the way for another revolution in historical thinking—the understanding that “men make their own history,” even if “they do not make it as they please.”<sup>33</sup> Parker, though, who rejected Hegel’s dialectic in favor of a Platonic idea of God, remained focused on the Gospels and their Christ.<sup>34</sup> He viewed the idea that the Gospels were inauthentic as more presupposition than proof, noting Strauss’s reliance on internal evidence and his neglect of “the [external] evidence of Christian, Heretical, and even Heathen Antiquity.”<sup>35</sup> As with De Wette, Parker found the German unconvincing in his historical argumentation and too liberal with his mythical approach, writing that “men do not make myths out of air, but out of historical materials.”<sup>36</sup> Rather than accept the mythical interpretation or the opposed supernaturalist reading, which posited the historical validity of the Bible as a whole, Parker adopted a middle-way approach, which held that the New Testament, at least, “always rests on historical ground, though it is not common historical ground, nor is it so rigidly historical

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<sup>32</sup> On the development in Hegelianism toward a humanism that displaced the ideal in its emphasis on the human, and on Strauss’s crucial role in forming the Hegelian Left that completed the shift, see John Edward Toewes, *Hegelianism: The Path toward Dialectical Humanism, 1805–1841* (New York: Cambridge University Press, 1980).

<sup>33</sup> Karl Marx, “The Eighteenth Brumaire of Louis Napoleon,” in *Marx and Engels Collected Works*, trans. Richard Dixon et al., 50 vols. (London: Lawrence and Wishart, 1975-2005), 11:103.

<sup>34</sup> Elizabeth Hurth may be right to point out that Strauss’s views, including his Christian humanism, brought Unitarians and Transcendentalists closer together, at least in terms of defending the Gospels as based in historical fact. Hurth’s attention to the distinctions between American Transcendentalists and figures such as Strauss and Feuerbach seems to undermine her argument that “the tendencies toward atheism were inherent in Transcendentalist thought.” Hurth, *Between Faith and Unbelief*, 2. She seems to accept the Unitarian critics at their word that Transcendentalism led to atheism. On the influence of Platonism on Parker in comparison to German idealism, see Grodzins, *American Heretic*, 137.

<sup>35</sup> Parker, review of *Das Leben Jesu*, 308.

<sup>36</sup> *Ibid.*, 309.



that no legendary or mythical elements have entered it.”<sup>37</sup> He thus held that “if there was not an historical Christ to idealize, there could be no ideal Christ to seek in history,” while still critiquing the modern desire to obtain a full rendering of Christ. Following De Wette, he suggested that not even the apostles, “though they were eye-witnesses, had such a complete, consistent, and thoroughly historical picture of the life of Christ, as we seek after.” As with some of his contemporaries, Parker showed an awareness of the limits of historical interpretation, even as he championed it as the best available approach. Parker was relieved to find that Strauss, in the third edition of the work, recognized the shortcomings of his historical critique and left room for Jesus in history.<sup>38</sup> Parker felt that enough historical material existed to confirm but not deny his life: “if we cannot *prove* all things, we can hold fast to enough that is good.”<sup>39</sup> He conceded that Strauss’s text—“the production of the age”—had initiated an unprecedented crisis for Christian believers, compared him to Spinoza—“both struck at the most deeply cherished doctrines of their times”—and described his work as “colder than ice” and labeled it “the most melancholy book we ever read.”<sup>40</sup> But, Parker professed that it did not remove “the Redeemer’s image” which “has been stamped ineffaceably on the hearts of men.”<sup>41</sup> This affirmation did not signify a belief in the necessary authenticity of the Gospels, but rather that essential Christianity had found historical expression in Jesus.<sup>42</sup>

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<sup>37</sup> Ibid.

<sup>38</sup> Ibid., 313. See Grodzins, *American Heretic*, 242-43.

<sup>39</sup> Ibid., 310, emphasis in original.

<sup>40</sup> Ibid., 314.

<sup>41</sup> Ibid., 316.

<sup>42</sup> On Parker’s reading and review of Strauss, and his other studies and writings in his period, see Grodzins, *American Heretic*, 129-90.

Through readings, translations, and reviews of De Wette and Strauss, Parker came to the conclusion that some biblical texts stood on a firmer footing than others, including the accounts of the life of Christ, but he also followed these scholars in unhinging his religious belief from biblical texts, including those deemed authentic, which rested on grounds that new evidence might unsettle. He followed De Wette, in particular, in locating the source of religious belief in an innate religious sense. Both this emphasis and historical evidence led Parker to appreciate the New more than the Old Testament. In the teachings of the New Testament Christ, Parker discovered truths that corresponded to the truths emanating from his soul, and it was on this basis, and not on that of Christ's miracles, that he remained invested in the historicity of the Gospel accounts.

*"I See Not How a Miracle Proves a Doctrine": Parker, the Miracles Controversy and the Permanence of the Religious Element*

Though his review, completed on 1 April 1839, fit comfortably in the Unitarian *Examiner*, Parker himself had grown uneasy with Unitarianism. Around the time of its completion and months before its publication in July, he contributed to the growing division between Unitarians and Transcendentalists. He entered the acrimonious miracles controversy, a New England polemic that erupted when Unitarians, including Andrews Norton and George Ripley, took opposing positions in a pamphlet war over the relationship between Christianity and Christ's New Testament miracles. In an article on Schleiermacher, Ripley praised the German theologian's emphasis on intuition-based religious experience, and in a review of James Martineau's *The Rationale of Religious Enquiry* (1836), he agreed with the English theologian's move to sever the evidentialist

tie between Jesus's miracles and his gospel message.<sup>43</sup> In his reply, Norton damned Ripley's reasoning as heretical and forcefully asserted the necessity of a link between the authenticity of the Gospels and the reality of Christ's miracles.<sup>44</sup> Thus, while figures such as Norton argued that Christian faith depended on the historicity and literality of the accounts of Christ's miracles, figures such as Ripley, who granted that such miracles might have occurred, saw no such necessary relationship.

Another prominent Transcendentalist soon threw his weight behind those emphasizing a faith centered in an internal religious sense rather than grounded on external evidences. In his infamous address to the Harvard Divinity School's graduating class of 1838, Emerson leveled a powerful blow in the battle over the relationship between Christ's miracles and Protestant belief. There, he stated that Christ "spoke of miracles" but quickly qualified that statement in clarifying that Jesus "felt that man's life was a miracle." Christ "saw with open eye the mystery of the soul," Emerson explained, he saw a direct pathway from God, the divine fount of religion, to the human soul.<sup>45</sup> The Galilean's salvific message rested not in an atoning sacrifice but rather in the teaching that each human possessed divine attributes and a revelatory prerogative. His exceptional status depended on the fact that he was, as Emerson stated, "the only soul in history who

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<sup>43</sup> [George Ripley], review of *Recollections of Schleiermacher*, by Friedrich Lücke, *Christian Examiner and General Review* 20 (March 1836): 1-46 (APSO); and George Ripley, review of *The Rationale of Religious Enquiry*, by James Martineau, *Christian Examiner and General Review* 21 (November 1836): 225-54 (APSO).

<sup>44</sup> Andrews Norton, [Letter to the Editor], *Boston Daily Advertiser*, 5 November 1836, 2. For Ripley's response, see George Ripley, [Letter to the Editor], *Boston Daily Advertiser*, 9 November 1836, 2.

<sup>45</sup> Ralph Waldo Emerson, "An Address Delivered Before the Senior Class in Divinity College," in *Collected Works*, 1:76-93, quotations on 81.

has appreciated the worth of man.”<sup>46</sup> Drawing attention to Protestant contemporaries’ sense that miracles stood in opposition to or apart from nature, Emerson also lamented that “miracle” “is not one with the blowing clover and the falling rain.” He believed that verbal misuse had turned “Miracle” into an epistemological and theological “Monster.”<sup>47</sup> Belief in Christianity had mistakenly come to rest on whether or not Gospel miracles reflected ancient realities. In shifting his evidentiary weight to the indwelling presence of the divine in nature and, above all else, in the soul, Emerson struck at Unitarianism’s shaky foundation of belief.

Righteous indignation reigned down from America’s Christian watchtowers. As expected, Norton, who had turned his attention from schooling Congregationalists in biblical interpretation to raising the spectre of Transcendentalism, was at the forefront of those signaling the warning. A year after Emerson’s address, “the Unitarian Pope,” who had been in the audience, delivered an address of his own to the alumni of the Harvard Divinity School, which included others who also had been present at Emerson’s oration the previous summer. Norton sought to not only respond to Emerson but also aimed to address the larger disease of which he believed Emerson was a symptom. Citing recent political and intellectual attacks on traditional powers and modes of thought, Norton warned that a new form of infidelity, one that had been spawned “in Europe, and especially Germany, has made its way among a very large portion of nominally Christian theologians.”<sup>48</sup> Like Spinoza, Norton explained, these theologians used orthodox terms to mask heretical and even atheistic notions. What was at the heart of the debate? “The

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<sup>46</sup> Ibid., 1:82.

<sup>47</sup> Ibid., 1:81.

<sup>48</sup> Andrews Norton, *A Discourse on the Latest Form of Infidelity* (Cambridge, MA: John Owen, 1839), 9.

latest form of infidelity is distinguished by assuming the Christian name, while it strikes directly at the root of faith in Christianity, and indirectly of all religion, by denying the miracles attesting the divine mission of Christ.”<sup>49</sup> In stressing the ultimate implications of that denial, Norton made clear the historical nature of those religious roots, stating that to “deny that a miracle is capable of proof ... is, in effect ... to deny the existence of God.”<sup>50</sup> Miracles, external evidences, proved God’s reality. And New Testament miracles, as historical facts, proved Christianity’s truth.

Outlining the recent German approaches to New Testament miracles, Norton explained that some scholars spoke of them as exaggerated natural events, others as “prodigies, adapted to rouse the attention of a rude people, like the Jews; but not required for the conviction of men of more enlightened minds,” and still others denied them outright.<sup>51</sup> Norton argued that Christ’s “whole history, as recorded in the Gospels, is miraculous,” and thus, in explaining away the miracles one inevitably threw out the Gospels too. “If the accounts of Christ’s miracles are mere fictions,” as some claimed, “then no credit can be due to works so fabulous as the pretended histories of his life” and no one can regard Christ himself “as an object of veneration or to consider his teachings ... as of any importance to himself.”<sup>52</sup> This was an all-or-nothing equation: either the miracles were factual occurrences, and Jesus was the Christ, and, thus, Christianity was true, or they were fictions and Christianity was a farce. Norton conceded that “certainty, in the metaphysical sense of the word, has nothing to do with the concerns of men,” but he, similar to Edwards in the previous century, upheld historical evidence, understood

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<sup>49</sup> Ibid., 11.

<sup>50</sup> Ibid., 14-15.

<sup>51</sup> Ibid., 22.

<sup>52</sup> Ibid., 23, 29.

through the use of reason, as the surest foundation of human knowledge about religious truth.<sup>53</sup> He thus protested against the “rejection of all that mass of evidence, which in view of a Christian, establishes the truth of his religion.” As he saw it, the Germans and their American followers “complain, that the solid earth is not solid enough for them to rest on. They have firm footing on the clouds.”<sup>54</sup> Norton’s characterization was not far off. The Transcendentalists did find the historical grounds “not solid enough,” and surely they realized that their more abstract footings were less susceptible to the undermining potential of rigorous historical examination. Norton, though, contended that “there can be no intuition, no direct perception, of the truth of Christianity.”<sup>55</sup> Intuition might not fall prey to historical criticism, but it provided no surer epistemology of truth, and indeed conscience seemed to lack any kind of foundation whatsoever.

In the appendix of the published version of this address, Norton included “SOME FURTHER REMARKS ON THE CHARACTERISTICS OF THE MODERN GERMAN SCHOOL OF INFIDELITY,” and a second note “ON THE OBJECTION TO FAITH IN CHRISTIANITY, AS RESTING ON HISTORICAL FACTS AND CRITICAL LEARNING.” In both, he focused on the historical foundation of Christian faith. He pointed to De Wette and Schleiermacher as examples of German theologians who placed faith in “a pious apprehension of things” and who argued against faith “being founded on a historical acquaintance with Christianity.”<sup>56</sup> He noted that Strauss went even further in arguing that the Gospels were “destitute of historical truth.”<sup>57</sup> In Norton’s framework, that conclusion demolished

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<sup>53</sup> Ibid., 33.

<sup>54</sup> Ibid., 30.

<sup>55</sup> Ibid., 32.

<sup>56</sup> Ibid., 41.

<sup>57</sup> Ibid., 46.

Christian faith. Such thinkers seemed to hold that “Christianity is no permanent thing, but must, with the advance of men, go on improving, and divesting itself more and more of its historical relations.”<sup>58</sup> Holders of such a position stood little to lose in the face of historical distance. Indeed, the position depended, in some sense, on the recognition of that fact. Norton, despite his heavy-handed approach, could be quite perceptive in his critiques. In Parker’s case, while he actually believed with Norton that “true Christianity is always the same,” he had a more minimalist and atemporal understanding of Christianity and did, in fact, hold that the innate religious sense, used to perceive Christian truth, became less obstructed over time.<sup>59</sup> In January of 1839, he had written to Convers Francis, asking whether he thought “the apostles understood Christianity as well as some in these times?”<sup>60</sup> Parker certainly did. This sort of thinking and these sorts of questions proved influential when confronted with contextual explanations of the apostles’ and, later, the American founders’ approach to the moral issue of slavery. Yes, he would grant, perhaps they did sanction slavery, but, he would stress, their historical contexts had blinded them to the sin, and progress since then had removed the blinders.

In his second note, Norton addressed the objections to the idea that Christian faith rested on historical grounds, asserting that “there is ... no other mode of establishing religious belief, but by the exercise of reason, by investigation, by forming a probable judgment upon facts.”<sup>61</sup> Such facts, though ascertained “by only a comparatively small portion of” learned men, could be distilled and enjoyed as “a common property and a

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<sup>58</sup> Ibid., 43.

<sup>59</sup> Ibid., 48.

<sup>60</sup> Theodore Parker to Convers Francis, 8 January 1839, Theodore Parker Papers, MHS.

<sup>61</sup> Norton, *Discourse*, 53.

common blessing” by the mass of humanity, but the foundations of De Wette and his ilk seemed understandable only to an initiated few.<sup>62</sup> Norton stressed that epistemological dependence on an elite group was characteristic of all fields of inquiry and contended that nothing “gives to Christianity a different character from what belongs to all the higher and more important branches of knowledge.”<sup>63</sup> Norton did not notice that in characterizing knowledge of truth as of the same epistemic makeup as other subjects, he helped denude Christianity of its supernaturalism. And he did not realize that in resting his faith on historical grounds, he and others like him contributed to the growing awareness that historical peculiarities could be used to disprove the New Testament texts and historicize the New Testament past just as easily as they could be used to authenticate the Gospel accounts. He proposed that exegetes interpret the Bible as scholars read other ancient texts and suggested that adherents approach Christianity as they might approach other historical subjects. In fact, Norton had already done that very thing in the first of three volumes of his *Evidences of the Genuineness of the Gospels* (1837-1844). He marketed his works in drawing attention to their principal subject—“the genuineness of those books.” Norton was no longer preoccupied with whether orthodox readers like Moses Stuart attended to circumstances in their interpretations, he now fixated on defending the authenticity of the Gospels with historical reasoning.

Indeed, in a surprising move, Norton now called on those more orthodox readers for help. A volley of exchanges between he and Ripley followed Norton’s *Discourse*.<sup>64</sup>

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<sup>62</sup> Ibid., 55.

<sup>63</sup> Ibid., 59.

<sup>64</sup> For Ripley’s responses to Norton, see George Ripley, *Letters on the Latest Form of Infidelity, Including a View of the Opinions of Spinoza, Schleiermacher, and De Wette* (Boston: James Munroe, 1840).



The level of Norton's contempt became evident when he put to use an article written by Princeton Presbyterian Charles Hodge—which included a cutting review of his own *Discourse*—a portion of which he reprinted as a pamphlet along with a biting critique of Transcendentalism that Hodge's co-religionists James Alexander and Albert Dod had written.<sup>65</sup> Alexander and Dod exposed Emerson's affinities with the Germans and Victor Cousin, their French counterpart, and excoriated his exaggerated opinion of man, which undercut the authority of God.<sup>66</sup> For his part, Hodge rejected Norton's reliance on miracles as the sole evidential grounds of Christian belief, holding up the Bible as a whole as proof of Christian truth. Hodge's foundation, though, remained historical. He also exposed Emerson's philosophy as Hegelian, aligning him with the heretical Strauss.<sup>67</sup> When Norton used Hodge to combat Transcendentalism, Parker entered the fray, picking up where Emerson had left off. In response to Norton, he published a satirical announcement of the former's pamphlet, an elucidating essay on Transcendentalist views, and a damning "Desultory Notice." In the short notices, he briefly dismissed the arguments of Hodge for his reliance on Berlin biblical literalist E.W. Hengstenberg, and those of Alexander and Dod for their ignorance of German

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<sup>65</sup> [J. W. Alexander, Albert B. Dod, and Charles Hodge], *Transcendentalism of the Germans and of Cousin and Its Influence on Opinion in the Country* (Cambridge, MA: John Owen, 1840).

<sup>66</sup> For the Alexander and Dod review alone, see "Review 3," *Biblical Repertory and Princeton Review* 9 (January 1839): 95-101 (APSO).

<sup>67</sup> On Hodge's response to Transcendentalism, see Gutjahr, *Charles Hodge*, 227-34.

philosophy.<sup>68</sup> But it was in the more substantial essay, which Parker penned under the pseudonym of Levi Blodgett, that he aimed at the heart of the debate.<sup>69</sup>

In addressing the question of whether miracles form the basis of belief in Christianity, Parker attempted to establish, through philosophical and historical demonstration, the universal presence of an innate religious element, which, he contended, led the human soul to believe in, and recognize one's dependence on, God. Parker used historical evidence to buttress his claims rather than serve as their foundation, and thus he could use such evidence without contradicting his belief in a non-historical source of religious truth. In accounting for perceived differences in awareness and evidence of the "higher faculties of the soul" among past peoples and prophets, he emphasized the "progress and development of religion in man."<sup>70</sup> Parker posited that "as the tribe of race improves, the manifestations of religion become more perfect. The form changes to suit the culture of the age."<sup>71</sup> He believed that while religious truth remained constant, its expressions became clearer as religious forms developed and accommodated to more enlightened circumstances. Although teleological and in some ways similar to enlightenment thinkers' turn from tradition and their emphasis on progress, this idea fostered an awareness of historical difference and change, and of distinct historical periods.<sup>72</sup> Stressing the progress of religion supported Parker's belief that some in the

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<sup>68</sup> On these developments, see Grodzins, *American Heretic*, 190-99.

<sup>69</sup> Levi Blodgett [Theodore Parker], *The Previous Question between Mr. Andrews Norton and His Alumni Moved and Handled, in a Letter to All Those Gentlemen* (1840) in *Transcendentalism: A Reader*, ed. Joel Myerson (New York: Oxford University Press, 2000), 260-80.

<sup>70</sup> *Ibid.*, 266.

<sup>71</sup> *Ibid.*, 267.

<sup>72</sup> Enlightenment thinkers engaged with the past on different levels and in different ways. While some posited a narrative of progress, others understood historical

present understood Christian truth and moral issues better than the primitive Christians. Parker's continued study of the past would only bolster that belief.

He wrote that individuals who communicate with the divine through the religious sentiment "create new religions and make religious epochs," and explained that though some "of these men are deemed gods," they "are subject to the various peculiarities of their nation, place and age, and to their own idiosyncracies [*sic*]." Because the peculiarities "perpetually change, the old form of religion, unable to change with them, gradually becomes obsolete. A new teacher of religion arises; starts from a higher stand and separating the peculiarities of the old form which adapted it to its age ... constructs a new form suitable to the altered condition of mankind, which shall, for its season, carry forward the good work, until 'in the fulness of time,' it gives place to somewhat higher and better."<sup>73</sup> Parker's belief in the progress of religion related to his sense that true religion adapted to new circumstances. This broad understanding placed him at the far end of the spectrum of antebellum religious thinkers who accepted that the sacred writers had accommodated their messages to specific times and audiences. Stuart and Hodge granted that sacred writers accommodated in language, while asserting that the Bible remained the repository of divine revelation. Norton contended that those writers accommodated in content as well, but argued that New Testament, and the Gospels in particular, served as the fount and foundation of Christian faith. Parker agreed that religious truth found expression in the Bible, but only to the extent that circumstances

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development as cyclical, with alternative periods of rationality and irrationality. Some, for example, thought of the classical era as a kind of golden age. For a recent discussion of French enlightenment thinkers' complicated relationship to the past, see Dan Edelstein, *The Enlightenment: A Genealogy* (Chicago: The University of Chicago Press, 2010).

<sup>73</sup> [Parker], *The Previous Question*, 268, 269.

had allowed. True religion existed independent of time but, because it functioned in relation to individual enlightenment, it evolved in time according to the development of the soul. Parker held that truth itself accommodated. Although the Transcendentalists Emerson and Parker maintained the permanence of divine truth and of God as the originator of that truth, they placed the development of religion in human hands, which, to someone like Norton, was tantamount to the humanistic and atheistic positions that Hegel had spawned, Strauss had nurtured, and Feuerbach had perfected and unleashed.

Applying his understanding to true Christianity, which he held “to be the highest form of religion,” Parker explained that though he could conceive of “no more perfect moral and religious incarnation of God than Jesus of Nazareth,” he could not designate Christianity “absolute religion” or label Christ “the ultimate incarnation of God.” Rather, in Christ he saw someone who “attempted to excite in man a more living consciousness of” God’s existence and of human dependence on him.<sup>74</sup> Parker believed that “Jesus ... wrought miracles.” But he saw “not how a miracle proves a doctrine,” which allowed him to sidestep “some historical difficulties in the way of establishing *all* the miracles which [Jesus] wrought.”<sup>75</sup> Part of these historical difficulties included an awareness of historical context. Parker pointed to the “tendency to the marvellous in all ancient nations, especially among the Jews, before and after the time of Christ,” and of the evangelists in particular, he argued that “their inspiration did not free them from the notions of the age and nation.” He assured his readers that he believed in “the *general* accuracy of their history of Christ, at least during his ministry.”<sup>76</sup> His insistence that Christian truth flowed

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<sup>74</sup> Ibid., 271.

<sup>75</sup> Ibid., 274, 275, emphasis in original.

<sup>76</sup> Ibid., 276, emphasis in original.

from an internal source rather than resting on external evidences did not necessarily imply a dismissal of New Testament miracles as the fictions of fabricated accounts. The issue was not whether or not Christ had existed or performed miracles, but whether or not the truth of Christianity rested on the miracles he had presumably performed. So, when someone like Norton, or even Hodge, accepted that historical circumstances shaped biblical language and content, but insisted that Christ's miracles had occurred as related in the Gospels and resisted viewing the accounts of those miracles as productions of the age, Parker thought that they had rested their belief on "insecure" grounds. In his opinion, they were "at the mercy of scoffers, scholars and critics" who had dismantled the Old Testament miracles and discredited those of the New.<sup>77</sup> Parker stressed the shakiness of their chosen historical foundation. "You make our religion depend entirely on something outside, on strange events which happened, it is said, two thousand years ago, of which we can never be certain, and on which yourselves often doubt, at least of the more and less."<sup>78</sup> Some, including Parker himself, had pointed out the limits of historical explication to protect the canon from the deepest critiques, but the historical skepticism that historical distance introduced could also be used to demonstrate the difficulties involved in upholding a faith based on historical facts. Parker preferred a more reliable basis of faith, or, rather, one that was less susceptible to deterioration and falsification.

Parker believed that the endurance of the gospel message contained in the New Testament rested in its relationship to the universal religious sentiment, which found residence in the soul. He further outlined this conviction in an updated version of his sermon, "The Relation of the Bible to the Soul," which he published in two articles in the

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<sup>77</sup> Ibid., 277.

<sup>78</sup> Ibid., 278.

winter of 1840-41.<sup>79</sup> In the first, he began by stressing the Bible's high status as "the Book of Books."<sup>80</sup> In an attempt to explain its elevated position, he first described what the Bible was not. It was "not the master of the Soul," or "the foundation of Religion," and was "not greater than Conscience and Reason."<sup>81</sup> In part, the ancient text was not ancient enough. "Religion is older than the Bible," Parker posited, just as justice is older than legal tradition.<sup>82</sup> The legal parallel he raised here held great promise in a nation preoccupied with law.

Parker held that eternal sentiments formed the basis of legal and religious truths, while biblical and legal codes were "simply [their] historical form." The essential truths of Christianity were "not simply 'as old as the creation,' but far older; ancient as the eternal ideas of Justice, Love, Holiness and Truth."<sup>83</sup> This was, of course, not a strictly historical claim; it was not an attempt to reclaim the teachings and principles of a pure past, but rather an appeal to truths above time and space. Anticipating his later statements about slavery, and adding a token of support to the Garrisonian critique of Constitution worship, Parker disconnected eternal juridical and religious truths from sacred historical texts. Indeed, it was during this period that he began to address, if haltingly, slavery as a subject of reform.<sup>84</sup> Before long, it would become *the* subject of his reform efforts, efforts that became enveloped in constitutional debate. In this article, Parker wrote that that

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<sup>79</sup> For a contextual examination of the preaching and publication of these articles, see Grodzins, *American Heretic*, 180-200.

<sup>80</sup> Theodore Parker, "The Relation of the Bible to the Soul," *Western Messenger Devoted to Religion, Life, and Literature* 8 (December 1840): 337-40, quotation on 337.

<sup>81</sup> *Ibid.*, 338, emphasis in original, 339, emphasis in original.

<sup>82</sup> *Ibid.*, 338.

<sup>83</sup> *Ibid.*, 339.

<sup>84</sup> On the Parker's initial sermons on slavery, see Grodzins, *American Heretic*, 168-73, 333-40.

“men sometimes think the statues of the land were providentially struck out, in some happy moment, which will never return—that if these should perish, so would Order and Justice decrease from being.” Parker seemed to have in mind the favored founding era to which his generation habitually referred to and longed to recreate. This anticipated his critique of the fixation on a period in the American past, which, in terms of moral insight, he believed the American present far exceeded. In this article, though, Parker remained focused on religion. “They say the same of the Bible,” Parker continued, “and assert that Morality and Religion would have been quite lost from the world, if the Bible had chanced to perish.”<sup>85</sup> Parker’s absolute religion was ahistorical:

granting it were shewn, in opposition to the greatest amount of historical evidence ever brought to bear on one point,—that the facts related in the Gospels, were not facts, but fictions; that Jesus never rose from the dead; never died, as it is related; never wrought miracles, taught doctrines, or even lived—still Christianity would be as true, as lasting, as now it is, when environed by all these historical statements.<sup>86</sup>

Parker’s formulation contradicted Norton’s equation. His separation between external evidences in the form of the truthfulness of the Gospels and the miracles recounted therein, paralleled De Wette’s distinction between historical facts and religious meaning. Parker’s proposition, as with Emerson’s salvo, shook the religious foundation of thinkers such as Norton, who rested their Gospel-centered faith on historical grounds. It undermined the exceptional status of the New Testament, of Christ’s miracles, and even of Christ himself. Parker did not cast Christ aside but he measured his teachings against

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<sup>85</sup> Parker, “Relation of the Bible,” (December 1840): 338.

<sup>86</sup> Ibid., 339.

“Reason and Conscience.”<sup>87</sup> After all, “The Bible was made for man, not man for the Bible.”<sup>88</sup>

In a slightly longer second installment, Parker set out to explain the Bible’s central role as instructor. Rather than “teach men by pouring certain abstract doctrines into all minds,” the Bible, a product of the soul, “teaches by arousing the soul. . . . It reveals the true idea of a *man*, the divine man . . . tells him of his noble nature—the image of God. It sets before him the noblest aim—‘Be perfect as God.’”<sup>89</sup> Parker held that, unbounded and universal, the “spirit of God everywhere reveals itself,” as seen in the sacred books of India, Persia, Egypt, and Greece. While he granted that it is revealed “perhaps more clearly in the Old Testament than in any other witness of equal antiquity,” he held that “pupils outgrow their teachers.” Parker compared outdated Old Testament passages to “laws and political institutions. Like old garments which were fine in their day, they are laid aside when their end is answered.”<sup>90</sup> He allowed that Moses “was a prophetic man” who saw “far onward into futurity,” and that his laws were “wonderful for his age,” but noted that “it is only the true, the universal, the divine part of them, that thus extends itself and still lives. All peculiar institutions of his system, which belong to the *man Moses*, not to the *divine idea* of justice, holiness and love, have long since fallen to decay.” Before long, Parker would train his focus on one peculiar institution in particular. A belief in the universal and unchangeable nature of the religious sentiment led him to dismiss as peculiar and passing much of Moses’s teachings and to posit that

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<sup>87</sup> Ibid.

<sup>88</sup> Ibid., 340.

<sup>89</sup> Theodore Parker, “The Relation of the Bible to the Soul,” *Western Messenger* 8 (January 1841): 388-96, quotation on 388, emphasis in original.

<sup>90</sup> Ibid., 389.



“we too are men, and have seen what he and Solomon desired to see and saw not.”<sup>91</sup>

Parker conceived of revelation as progressing rather than historical. Thus, he could highlight historical distance without repercussions. This understanding would allow him to shine a spotlight on the discrepancies he found between ancient and modern views on servitude, or even mid-nineteenth-century and late-eighteenth-century understandings on slavery.

Parker’s belief in the universal sentiment and the progress of religion supported his separation of the Hebrew and Greek scriptures, but it also directed him to question the relevance of the New Testament and its actors. “If the Old Testament,—which Paul considered imperfect and transitory . . . has been superseded,” he asked, “how do we know that the New Testament, the Gospel, nay, even Christianity itself, shall not one day be passed by and forgotten, having prepared the way for a more beautiful revelation of the divine image than Jesus himself?”<sup>92</sup> Parker was almost willing to leave behind the whole Christian past, in part because he believed that “doubtless there are men at this day who understand Christianity far better than it was understood by its teachers in the first ages of our era.”<sup>93</sup> Such clarity, however, did not obviate the importance of the original Christian truth, which “can never pass away. . . . No sign of decay is written on it; no mark of age appears.” Parker saw the passage of time as the sifter of religious truth. “The lights of old time, like lamps in the street, are passed by, diminished by the distance, and gradually lost sight of; while . . . Christianity still shines with mild and tranquil light, and appears clearer and more lovely to man as he awakes more broadly from his dream, and

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<sup>91</sup> Ibid., 390, emphasis in original.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid., 391.

is refined and elevated by the science and culture of successive ages.” Distance rendered much of the past and its teachings obsolete, burnt up in “the furnace of time,” as change, in the form of progress, made permanent Christian truth, “which knows nothing of time or space,” clearer. “Three thousand years, that are past” and “eighteen hundred years of change, downfall, progress, and retreat” could not dim the light of eternal truth.<sup>94</sup> Clearly, Parker’s efforts to separate out the timeless from the time-bound truths more explicitly drew attention to historical distance than did those of his contemporary exegetes, but in stressing context and accommodation they also identified the transient nature of the Bible’s content and thus highlighted that distance as well. In essence, even if they used knowledge of historical distance differently in their interpretations, they all recognized the pastness of the Old and New Testament pasts.

In Parker’s case, held that because Jesus taught pre-existing Christian truths, and not because those truths resided in him alone, “Christ will always teach” and his gospel will “be an eternal text-book.”<sup>95</sup> Parker’s accommodation theory prescribed that “the form of Christianity will change, to suit the character and wants of different nations and ages.” His historicism stood in tension with his assertion that “the essence of Christianity can never change.”<sup>96</sup> He attended to both sides of the equation, the transient and the permanent, but toward the end of the article he focused on the former. He again noted the Old Testament’s imperfections. Specifically, he cited its “degrading views of God and man” and bemoaned his contemporaries’ use of Moses’s writing to justify “war, capital

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<sup>94</sup> Ibid., 392.

<sup>95</sup> Ibid., 393.

<sup>96</sup> Ibid.

punishment, [and] slavery.”<sup>97</sup> Parker again brought together issues of both secular law and sacred scripture, a link made clearer in the next two decades. As the debate over slavery gained steam in the 1840s and 1850s, interpreters would appeal to both the Bible and the Constitution, and abolitionists like Parker would highlight historical distance to question those appeals. Even in this article, he decried readers’ adherence “to the [Bible’s] letter, while the spirit has long since gone.”<sup>98</sup> Parker retained his distinction between the Old and New Testaments, writing that “the old dispensation has passed away. . . . But the Gospel will teach to the end of time.”<sup>99</sup> But the limitations he found with ancient Israel and its prophets also applied to the New Testament and its apostles: “Paul, and Peter, and James, and John, saw not all things; nor were they placed above the reach of passion, human weakness, the dreams of that age, and that imperfection of wisdom incidental to this mortal state.” Although sometimes prophetic, the biblical writers had existed in time and space and were subject to human weakness and temporal limitation and, as a result, often failed to draw “a sharp line between the fabulous and the historical.” Despite this, Christian ministers “will tell you the canon of revelation is closed—that you and I . . . must be poor imitators of two or three men, who have incarnated in past ages, all of God’s spirit that can be embodied in mortal flesh.”<sup>100</sup> Parker echoed Emerson’s shocking statements in his Divinity School Address, where he had observed that “the divine nature is attributed to one or two persons, and denied to all the rest, and denied with fury,” and had lamented that “men have come to speak of the

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<sup>97</sup> Ibid., 393, 394.

<sup>98</sup> Ibid., 394.

<sup>99</sup> Ibid., 395-96.

<sup>100</sup> Ibid., 394.

revelation as somewhat long ago given and done.”<sup>101</sup> While encouraging the use of “the revelation made to others,” as did Emerson, Parker joined the Sage of Concord in directing believers to “seek new ones in himself.”<sup>102</sup> An awareness of the transient in and transience of the Bible highlighted the need for permanent and ongoing revelation.

During the late 1830s and early 1840s, Parker’s religious position became detached from the historicity of the Bible. He had grown skeptical of the Old Testament narratives and dismissed much of the Hebrew scriptures as products of an outdated past with little meaning to offer the present. The miracles controversy allowed him to further articulate his position against that of Unitarians like Norton, who asserted that Christian faith rested on the historicity of New Testament miracles. In contrast to this position, Parker posited that Christian truth existed independent of historical facts and flowed from an innate and ubiquitous religious sense that time had cultivated. Parker continued to distinguish between the Old and New Testaments, but this distinction came to rest less on a belief that the Gospels were the first and final repository of religious truth and instead followed from his understanding that enough historical evidence existed to confirm that true religion found expression rather than embodiment in a person named Jesus. Now Parker was willing to suggest the transience of even that particular historical expression.

*“The Inward Christ, Which Alone Abideth Forever, Has Much to Say Which the Historical Jesus Never Knew”*: *The Transient Jesus and the Permanent Christ*

The themes in these sermons and writings developed in relation to Parker’s continued attention to German literature and his ongoing translation of De Wette. Those

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<sup>101</sup> Emerson, “Address,” in *Collected Works*, 1:80, 84.

<sup>102</sup> Parker, “Relation of the Bible,” (January 1841): 396.

sermons and writings served as the intellectual backdrop to his two most important publications on the relationship between Christianity and history: *A Discourse on the Transient and Permanent in Christianity* and *A Discourse of Matters Pertaining to Religion*.<sup>103</sup> The first, published in June of 1841, resulted from a sermon Parker wrote in January and preached in May. The second resulted from a series of lectures he delivered in the fall of 1841 and published in May of 1842. In these writings, as much as in any other source from antebellum America, one can see a thinker whose engagement with biblical criticism created an acute sense of the historical transience and pastness of the Bible and its central figure.

The first discourse paid homage to Strauss's "On Transiency and Permanency in Christianity," wherein the somewhat repentant German critic had made room for the historical Jesus.<sup>104</sup> Parker did too, but he located the permanent in Christ's eternal words rather than his temporal person. Distinguishing between the eternal and true religion (the permanent) and the religion of the people (the transient), he explained that the latter "has never been the same thing in any two centuries or lands, except only in name."<sup>105</sup>

Parker's studies led him to recognize temporal distinctions, a realization that created an

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<sup>103</sup> In early 1841, Parker published an essay on "German Literature" in *The Dial: A Magazine for Literature, Philosophy, and Religion* 1 (January 1841): 315-39. He included strictures and stressed the need for American originals, but described German literature as "the fairest, the richest, the most original, fresh, and religious literature of all modern times" (ibid., 320). Of German biblical scholarship, in particular, he noted that "it is only the Germans in this age, who study theology, or even the Bible, with the aid of enlightened and scientific criticism" (ibid., 324). Americans, his analysis suggested, were behind the times in their literature, their biblical interpretation, and their religious inclinations.

<sup>104</sup> On Strauss's revisions, see Grodzins, *American Heretic*, 242-43.

<sup>105</sup> Theodore Parker, "A Discourse of the Transient and Permanent in Christianity," in *The Critical and Miscellaneous Writings of Theodore Parker, Minister of the Second Church in Roxbury* (Boston: James Munroe, 1843), 136-69, quotation on 140.

awareness of unbridgeable historical gaps. In contrast to restorationists and Christian primitivists, he found efforts to reclaim religious forms futile: “neither God nor the world goes back.”<sup>106</sup> He found that the forms and rites of religion, like the outward facts of nature, pass away in time while true religion, like the law of nature, transcends temporality. Universal moral truths remained permanent, but the historical forms and expressions approaching those truths often obscured more than they revealed and thus possessed little purchase in the present.

“Nothing changes more from age to age than the doctrines . . . insisted on as essential to Christianity and personal salvation,” Parker stated.<sup>107</sup> He used familiar examples—the authority of the Bible and the authority of Christ—to make his point. Tracing the tradition of belief in the infallibility and unmatched authority of the Bible from the first centuries after its creation to the present, he noted that such a belief “is now the general opinion of religious sects at this day.”<sup>108</sup> With some relief, he observed that “modern Criticism is fast breaking to pieces this idol which men have made out of the Scriptures.” Historical criticism identified the biblical authors as “men who in some measure partook of the darkness and limited notions of their age.”<sup>109</sup> Parker also addressed the proclivity to make “Christianity rest on the personal authority of Jesus.” He highlighted the changing opinions about Christ to evidence the “transitoriness” of this belief.<sup>110</sup> He conceded that Christianity “depends on [the New Testament] for the historical statements of its facts,” but insisted that “we do not require infallible inspiration

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<sup>106</sup> Ibid., 140.

<sup>107</sup> Ibid., 144.

<sup>108</sup> Ibid., 147.

<sup>109</sup> Ibid., 148.

<sup>110</sup> Ibid., 150-52, quotations on 150.

on the part of the writers, more than in the record of other historical facts.”<sup>111</sup> Historical evidence still convinced Parker that the Gospels rested on historical grounds, but he did not rest his faith on those grounds: “If it could be proved . . . that the gospels were the fabrication of designing and artful men, that Jesus of Nazareth had never lived, still Christianity would stand firm.” Christianity was “tried by the oracle God places in the breast” rather than the evidence offered by the critic.<sup>112</sup> Parker agreed with contemporary interpreters such as Stuart and Norton that the Bible should be interpreted as a historical text, but he refused to base his belief in that text or the people and events it described.

Freedom from transitory doctrines, Parker argued, allowed believers to understand the Bible and Christ as God intended. Read with “Reason, Conscience, and Faith fully active,” the Bible presented a “whole library of the deepest and most earnest thoughts and feelings and piety and love, ever recorded in human speech.”<sup>113</sup> Viewed in such light, Christ’s words “solve the questions of this present age.”<sup>114</sup> While rejecting the transient as outdated, Parker affirmed the continued relevance of the permanent. Indeed, he would later argue that the spirit of Christianity, which existed above time, if not a literal reading of the New Testament text, which was grounded in time, condemned slavery. Parker pointed out cultural differences between past ages and his own, but he upheld as ahistorical the permanent that essential Christian truth that taught the “method of attaining oneness with God.”<sup>115</sup> Part of attaining oneness with God depended on cultivating the divinity within. Echoing Emerson, Parker believed that in making Christ

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<sup>111</sup> Ibid., 153.

<sup>112</sup> Ibid., 154.

<sup>113</sup> Ibid., 155.

<sup>114</sup> Ibid., 157.

<sup>115</sup> Ibid., 161.

“the Son of God in a peculiar and exclusive sense—much of the significance of his character is gone.”<sup>116</sup> Instead, his significance was based on the fact that he, as Emerson stated, was “the only soul in history who has appreciated the worth of man.”<sup>117</sup> Parker explained that “in an age of corruption, as all ages are, Jesus stood and looked up to God. There was nothing between him and the Father of all. ... He would have us do the same; worship with nothing between us and God.”<sup>118</sup> Other biblical teachings fell prey to the past. Parker warned that “the ground will shake under” the feet of those who focused on “the surfaces of things.”<sup>119</sup> Indeed, “the form Religion takes ... can never be the same in any two centuries or two men,” but, he asserted, “the *Christianity holy men feel in the heart*—the Christ that is born within us, is always the same thing to each soul that feels it.”<sup>120</sup> Bold statements such as these came at a cost.

Even when the religious press damned Parker as a deist and fellow minister refused to share the pulpit with him, he persisted in promulgating his views. His *Discourse of Matters Pertaining to Religion* represented a kind of culmination of the ideas contained in his prior sermons and publications.<sup>121</sup> Following from “The Transient and the Permanent,” he summarized his purpose in recalling “men from the transient

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<sup>116</sup> Ibid., 158.

<sup>117</sup> Emerson, “Address,” in *Collected Works*, 1:82.

<sup>118</sup> Parker, “Discourse of the Transient,” 161-62.

<sup>119</sup> Ibid., 165, 167.

<sup>120</sup> Ibid., 162-63, emphasis in original.

<sup>121</sup> On these sermons, their publication, the response to their printed form, and the repercussions that followed, see Grodzins, *American Heretic*, 242-316. On the process of publishing the sermon on the transient and the permanent, see Philip F. Gura, “Theodore Parker and the South Boston Ordination: The Textual Tangle of ‘A Discourse on the Transient and the Permanent in Christianity,’” *Studies in the American Renaissance* (1988): 149-78, which also contains the text in the form Parker claimed he delivered it on May 19, 1841.



shows of time to the permanent substance of Religion.”<sup>122</sup> He revisited and expanded the familiar themes of the innate religious element and its relationship to God (inspiration), to Jesus (Christianity), the greatest book (the Bible), and the greatest human institution (the Church). He announced the historical implications of this discussion at the outset, declaring that “our reverence for the Past, is just in proportion to our ignorance of it.”<sup>123</sup> Historical ignorance had led Christians to make idols out of a historical text and a historical figure, blinding them from the fact that religious truth rested within themselves.

As in his previous writings, Parker first sought to establish the universal presence of the religious element. He contended that the ubiquity of this “religious element is confirmed by historical argument.”<sup>124</sup> And historical circumstances and development, he posited, explained perceived differences in the presence and power of that religious element. Again, Parker persisted in his use of historical evidence to confirm his views rather than insist that they constituted the basis of them. Indeed, in the winter of 1841-1842, as he prepared to publish his sermons as *Discourse*, his reading of Comte convinced him that human existence started in an uncivilized state and progressed from lower to higher levels of being. The historical evidences he found in Comte’s work supported his historical conclusions about the progress of religion. He soon associated golden age thinking with the Old Testament mythmaking, finding both characteristic of ancient times.<sup>125</sup> By the early 1840s, then, the intellectual framework was in place for Parker to critique what he viewed as his contemporaries’ overreliance on the archaic if not barbaric teachings of historical sacred texts from favored pasts for insight into

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<sup>122</sup> Parker, *Discourse of Matters*, iii.

<sup>123</sup> *Ibid.*, 5.

<sup>124</sup> *Ibid.*, 31.

<sup>125</sup> On this development, see Grodzins, *American Heretic*, 281-83.

nineteenth-century questions of religious truth and legal sanction. The issue of slavery would drive him to further historicize the biblical and founding eras. And once these golden ages became objects of historicization, it left all periods of time susceptible to historical critique and explanation.

Turning to the issue of inspiration in the *Discourse*, Parker used his new understanding to condemn Protestants' golden age mentality, which shut communication with God between the two lids of the Bible. At Harvard, Emerson had stated, "I look for the hour when that supreme Beauty, which ravished the souls of those eastern men, and chiefly the Hebrews, and through their lips spoke oracles to all time, shall speak in the West also."<sup>126</sup> Parker similarly contended that "now, as in the days of Adam, Moses, Jesus, he that is faithful to Reason, Conscience, and Religion, will, through them, receive inspiration."<sup>127</sup> In Christ, then, Parker found a historical expression, rather than the exclusive embodiment, of absolute religion.

Unlike knowledge of absolute religion, which came directly via intuition, "knowledge of the doctrine taught by any teacher of ancient times," a "historical question" that rested on secondary sources and testimonies, was "more difficult."<sup>128</sup> The problem, in part, as biblical criticism made clear, was the constraining historical context of the testators: "Their national, sectarian, personal prejudices must color their narrative."<sup>129</sup> Hence the problem with making the reality of the miracles of Christ—a "purely historical question"—the basis of Christianity.<sup>130</sup> Consistent with his prior

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<sup>126</sup> Emerson, "Address," in *Collected Works*, 1:92.

<sup>127</sup> Parker, *Discourse of Matters*, 234.

<sup>128</sup> *Ibid.*, 246, 247.

<sup>129</sup> *Ibid.*, 248-49.

<sup>130</sup> *Ibid.*, 271.

position, Parker argued that “if we look after the *facts* of the case, we find the evidence for the Christian miracles is very scanty in extent, and very uncertain in character,” adding that “the current belief of the times” favored miracles created more problems.<sup>131</sup> Parker proposed that, if the evangelists were to be trusted, even Christ himself held erroneous opinions characteristic of the times. Allowing that baptism and the Last Supper seemed “to have been an accommodation,” on the part of Christ, “to the wants of the times,” and were not intended to “last forever,” Parker held that Jesus was “mistaken in some points, in the interpretation of the Old Testament, in the doctrine of demons, in the celebrated prediction of his second coming and the end of the world.”<sup>132</sup> As with the Old Testament and its prophets and the New Testament and its apostles, the Christ of the Gospels could not escape the temporal limitations of his era. That fact left Parker unshaken. He averred: “Let it be shewn . . . that the Gospels are false, and Jesus mistaken, still Christianity is eternally true if it be the Absolute Religion.”<sup>133</sup>

Parker still believed in the historical basis of the Gospels and of Jesus and in them he found the summarization of Christianity: “Love to Man—Love to God.”<sup>134</sup> This practical method of living set Christianity apart as absolute religion and absolute morality. Parker rested his religion in universal precepts rather than particular peoples, encouraging his contemporaries to “worship with no master but God, no creed but Truth,

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<sup>131</sup> Ibid., 272, emphasis in original, 273.

<sup>132</sup> Ibid., 259, 260, 265-66. Later in the text, Parker similarly wrote that “it is apparent that Jesus shared the erroneous notions of the times respecting devils, possessions, and demonology in general.” Parker held that “he was mistaken in his interpretation of the Old Testament, if we may take the word of the Gospels” (ibid., 290).

<sup>133</sup> Ibid., 280.

<sup>134</sup> Ibid., 253.

no service but Love.”<sup>135</sup> To this, Parker added the universal privilege of inspiration, declaring that Jesus “never speaks of his connection with God as peculiar,” but rather “represents himself as but the type of that relation which all good men sustain to God.”<sup>136</sup> In short, Parker gloried that “the experience of the past lives in the present.” As Emerson listed Boston alongside Rome and Jerusalem, so Parker posited that “the light that shone at Nineveh, Egypt, Judea, Athens, Rome, shines no more from those points; it is everywhere.” Parker’s religion was not restricted to a place, a past, a book, or a man, but “the inward Christ, which alone abideth forever, has much to say which the Bible never told,” or, as he added in a later edition, “much which the historical Jesus never knew.”<sup>137</sup>

### *Conclusion*

Parker clung to an idea of universal and unchanging religious truth as much as Channing, Norton, Stuart, Hodge, and other antebellum Christians, but he unbound those truths from historical facts, events, and figures. His rare willingness to travel down the various paths of historical criticism outlined by De Wette and Strauss informed his urgent rejection of the idea that the permanent relevance of religious truth rested in historical texts and actors. From the mid-1830s, at least, Parker affirmed that religion originated in feeling and his engagement with biblical criticism revealed the benefits of this belief. Liberal and conservative scholars recognized the need to attend to historical context in discerning the meaning of scriptural passages, including the Gospel accounts, and through that recognition exposed that real temporal distances separated even the pure

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<sup>135</sup> Ibid., 377.

<sup>136</sup> Ibid., 255, 256.

<sup>137</sup> Ibid., 376; Theodore Parker, *A Discourse of Matters Pertaining to Religion*, 4th ed. (Boston: Little, Brown, 1856), 354.

primitive Christian era from the American present. Rather than simply point out historical distance through contextual interpretation, and then mute its presence in scriptural application, Parker came to assume such distance in his writings. Instead of struggling to separate the transient from the permanent through historical explication, Parker measured the transient and the permanent according to conscience. In analyzing this sifting process among America's biblical scholars, one finds a spectrum, from those retaining faith in the Bible as a whole, such as Stuart and Hodge, to those claiming the New Testament or the Gospels alone as canon, such as Channing and Norton, to those focused on the actions and teachings of Jesus himself. Regardless of those positions, however, each of these interpreters granted, and indeed, insisted that his chosen canon contained time-bound teachings meant for a particular ancient audience. Parker stood at the far end of the spectrum. He accepted a few specific messages he gleaned from Christ's teachings as permanent religious truths, and all else he let drift away into the sea of the distant past. This position armed Parker, who had endured ecclesiastical controversies that his beliefs created, for engagement in the nation's most wrenching moral, political and legal crisis.

In 1850, the Congregationalist Stuart echoed the Unitarian Buckminster by using historical reasoning to interpret Paul's decision to send a slave back to his owner and—muting historical distance—asserting the correspondence between that decision and the Fugitive Slave Law.<sup>138</sup> Parker's engagement with biblical criticism and his deep-seated belief in an innate religious guide and the progress of religion led him to accept Stuart's interpretation as historically accurate and then dismiss it as historically dated. Parker had

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<sup>138</sup> See Moses Stuart, *Conscience and the Constitution: With Remarks on the Recent Speech of the Hon. Daniel Webster in the Senate of the United States on the Subject of Slavery* (Boston: Crocker and Brewster, 1850), 60-61. I examine this publication in chapter four.

already cast as past what he perceived to be the historical Jesus’s false ideas. Damning Paul’s directive seemed a small thing in comparison. In the *Discourse*, Parker echoed his prior critique of his contemporaries’ use of the Old Testament to justify evil, lamenting that “men justify slavery out of the New Testament, because Paul had not his eye open to the evil, but sent back a fugitive. It is dangerous,” he warned, “to rely on a troubled fountain for the water of life.”<sup>139</sup> In the early 1840s, Parker, as with the nation itself, began to direct his attention to slavery, a process that further raised questions about the relationship between the imperatives of the past—the biblical *and* Revolutionary past—and the duties of the present. In the wake of what Parker perceived as proslavery consolidation in the late 1840s and early 1850s, which, in his view, paralleled the progress of antislavery sentiment, Parker’s reference to Paul’s error would pick up a new punctuation mark: “Paul had not his eye open to the evil, but sent back a fugitive!”<sup>140</sup> Slavery raised the historical stakes.

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<sup>139</sup> Parker, *Discourse of Matters*, 1st ed., 375.

<sup>140</sup> Parker, *Discourse of Matters*, 4th ed., 353.

### CHAPTER 3

#### “OF WHAT AVAIL ARE A FEW TEXTS, WHICH WERE DESIGNED FOR LOCAL AND TEMPORARY USE”: SOUTHERN SLAVERY AND THE IMPLICATIONS OF HISTORICAL THOUGHT IN ANTEBELLUM BIBLICAL AND CONSTITUTIONAL INTERPRETATION

Debates about slavery had been raising the historical stakes for some time, and not just in terms of the Bible and the biblical past. Discussions about the South’s peculiar institution also inspired questions about the historical nature of the nation’s legal guide—the Constitution—and the place of the Revolutionary past in the nineteenth century. As noted above, in “The Relation of the Bible to the Soul,” Parker compared the Bible to legal codes, citing common law, in particular, and arguing that biblical texts and legal statutes are historical forms of “the indestructible religious sentiment” and “the sense of justice in the Soul.” Parker offered the latest instantiation of a Western intellectual tradition in which legal and scriptural interpretations had long been intertwined. Perhaps in reference to the ratification of the Constitution, he explained that “men sometimes think the statutes of the land were providentially struck out, in some happy moment, which will never return—that if these should perish, so would Order and Justice debase from being. They say the same of the Bible,” he observed, “and assert that Morality and Religion would have been quite lost from the world, if the Bible had chanced to perish.”<sup>1</sup> Parker, of course, believed that such people had confused mutable historical expressions of immutable truths with the truths themselves. In 1840, the year that he published this article, the publication of Madison’s papers directed unprecedented historical attention to

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<sup>1</sup> Parker, “Relation of the Bible,” (December 1840): 338.

the Constitution and its moment of creation. Soon, the nation's sacred legal text became the subject of deep historical inquiry alongside the nation's sacred religious canon.

The potential for overlap in antebellum biblical and constitutional hermeneutics was most pronounced in rhetorical clashes over southern slavery and this potential increased in the buildup to actual war. Slavery linked these distinct interpretive traditions along lines of historical argumentation, even if commentators seldom made the connection explicit. To be sure, critical conversations about the Bible reached a high level of intensity long before historical readings of the Constitution became relevant. The emphasis on original contexts and circumstances in explicating the Bible resulted from engagements with biblical criticism in the first four decades of the nineteenth century, but it was not until the 1840s that constitutional interpreters also began to stress the use of historical insight in their readings. The latter development did not simply follow from the former. Attempts to recover and use the framers' writings in constitutional interpretation resulted, in part at least, from the passing of the founding generation, which was symbolized in the deaths of Thomas Jefferson and John Adams on July 4, 1826, and of the primary crafter and last living signer of the Constitution, James Madison, a decade later. As one Boston paper explained after the publication of Madison's papers, "the further we recede from the birth of the constitution, the more precious do contemporary expositions of it become."<sup>2</sup> By midcentury both biblical and constitutional exegetes used historical research and reasoning to uncover original and timeless truths. The growing crisis over slavery increased the urgency to understand and put to use original meanings of the nation's religious and legal texts, which created numerous possibilities for

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<sup>2</sup> "Literary Intelligence—U. States," *Boston Recorder*, 23 October 1840, 170 (APSO).



interpretive overlap and opened up new possibilities for realizing and confronting historical distance. While presentism remained a powerful factor in religious and legal interpretation, interpreters' contextual readings and their narrations of change further exposed historical distance and troubled attempts to see past and present temporal frames as fusible and the teachings and imperatives of even the most favored pasts as fixed.

In biblical battles over slavery, the historicizing process began with the most distant period in question, the Old Testament era, and worked its way forward toward more recent New Testament times. A number of factors contributed to the historicization of the Old Testament, including, as discussed in the previous chapters, certain religious proclivities and the exposure to the principles of biblical criticism. Liberal Christian scholars who identified with the God of the New more than that of the Old Testament found biblical criticism useful in upholding the former as the premier canonical text. When the slavery debate further highlighted the peculiarities of Patriarchal and Mosaic times, American Protestants—orthodox and liberal, proslavery and antislavery—trained their focus on the Gospels and the Epistles.<sup>3</sup> The results of this shift in interpretive attention suggested that historical distance could call into question the relevance of even the New Testament past. Although most biblical scholars accepted the reasonableness of the proslavery interpretation, a number of slavery's opponents developed alternative arguments.<sup>4</sup> Some differentiated ancient servitude from American slavery while others, in a more innovative approach, outlined a variant of the accommodation theory. They

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<sup>3</sup> On the parallel emergence of biblical criticism in America and the beginnings of the antislavery movement, see David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770-1823* (Ithaca, NY: Cornell University Press, 1975), 527-28.

<sup>4</sup> On the success of the proslavery argument and the failure to produce a viable antislavery response, see Noll, "Bible and Slavery"; and Noll, *Civil War*, 31-74.

suggested that Christianity's founders had chosen not to condemn slavery openly and loudly, so as not to upset the established social order, but instead carefully sowed the seeds of its gradual destruction. These approaches, like Theodore Parker's, posited the progress of moral sentiment since the time of Christ. And as with Parker, their appeal to almost hidden universal truths buried in the soil of the New Testament past indicated the general transience of that period and its teachings. Although antislavery truths had been planted in that era, the promises they contained could only flower in a distant and different future. Antebellum antislavery interpreters began to imply that they inhabited that future, while abolitionists said so outright. Such readings displayed awareness of historical distance, which might threaten to undermine the Bible's relevance, but also could encourage more flexible readings of God's word.

The shift in focus to the New Testament, the set of scriptural texts that American Protestants increasingly valued most in their attempts to live Christian lives, raised the temperature of the debate and this particular strain of the rhetorical contest maintained its high and heated level through the Civil War. That temperature increased to a fever pitch when, in the 1840s and 1850s, politicians, judges, and citizens focused their attention on reading and using the nation's founding documents to resolve the growing crisis over slavery. As the use of historical texts in this debate expanded from the Bible to the Constitution, so did the impulse to historicize. Moving the battleground from one favored past to another more recent chosen period raised the historical stakes once more. When the realization of historical distance from favored pasts drew closer to the present, the process of historicizing the past as a whole neared completion. Appeals to the past to answer current problems revealed that historical distance separated Americans from even

the most familiar historical eras, increasing an awareness that temporal distinctions and changes distinguished all past eras from the present and from each other a real possibility.

Slavery shrunk the sphere of the timeless and expanded the realm of the temporal.

As in biblical debates, most American commentators assented to the proslavery constitutional reading, including both radical abolitionists like William Lloyd Garrison and moderate antislavery advocates like Moses Stuart, but antislavery constitutionalists developed a range of alternative approaches, which paralleled antislavery biblical interpretations in a number of ways. Moderate antislavery constitutionalists, such as Gamaliel Bailey, reasoned that the framers had secured extant slavery in the Constitution only because they realized the futility of abolishing it at that time. Thus, the framers satisfied themselves with allowing the egalitarian principles incorporated in the founding texts to work a gradual abolition in the states. This process, the moderates opined, was interrupted by the unforeseen emergence of the Slave Power, which many antislavery proponents described as antithetical to the spirit of the age. At times, more radical antislavery constitutionalists, including Lysander Spooner, rejected historical evidence in advancing their arguments, but even denying slavery's presence in the Constitution highlighted its place in the founding era. Further, in seeking political and constitutional means to bring about slavery's immediate abolition, the radicals also uncovered founding-era antislavery sentiment. As some antislavery biblical readings highlighted differences between ancient and modern slavery, some antislavery constitutional readings highlighted slavery's changed status in the nation since the founding. And, similar to "accommodationist" antislavery readings of the New Testament, these readings suggested

that though the founders had respected the limitations of their historical setting they had advanced ideas that would ultimately abolish slavery.

In contrast to antislavery biblical readings, which often separated a presumably proslavery Old Testament from an antislavery New Testament, antislavery constitutionalists tied together the nation's canonical texts, reading the Constitution in light of the Declaration of Independence, even as a growing number of southerners rejected that document as a unreasonable rag that put forth false and impractical propositions. While harnessing the Declaration's revolutionary power, Garrisonians used historical research to reject antislavery interpretations of the Constitution as irresponsible failures to admit its proslavery nature. Each of these approaches, though, even those interpretive practices that upheld the founding era as pregnant with present relevance, highlighted qualitative historical distance from that period. Despite vast differences in the use of historical sources, both antislavery constitutionalists and anti-constitutionalists crafted historical narratives positing that the founders' had expected slavery to die out. These positions drew attention to slavery's presence at the founding, but posited an original expectation of change in the form of slavery's abolition. This furthered a belief in the Constitution as a flexible set of guidelines rather than a strict set of legal rules.

This chapter outlines biblical and constitutional antislavery interpretive practices during the 1830s and 1840s, tracing the rhetorical parallels between them and highlighting their implications for historical awareness. It examines the role of biblical criticism in both of these discussions. The use of words such as *context*, *circumstance*, and *accommodation* informed debates among biblical scholars but also seeped into the interpretations of those who demonstrated little interest in or awareness of biblical

criticism. This chapter suggests that even biblical interpretations that did not privilege historical explication could challenge the assumption of a close correspondence between biblical and modern times. It also demonstrates the growing attention to context and change in constitutional readings and highlights the role of Madison's published papers in that development. Similar to the biblical debates, even those who denied the importance of historical resources in constitutional interpretation crafted historical narratives that exposed historical distance from the founding era, which created challenges for using the Constitution to solve the present crisis. Most Americans, including those studied here, did not set out to explore the historical differences of their favored pasts, nor did many of them consider their interpretations' implications for realizing historical distance. Indeed, most desired to recover static original truths in hopes of using them to resolve the slavery crisis. Their efforts, though, had undeniable potential to evidence the reality of historical distance.

*"The Unreasonableness of Perpetual Unconditional Slavery": Patriarchs, Prophets, Apostles and the Shifting Grounds of the Biblical Debate*

If the proslavery biblical argument triumphed in antebellum America, it came at a price for the Old Testament. As the debate over southern slavery reached a national scale in the 1830s and increased in the following decades, the reverberations of Joseph Stevens Buckminster's reading of Philemon to sanction both slavery and the return of fugitive slaves grew louder. The proslavery appeal to Philemon came as a response to antislavery readings of the New Testament. Liberal Christians' antislavery proclivities contributed to and affirmed the decision to privilege the New over the Old Testament. To be sure, some

of slavery's opponents continued to call on the Old Testament, holding that slavery did not exist among the Israelites, or refocusing the argument by accepting its nominal existence while maintaining that it differed in crucial respects from southern chattel slavery. But when that discussion affirmed the foreignness of the Old Testament past and thus the inapplicability of Old Testament precedent, most antislavery interpreters designated the New Testament as the central biblical battleground. Their proslavery opponents eagerly met them there. This development in historical understanding carried significant canonical implications. It further undermined the privileged place that the Hebrew scriptures had enjoyed in the United States until, not coincidentally, about 1830.<sup>5</sup> It also threatened to unveil dissonance between the New Testament and the new republic to an extent that antebellum biblical criticism alone had not. Shifting the grounds of debate to the New Testament held threatening implications.<sup>6</sup> Where would Americans look for religious guidance if the most recent biblical past also proved too far away and too foreign for use?

Proslavery exegetes agreed to meet their counterparts on the chosen grounds but dictated that the issue was not whether slavery was wrong in certain circumstances (*mala prohibita*) as some contended, but whether slavery was wrong in all circumstances (*mala en se*). Moderate antislavery Protestants, including liberal Christians such as William

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<sup>5</sup> On the prevalence of "Old Testamentism" in the political culture of the early republic and the antebellum period, and on the reasons for its eventual decline, which included the biblical argument over slavery, see Shalev, *American Zion*.

<sup>6</sup> On this shift and its implications, see Harrill, "Use of the New Testament." This portion of the chapter draws on Harrill's article, but while he argues that radical abolitionists' appeals to moral sense undermined biblicism and encouraged the incorporation of German higher criticism, I contend that this was a dialectical development. Experience with biblical criticism informed the development of liberal Christians' later antislavery arguments, and those arguments reinforced the acceptance and use of biblical criticism.

Ellery Channing and more orthodox figures such as Moses Stuart and his student Francis Wayland, accepted the terms of the debate and, given their scriptural commitments, attempted to explain how slavery became a sin, formulating what historian Molly Oshatz describes as a theological innovation of moral progress. The North and the South believed in social progress but neither northern abolitionists nor proslavery southerners thought that the moral law itself, which they viewed as static and unchanging, progressed. In juxtaposing the moral law with the Bible's teachings, abolitionists either accepted the proslavery reading and then damned the Bible, as would William Lloyd Garrison, or posited a fundamental difference between ancient and modern slavery, as did Theodore Weld. Moderate antislavery proponents, however, developed an argument that though slavery was *mala en se*, the revelation of that truth evolved in relation to the varied circumstances of human existence.<sup>7</sup> The question of slavery's morality, then, brought together thinkers such as Channing and Stuart on this point. Although his use of the New Testament to support the Fugitive Slave Law demonstrated that Stuart still encouraged strict applications of the biblical text in 1850, slavery led him to emphasize that historical conditions constrained even Christ and his apostles in some ways. He seemed to hold that even after nineteen centuries the time had not arrived to abolish slavery, but believed that the passage of time did show that Christian truth spotlighted the sin of slavery.

Each of these antislavery positions had the potential to reveal historical distance. When Garrisonians contended that slavery was prevalent in biblical times and that, in fact, the Bible did support proslavery claims, it suggested that southerners used an

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<sup>7</sup> See Oshatz, *Slavery and Sin*, 81-109. See also, Molly Oshatz, "The Problem of Moral Progress: The Slavery Debates and the Development of Liberal Protestantism in the United States," *Modern Intellectual History* 5, no. 2 (2008): 225-50.

obsolete text to justify a barbaric practice. When some antislavery interpreters argued that ancient servitude was profoundly different than modern slavery, and thus that the Bible could not be used to justify the southern institution, it highlighted historical differences as well. When moderate antislavery proponents insisted on the progress of moral sentiment and posited that neither Old Testament precedent for nor the New Testament presence of slavery could be used to condone the peculiar institution in the enlightened present, it signaled qualitative historical change. And when some abolitionists proposed that enough historical change had occurred to implement the antislavery principles that Christ and his apostles had taught, it pushed the period to which they appealed further into the past. In most cases, slavery did not lead its critics to abandon the Bible, but it did inspire them to interpret the sacred canon in such a way as to indicate that the biblical past was a foreign country.

These arguments received their clearest articulation during the 1830s, 40s, and 50s, though one can find components of each much earlier. African American minister Daniel Coker, who had been ordained a deacon by Francis Asbury and was familiar with Absalom Jones, helped Richard Allen organize the African Methodist Episcopal Church in 1816. Six years before, in 1810, he had published a fictitious dialogue between an African minister and a Virginian slaveholder, wherein the minister convinced the slaveholder of the sin of slavery and the virtue of gradual emancipation.<sup>8</sup> Coker granted that the Romans, other “ancient nations,” and modern “barbarous tribes” made slaves of war prisoners, but protested that “it is a cruelty that the present practice of all civilized

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<sup>8</sup> Daniel Coker, *A Dialogue between a Virginian and an African Minister* (Baltimore: Benjamin Edes, 1810).



nations, bears testimony against.”<sup>9</sup> His temporal distinctions made modern slavery anachronistic. Despite these distinctions, however, Coker believed that the Bible, an account about a favored ancient past, condemned the practice. Christians had long made an exception with biblical times when dividing ancient and modern, barbaric and civilized. Coker, then, voiced a conventional understanding that hallowed the biblical past as timeless. He argued that Abraham’s command to circumcise purchased servants had granted those servants “all the common privileges of citizens.”<sup>10</sup> Ancient Abrahamic religion, according to Coker, offered freedom for all. Sharpening his gaze, he argued that the Atlantic slave trade, outlawed in the United States only two years before, lacked an Old Testament precedent, writing that “the Israelites were not sent by a divine mandate, to nations three hundred miles distant ... in order to captivate them by fraud or force.”<sup>11</sup> On the one hand, progress from ancient to modern times had made slavery anachronistic. On the other hand, declension since the golden age of Old Testament times had introduced the slave trade. Coker’s discussion demonstrated the conflicted nature of the development of historical consciousness, as traditional historical understandings intermingled with new historical reasoning.

Turning to the New Testament, Coker continued his proof-texting approach, but, seeming to take a cue from William Paley, he also emphasized context in dealing with Paul’s teachings, writing that “to understand rightly the matter, we should recollect the situation of the Christians at that time.”<sup>12</sup> Noting Roman rule, “a heathen” polity that he

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<sup>9</sup> Ibid., 9.

<sup>10</sup> Ibid., 20.

<sup>11</sup> Ibid., 22.

<sup>12</sup> Ibid., 23. Among other Old and New Testament verses, Coker cited Gen. 17:13, Lev. 25:42, 54, Col. 3:22, 1 Cor. 7:21, and Matt. 7:12. See William Paley, *Principles of*

contrasted with the new republic's "Christian government," Coker explained that "in such circumstances ... had the apostle proclaimed liberty to the slaves, it would probably have ... injured the cause he loved so well, and that without the prospect of freeing one single individual. ... Therefore it was wisdom in him, not to say a single word about freedom, more than he did."<sup>13</sup> Circumstances dictated that Paul use prudence, but Christian teachings clearly opposed servitude. "Though the apostle acted with this prudent reserve," Coker continued, "the unreasonableness of perpetual unconditional slavery, may be easily inferred from the righteous and benevolent doctrines and duties, taught in the New Testament. It is very evident," he explained, "that slavery is contrary to the spirit and nature of the Christian religion."<sup>14</sup> The Golden Rule stood in contrast to the South's slave codes, even if it had been taught in a time where those codes would have fit the less civilized state of the ancient world. Though less developed than later antislavery readings, some of which drew on the German biblical scholarship being introduced by ministers and scholars such as Buckminster, Coker's pamphlet contained many of the contentions that became the focus of later writers. Even in his early antislavery biblical reading, one finds assertions of temporal distinction and a recognition of historical difference, which expanded as the debate over slavery gained momentum.

Shifting the grounds of debate from the Old to the New Testament was a gradual process. Coker's antislavery arguments from the Old Testament found expression throughout the antebellum period, perhaps most famously in Theodore Dwight Weld's

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*Moral and Political Philosophy*, 2 vols., 4th ed. (London: Faulder, 1787), 1:238-40. First published in London in 1785, by 1810 Paley's publication had been reprinted extensively in the United States, and had been published in six American editions.

<sup>13</sup> Coker, *Dialogue between a Virginian*, 23.

<sup>14</sup> *Ibid.*, 25.

*The Bible Against Slavery* (1837).<sup>15</sup> Weld received training and direction from some of the period's most well-known religious and reform personalities, including Charles Finney, Lewis and Arthur Tappan, James G. Birney, and Sarah and Angelina Grimké. He married Angelina in 1838. While a student at Lane Theological Seminary in 1834, Weld had led debates on a range of issues, including slavery, that inspired his antislavery efforts. Leaving Cincinnati for New York, he became involved in the newly formed American Anti-Slavery Society (1833). His subsequent publications on slavery, which ranged from biblical and legal interpretation to exposés on the nature of slavery and the slave trade, show his interest in both biblical and constitutional interpretation.<sup>16</sup> A growing number of national commentators would demonstrate this dual interest in the 1840s and 1850s, as the slavery debate became more intense.

In his 1837 publication, Weld brought his powers to bear on the biblical debate. Anticipating national commentators' increasing focus on constitutional issues in the succeeding decades, he referenced legal differences between Abrahamic bondage and southern slavery, noting that "Abraham had neither 'Constitution,' nor 'compact,' nor statutes, nor judicial officers to send back his fugitives."<sup>17</sup> Like Coker, Weld found declension when measuring American slavery against Old Testament servitude, a position that once again called attention to temporal incongruities by upholding the

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<sup>15</sup> [Theodore Dwight Weld], *The Bible Against Slavery: An Inquiry into the Patriarchal and Mosaic Systems on the Subject of Human Rights* (New York: American Anti-Slavery Society, 1837).

<sup>16</sup> [Theodore Dwight Weld], *The Power of Congress over the District of Columbia* (New-York: John F. Trow, 1838); [Theodore Dwight Weld], [Angelina Grimké], and [Sarah Grimké], *American Slavery As It Is: Testimony of a Thousand Witnesses* (New York: American Anti-Slavery Society, 1839); [Theodore Dwight Weld], *Slavery and the Internal Slave Trade in the United States of North America* (London: Thomas Ward, 1841).

<sup>17</sup> Weld, *Bible Against Slavery*, 28.

ancient past as a kind of golden age. While highlighting differences between Abrahamic and American circumstances, Weld contrasted the Mosaic system of “Divine authority” with that of his patriarchal predecessors, of whom Weld wrote, “God has not made them our exemplars [*sic*].”<sup>18</sup> Slavery encouraged some interpreters to make canonical choices among Old Testament texts and to value the newer Mosaic over the older Patriarchal dispensation. While still using the Hebrew scriptures to condemn the practice, Weld suggested that the oldest portion of the Old Testament past had no claim on the present. Slavery encouraged the move from appealing to more distant to more recent favored historical periods. In this case, Weld aimed to undermine the proslavery position by arguing that slavery did not exist among the Israelites. He made a semantic distinction between the words *servant* and *slave* to argue that they did not reduce men to “articles of property,” to “things,” as was the case with “American slavery.”<sup>19</sup> Again, part of his argument displayed a conventional belief that the biblical past, or at least a portion of that past, exhibited timeless appeal. However, when further examination highlighted the peculiar nature even of Mosaic practices, favorably comparing the ancient past to the American present served to identify slavery as the great contradiction of modern civilization more than to uphold the Old Testament past as a golden age. Later antislavery writers who were more attentive to biblical scholarship and more open to biblical criticism conceded that historical evidence demonstrated slavery’s existence in Abrahamic, and Mosaic, and Christian dispensations. Some would refocus the argument in expanding the contention that the southern system differed in significant respects from

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<sup>18</sup> Ibid., 15.

<sup>19</sup> Ibid., 6, 7.

what existed in biblical times, or contend that progress in moral understanding had revealed the sinfulness of slaveholding.

*“Principles Which, However Slowly, Could Not but Work Its Destruction”*: *The Christian Founders and the Antislavery Argument from Expediency*

In closing his discussion, Weld noted that he had intended to include “an Inquiry into the teachings of the New Testament.”<sup>20</sup> Perhaps he felt that ground had been adequately covered. The turn to a focus on the Greek scriptures was already well under way. In 1819, William Ellery Channing had demonstrated his preference for contextual interpretation and had made clear his canonical preference for the New Testament. His openness to new research led him to argue in an 1835 publication that polygamy, like slavery, “was allowed to the Israelites, was the practice of the holiest men, and was common and licensed in the age of the Apostles.”<sup>21</sup> Channing assumed that southerners agreed that polygamy belonged in the past. In highlighting its biblical sanction he called into question southern reasoning, quipping, “Why may not Scripture be used to stock our houses with wives as well as with slaves?” Approach the issue with another line of reasoning, Channing asked what “was slavery in the age of Paul?” and, with some embellishment, he explained that it included the enslavement of white men, of Greeks, of “the virtuous, educated, and refined.”<sup>22</sup> To drive his point home, he made a modern comparison. Had Napoleon, through his military victories, enslaved “the delicate, refined, beautiful young woman,” or “the minister of religion, the man of science, the man of

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<sup>20</sup> Ibid., 81.

<sup>21</sup> William E. Channing, *Slavery* (Boston: James Munroe, 1835), 108.

<sup>22</sup> Ibid., 109.

genius ... we should then have a picture in the present age of slavery as it existed in the time of Paul.” More than Coker or Weld, Channing stressed the differences between ancient, in this case New Testament, and modern slavery to emphasize that “such slavery” could not have been “sanctioned by the Apostles!”<sup>23</sup> Others more fully drew attention to these temporal distinctions to undermine the authorizing potential of biblical precedent. Although Channing favorably compared ancient to modern slavery in this passage, his purpose was to draw attention to the irony of slavery’s existence in America. He was not denying that slavery existed in the biblical past, indeed, he stressed that it held a firm grip on society in New Testament times. Focusing on the relationship between primitive Christianity and slavery, Channing echoed Coker’s argument in emphasizing context, writing that “slavery ... had so penetrated society, was so intimately interwoven with it ... that a religion, preaching freedom to its victims, would have shaken the social fabric to its foundations, and would have armed against itself the whole power of the State. Of consequence,” he explained, “Paul did not assail it. He satisfied himself with spreading principles which, however slowly, could not but work its destruction.”<sup>24</sup>

Channing’s reading might be read as a critique of radical abolitionists who called for immediate rather than a gradual abolition. Indeed, Channing only later adopted an immediatist position. Even still, here he offered an alternative interpretation to the one Buckminster had provided of the oft-cited New Testament passage, proposing that Paul had instructed Philemon to receive Onesimus as a brother, “thus asserting for the slave the rights of a Christian and a Man.” Channing was unwilling to concede the historical

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<sup>23</sup> Ibid., 110.

<sup>24</sup> Ibid., 111.

grounds to the proslavery interpreters, emphasizing the differences between ancient and modern slavery and preferring to interpret the New Testament according to “the general tenor and spirit of Christianity.” But the thrust of his argument rested in the idea that Christ and his apostles had planted seeds of progress because their environment would not allow them to abolish the system outright. In an approach that aligned with Theodore Parker’s distinction between the transient and the permanent, Channing asked an incendiary question with unsettling implications: “Of what avail are a few texts, which were designed for local and temporary use, when urged against the vital essential spirit, and the plainest precepts of our religion?”<sup>25</sup> Channing remained invested in the historical Jesus and the historicity of his Gospel miracles, but he concluded that certain portions of the New Testament, including those that seemed to sanction slavery, had short shelf lives. Further, he believed that despite their temporal teachings, Christianity’s founders had inculcated universal antislavery principles. In outlining distinctions between ancient and modern slavery or in positing the apostolic expectation of slavery’s demise, Channing’s arguments drew attention to the temporal chasm separating the nineteenth from the first century.<sup>26</sup>

In a book also published in 1835, New York Baptist Francis Wayland made a similar argument. He acknowledged that, while a deviation from God’s original law, slavery was allowed to exist in Old and New Testament times. As a student of Moses Stuart’s at Andover Theological Seminary, Wayland had been trained in the new methods of biblical exegesis and was probably aware that historical evidence attested to slavery’s

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<sup>25</sup> Ibid., 113.

<sup>26</sup> On these and similar antislavery arguments, see Harrill, “Use of the New Testament,” 150-60. On Channing’s commitment to the Unitarian position, see Grodzins, *American Heretic*, 123-27.

existence in biblical times. Wayland's publication demonstrates that although Stuart and Channing emphasized different practices in their discussions of biblical hermeneutics, their approaches overlapped in important respects, and the issue of slavery could accentuate those similarities. Like Channing, Wayland compared the practice to polygamy, another clear corruption of God's original law and of "the gospel law of marriage," which was also allowed anciently.<sup>27</sup> This tie between slavery and polygamy only grew stronger, placing southerners on the defensive and later undermining the position of polygamous Mormons.<sup>28</sup> More immediately, when proslavery exegetes contended that the gospel abolished polygamy but not slavery, the debate about the relationship between the two practices ensured the Old Testament's dethronement. Wayland asserted that in the gospel, a system "designed ... for all races, and for all times," as opposed to the law of Moses, which was designed for the Israelites alone, God revealed truths meant "not to abolish this form of evil for that age alone, but for its universal abolition." He placed emphasis on historical context and "circumstances," suggesting that the gospel worked to "quietly and peacefully modify and subdue the evil passions of men, and thus, without violence, work a revolution in the whole mass of mankind." If the gospel "had forbidden the *evil*, instead of subverting the *principle*;" he posited, "if it had proclaimed the unlawfulness of slavery, and taught slaves to *resist* oppression of their masters; it would have arrayed the two parties in deadly hostility ...

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<sup>27</sup> Francis Wayland, *The Elements of Moral Science. With Questions for Examination* (London: The Religious Tract Society, 1835), 288.

<sup>28</sup> On the awkward position of the southerners, see Eugene and Elizabeth-Fox Genovese, *Mind of the Master Class*, 513-15. On the link between slavery and polygamy and the implications for Mormons, see Sally Barringer Gordon, *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth-Century America* (Chapel Hill: The University of North Carolina Press, 2001), 55-83.



and the very name of the Christian religion would have been forgotten.”<sup>29</sup> According to Wayland, Christ intended to rid the world of slavery by teaching universal principles that would flower, in the appropriate circumstances, to overcome particular corruptions. Anticipating arguments about the framers of the Constitution, Channing and Wayland held that the founders of Christianity planted the seeds of slavery’s destruction, which time would nourish.<sup>30</sup>

To retain a claim on the New Testament, proslavery exegetes asserted continuity with the Old Testament. This argument supported the contention that slavery “was an early arrangement of the Almighty, to be perpetuated through all time.”<sup>31</sup> In the wake of the split between Baptists along sectional lines in 1845, which followed the 1844 Methodist break, South Carolinian minister Richard Fuller answered his coreligionist’s arguments in a letter that represented the tenor of the southern position. Recognizing that “compared with slavery, all other topics which now shake and inflame men’s passions in these United States, are really trifling,” Fuller argued that “the Old Testament did sanction slavery,” citing a favorite proslavery passage from Leviticus.<sup>32</sup> He then attempted to show that “in the Gospels and Epistles, the institution is, to say the least, tolerated.”<sup>33</sup> Fuller responded with contempt to the idea that Christ and his apostles refrained from a straightforward denunciation of slavery for the sake of expediency, mocking the notion that “they who proclaimed and prosecuted a war of extermination

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<sup>29</sup> Wayland, *Elements of Moral Science*, 204, emphasis in original.

<sup>30</sup> On this and other antislavery arguments from the New Testament, see Harrill, “Use of the New Testament,” 150-58.

<sup>31</sup> Alexander McCaine, *Slavery Defended from Scripture, against the Attacks of the Abolitionists* (Baltimore: William. Wooddy, 1842), 5.

<sup>32</sup> Richard Fuller and Francis Wayland, *Domestic Slavery Considered as a Scriptural Institution* (New York: Lewis Colby, 1845), 3. See Lev. 25:44-46.

<sup>33</sup> Fuller and Wayland, *Domestic Slavery*, 3-4.

against all the most cherished passions of this guilty earth ... shrank from breathing even a whisper against slavery, through fear of consequences!”<sup>34</sup> Turning to Channing’s reading, in particular, Fuller wondered, if “nothing but this unyielding, uncompromising, condemnation of every sin could content him,” then why Paul had “declined uttering a word” on slavery, preferring to allow “millions on all sides” to sink “into hell through this crime” while “spreading principles which would slowly work a cure!”<sup>35</sup> Fuller’s Paul did not lack for temerity and was not limited by temporal constraints. Having established continuity between the Testaments, Fuller sought to untie the noxious knot between polygamy and slavery by applying to the former practice the argument that many antislavery readers applied to the latter, arguing that “the gospel does forbid, and did at once abolish polygamy.”<sup>36</sup> Fuller viewed polygamy as a corruption from the divinely instituted original practice of monogamy. To the extent that proslavery advocates displayed a distinction between polygamy and slavery under the gospel, it undercut the authority of the Old Testament, which, in turn, troubled the argument from continuity. And to the extent that the argument from continuity retained force, the New Testament stood to suffer from its association with the Old and its outdated practices.

In response to Fuller’s letter, Wayland broadened his argument from expediency to a claim about the progressive nature of revelation. Maintaining that slavery “is always and everywhere ... a moral wrong,” he conceded its existence in both the Patriarchal and Mosaic eras.<sup>37</sup> To explain this seeming inconsistency, he proposed that “God did not see

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<sup>34</sup> Ibid., 5.

<sup>35</sup> Ibid., 6. On this and similar proslavery responses, see Harrill, “Use of the New Testament,” 163-73.

<sup>36</sup> Fuller and Wayland, *Domestic Slavery*, 11.

<sup>37</sup> Ibid., 48.

fit to reveal his will on this subject, nor indeed on many others, to the ancient Hebrews.”<sup>38</sup> Thus, Old Testament permissions were “peculiar” and “anomalous” allowances and so, instances like the command to destroy the Canaanites did not “authorize American citizens ... to destroy, or to enslave, or to hold in slavery, the people of another continent.”<sup>39</sup> Wayland reasoned that Fuller’s assumption that “whatever God sanctioned among the Hebrews, he sanctions for all men and at all times” was “at variance with the whole theory of divine dispensation.”<sup>40</sup> God “has seen fit to enlighten our race progressively,” he explained, and thus “we cannot plead ... that what was permitted without rebuke in a darker age is permitted to us to whom greater light has been given.”<sup>41</sup> Wayland used the idea that biblical peoples lived in different time periods, described as dispensations, to advance an understanding of revelation quite similar to Theodore Parker’s idea of the progress of religion. In both cases, their positions led them to reject slavery as an antiquated practice. Like Channing, Wayland also stressed historical distinctions. Even if “whatever was sanctioned to the Hebrews is sanctioned to all men at all times,” he did “not see what manner it could justify slavery in the United States,” given the differences between the two systems.<sup>42</sup> Believing that “the Jewish law was made exclusively for that people,” he argued that it “can be pleaded in justification by no other people whatever.”<sup>43</sup> Emphasizing the progress of God’s revelation and spotlighting differences between ancient servitude and modern slavery allowed Wayland to dismiss Old Testament precepts as peculiar to a bygone past.

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<sup>38</sup> Ibid., 49-50.

<sup>39</sup> Ibid., 50, 51.

<sup>40</sup> Ibid., 51, 52.

<sup>41</sup> Ibid., 53.

<sup>42</sup> Ibid., 58.

<sup>43</sup> Ibid., 59.

Presuming that southerners would not want to mirror the peculiar Mosaic system, Wayland assumed that “the Scriptural argument in defence of slavery is narrowed down to the limits of the New Testament,” a text given not “to one people, but to the whole race; nor for one period, but for all time.”<sup>44</sup> Stressing “*a consideration of the circumstances*,” he wrote that “at the time of our Saviour and his apostles, slavery was universal,” which stemmed from “the moral darkness of the age.”<sup>45</sup> Thus, rather than teaching precise precepts, Christ and his followers inculcated broad principles, such as the brotherhood of man and their equal relationship to God, timeless truths which, once “instilled into the public mind, must of necessity abolish slavery.”<sup>46</sup> Wayland’s developmental argument took historical limitations into account. Citing the “long-mindedness of the Deity,” he argued that “God treats his intelligent creatures according to the nature which he has given them. ... He promulgates truth of universal efficacy, but frequently allows long time [*sic*] to elapse before the effect of it appears, in order that that effect may be the more radical and comprehensive.”<sup>47</sup> While it was a moral advancement over Patriarchal and Mosaic dispensations the gospel era emerged in a dark time, and “it was necessary that this darkness should be dispelled, before the moral light could shine upon slavery.”<sup>48</sup> Wayland found that moral light in a more recent favored past.

In a clear instance of overlap in biblical and legal interpretation, which also suggested a turn to the founding era as the most useful favored past, he argued that the gospel truths, which had evolved since the New Testament times, received “their fullest

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<sup>44</sup> Ibid., 77, 78.

<sup>45</sup> Ibid., 85, 89, emphasis in original.

<sup>46</sup> Ibid., 93.

<sup>47</sup> Ibid., 103.

<sup>48</sup> Ibid., 105.

development in the principles of the Declaration of Independence.”<sup>49</sup> Wayland went so far as to posit that “the gospel of Christ, on the subject of human rights, falls infinitely below the Declaration,” though he believed that the flowering of the principles in that document relied on the cultivation of original gospel truths.<sup>50</sup> This kind of reasoning brought together the biblical and Revolutionary pasts, but it also marked the beginnings of an emphasis on Revolutionary era texts as authoritative in the slavery debate. In answering the question as to how to implement antislavery principles found therein, he granted that “we are at liberty to use the same manner, in just so far as our circumstances and those of the early Christians correspond,” before arguing that “the cause with us is different. . . . We, in our Declaration of Independence, have already acknowledged the very principles now in question.” For primitive Christians, “laws were nothing but the published will of a despot. . . . It is by no means the same with us. *We make our own laws.*”<sup>51</sup> Rather than suggest that the US legal system granted greater protection for slaveholders than that of ancient Israel, as had Daniel Coker, or that slavery in New Testament times paled in comparison to modern slavery, as had Channing, Wayland stressed the democratic nature of the American republic and the amendatory potential of its laws. Change was now in the hands of the people. The time was ripe to pick the fruit born of gospel seeds. All this indicated historical distance from the New Testament era.

Before letting the subject rest, Fuller responded in a series of letters, which, in 1845, were published together with Wayland’s. Fuller reasserted that “WHAT GOD SANCTIONED IN THE OLD TESTAMENT, AND PERMITTED IN THE NEW, CANNOT BE SIN.”

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<sup>49</sup> Ibid., 74.

<sup>50</sup> Ibid., 88.

<sup>51</sup> Ibid., 105, emphasis in original.

Having posited that “both Testaments constitute one entire canon” and “furnish a complete rule of faith and practice”—a position undermined by his statements on polygamy—he attacked the abolitionists’ scriptural elasticity.<sup>52</sup> “The Bible operates *too slowly* for our reformers,” he sneered, dismissing “the germinal principle, which, in subsequent ages, and under the genial influence of the reformers, should expand and ripen.”<sup>53</sup> Believing that Wayland wrongly had conflated southern slavery with the South’s slave laws, and thus mistakenly compared slavery as an institution to the peculiar Old Testament laws, he posited that “the moral character of [ancient] actions is immutable.”<sup>54</sup> Fuller granted that the Mosaic laws and the slave codes differed, and even allowed that reform of the latter might be right, but argued that the example of biblical prophets demonstrated that slaveholding, in and of itself, was not sinful. Attention to historical distinction could be used to justify, as well as condemn, modern slavery. Though emphatic in his argument for canonical continuity, Fuller realized that temporal differences separated the biblical past from the American present. He, then, also recognized transient aspects of the biblical record in his attempt to rescue permanent and immutable truths. Rather than conflate Abrahamic servitude with American slavery, Fuller called on the biblical past simply to show that “slavery is not necessarily, and always, and amidst all circumstances, a sin.”<sup>55</sup> Like his opponents, Fuller recognized historical differences, but he believed that exemplary actions could be recovered to demonstrate that slavery was similar to a “large number of actions whose moral character

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<sup>52</sup> Ibid., 170.

<sup>53</sup> Ibid., 169, emphasis in original, 172.

<sup>54</sup> Ibid., 180-82, quotation on 80.

<sup>55</sup> Ibid., 170.

depends on the peculiar circumstances of each case.”<sup>56</sup> While some antislavery readers argued that progress in moral understanding made slavery’s immorality clearer in the present, Fuller contended that present circumstances made slaveholding itself moral in the American South. Fuller’s argument, which resurfaced in other proslavery defenses, downplayed historical distance, but in positing the contingent nature of some sins, his reading also stressed the importance of historical context and particularity.

Fuller, though, stood firm in his belief that God had revealed all moral truth in the gospel and that the first Christians understood that truth perfectly well. “Nothing can be more utterly sophistical,” he wrote, “than the idea that we have any light, as to matters of pure revelation, which the first Christians had not.” He acknowledged “that the world has made prodigious progress in all the arts and sciences, during the last three or four centuries,” but, in contrast to figures such as Wayland, Channing, Stuart, and especially Parker, believed that progress shed no new light on the original scriptural truths.<sup>57</sup> Fuller seemed to believe that while historical circumstances determined whether or not slavery was moral, changes in those circumstances did not alter the original Christian revelation. In short, he held that both primitive Christians and American nineteenth-century Protestants had access to the same gospel light needed to determine slavery’s morality, and when illuminated, understood that the similarities between past and present circumstances, made slavery moral then and now. Other southerners agreed, allowing for progress in “physical science,” but maintaining that “in religion and morals, we doubt all improvements, not known to certain fishermen who lived some eighteen hundred years

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<sup>56</sup> Ibid., 166.

<sup>57</sup> Ibid., 185.

ago.”<sup>58</sup> Fuller not only dismissed that humans had grown in their grasp of God’s moral laws since Christianity’s founding, but he believed that recent biblical scholarship darkened rather than illuminated static gospel truths. He aimed to remove the occlusion introduced by modern movements, such as abolitionism, and recover pure primitive teachings. He cited scriptural passages to provide inferences, proofs, and demonstrations that “in the days of the Saviour and the apostles, this institution existed everywhere,” and they “did not declare it to be a sin, but by precept and example permitted it to continue.”<sup>59</sup> Given his assumptions about the universal moral nature of New Testament actions and the similarities between ancient and modern slavery, Fuller could collapse vast historical distances and conflate real historical distinctions in positing that “should they appear now, they would find the same institution. . . . And they would act just as they acted then; or rather, they are here in the gospel, and are now doing what they then did.”<sup>60</sup> This sense of contemporaneity with the biblical past, its people, its institutions, and its sentiments, carried forward traditional understandings. The historical turn was not without its holdouts. Some interpreters continued to insist on reading the Bible as if its past retained a clear temporal correspondence with the present. Despite his emphasis on historical contingencies and circumstances, in Fuller’s mind, biblical figures sanctioned American slavery.

Wayland and Fuller’s 1845 publication became a useful text in the slavery debates, finding reference among prominent individuals such as Albert Barnes. A graduate of Princeton Theological Seminary, Barnes soon gained notoriety as head of

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<sup>58</sup> William F. Hutson, “Fictitious Literature,” *Southern Presbyterian Review* 2 (September 1847): 78 (APSO).

<sup>59</sup> Fuller and Wayland, *Domestic Slavery*, 187, 200.

<sup>60</sup> *Ibid.*, 200-201.



Philadelphia's First Presbyterian Church, where he championed New School Presbyterianism, and through his publications on the New Testament, which drew the ire of his coreligionist, the orthodox Charles Hodge. Trained in biblical criticism, Barnes added his abilities to the task of discerning Bible's meaning and relevance on slavery. In an 1846 publication, he brought his expertise to bear on the issue, while advocating widespread engagement, noting that "the subject of slavery is one in which all men have an interest, and which all have a right to discuss."<sup>61</sup> This appeal corresponded to the prevailing opinion that all could read and understand the Bible, but elevated that belief in opining that all could learn the principles of biblical interpretation. The growing emphasis on historical reasoning in both biblical and constitutional hermeneutics suggested that all could participate as interpreters, and not just biblical and legal scholars. In laying out his approach, Barnes responded to Fuller but also to Hodge's *Biblical Repertory*, both of which distinguished between slaveholding and slave laws to contend that "*the condemnation of the latter does not necessarily involve the condemnation of the former.*"<sup>62</sup> Shifting attention from whether slavery was wrong in all circumstances, Barnes responded that the only question "fairly before the American people" was "whether slavery as it exists in the United States is, or is not, in accordance with the principles and the spirit of Christianity."<sup>62</sup> In dealing with the various biblical dispensations, Barnes kept this question at the forefront of his discussion, though he also drew on the idea of the progress of God's revelation.

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<sup>61</sup> Albert Barnes, *An Inquiry into the Scriptural Views of Slavery* (Philadelphia: Perkins and Purves, 1846), 5.

<sup>62</sup> *Ibid.*, 12, emphasis in original.

With the help of cementing canonical divisions among more liberal Christians that pulled apart the Old and New Testaments and separated their texts from each other, Barnes examined patriarchal and Mosaic servitude. He narrowed his first consideration to “whether one who is a slaveholder in the United States, in the manner in which slavery exists here, is justified in it by the examples of the patriarchs.”<sup>63</sup> In determining whether “the slavery which existed then was essentially the same as that which it is proposed to vindicate,” Barnes examined terms denoting servitude in the Hebrew scriptures and concluded that “the mere use of the *word* in the time of the patriarchs, determines nothing in the issue before us.”<sup>64</sup> As with other antebellum scholars who were attuned to biblical criticism, Barnes employed his learning to muddy rather than to purify the waters of the biblical past. Some antislavery constitutionalists would do the same with the founding era. Even if slavery had existed among the Patriarchs, Barnes explained, existence was no sign of divine approval. “It is perfectly clear,” he wrote, calling on a now familiar equation, “that, so far as the conduct of the patriarchs goes, it would be just as easy to construct an argument in favour of polygamy as in favour of slavery.”<sup>65</sup> Regardless of the status of servitude among the ancients, “the patriarchs were good men in their generation, and, considering their circumstances, were men eminent for piety. But they were imperfect men; they lived in the infancy of the world; they had comparatively little light on the subjects of morals and religion; and it is a very feeble argument which maintains that a thing is *right*, because any one or all of the patriarchs practiced it.”<sup>66</sup> Barnes held that even the holy Patriarchs, who were exceptional figures despite their historical

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<sup>63</sup> Ibid., 59.

<sup>64</sup> Ibid., 60, 70, emphasis in original.

<sup>65</sup> Ibid., 79.

<sup>66</sup> Ibid., 79, emphasis in original.

context, did not transcend that context. Recognizing that most drew on the *Mosaic* system to defend southern slavery, Barnes stressed the failure “to compare it with that which exists in our land.”<sup>67</sup> His investigation of the practice turned the application around: “All the arrangements of law which are made in the slave states, are designed to perpetuate slavery, not to bring it to an end; all those in the Mosaic statutes were intended to modify the system, and ultimately abolish it.”<sup>68</sup> Barnes, on the one hand, asserted that the historical differences resulting from moral progress undermined the relevance of outdated Patriarchal precedents, and, on the other hand, he suggested that present southern laws, perhaps owing to decline, fell short in relation to enlightened Mosaic laws. Barnes, then, understood the Mosaic law as interpreters such as Channing and Wayland understood the apostles’ New Testament teachings. These sorts of antislavery biblical readings, which called on a past that looked forward to slavery’s abolition, anticipated antislavery constitutional readings, which also would appeal to a historical period—the founding era—that expected slavery’s demise.

Before turning to the New Testament, Barnes strove to minimize slavery’s existence in Judea between the times of Moses and of Christ, which allowed him to posit the antislavery tendency of Mosaic law and also to counter the claim that Christ, though familiar with slavery, never denounced it.<sup>69</sup> He conceded slavery’s existence in the apostolic era and followed Channing and Wayland in arguing that “God has in fact

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<sup>67</sup> Ibid., 106.

<sup>68</sup> Ibid., 196, emphasis in original. In a prior section focused on Israelite servitude under the Egyptians, Barnes similarly argued, “If we may draw an inference, also, from this case, in regard to the *manner* in which God would have such a people restored to freedom, it would be in favour of *immediate emancipation*” (ibid., 104, emphasis in original).

<sup>69</sup> Ibid., 203-28.

removed most of the evils of the world by a *gradual* development of principles which strike on great wrongs existing in society.”<sup>70</sup> Stressing historical “circumstances,” he explained that

the apostles were strangers in the lands where they published the gospel; they had no civil power. ... Slavery had existed for ages ... it was defended by lawgivers and moralists; it was interwoven with every custom and habit of social life ... and it was supposed to have the sanction of religion. What *would* have been the effect of denouncing it. ... [The apostles] would have been regarded as disturbers of the public peace ... and they would have been banished at once from every slaveholding community—just as abolition agents are now at the South.<sup>71</sup>

Again unable to resist historical comparison, Barnes cited the gradualist gospel views found in the *Biblical Repertory* and aligned them with those of Christ’s apostles in order to confront the paper’s contention that an argument from expediency made the apostles duplicitous.<sup>72</sup> Barnes made both historical comparisons and distinctions to serve his purposes. Turning to the case of Onesimus, he again complicated the conflation of servant and slave, proposing, as had Channing, that Paul had sent him back as a fellow Christian. He stretched the argument to the brink, positing that “the principles laid down in the epistle to Philemon ... would lead to the universal abolition of slavery.”<sup>73</sup> Barnes concluded that the “fair application,” of both the Mosaic laws and the Christian religion “*would ultimately bring the institution to an end.*”<sup>74</sup> Such an application, though, depended on the right circumstances. Barnes believed that these views were “destined most certainly to increase and prevail.”<sup>75</sup> This, according to the reformer, was because of history’s direction: “The progress towards universal freedom is onward. The spirit of the

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<sup>70</sup> Ibid., 288, emphasis in original.

<sup>71</sup> Ibid., 291, emphasis in original.

<sup>72</sup> Ibid., 297-303.

<sup>73</sup> Ibid., 330.

<sup>74</sup> Ibid., 229, 372, emphasis in original.

<sup>75</sup> Ibid., 378.

age; the settled principles of liberty; the advances in intelligence and in benevolent feeling, all are against the system, and it cannot survive the shock when all these are fully arrayed against it.”<sup>76</sup> Like Parker, Barnes posited progress, which highlighted historical distance from the past to which he appealed. The antislavery seeds had been planted centuries ago and soon would flower in the fertile grounds of the new age.

This kind of back and forth about what kinds of slavery prevailed in biblical times and about what portions of the Christian canon justified or condemned the institution held important implications for how Americans thought about the biblical past. The assertion that the institution did not exist in Old Testament times gave way to a debate about whether or not Patriarchal or Mosaic slavery paralleled southern slavery and thus could be used to uphold or condemn the American institution. This historicized the Old Testament past.<sup>77</sup> Some persisted in appeals to the Hebrew scriptures but the actions and words of Abraham and even of Moses seemed to lose relevance as polemicists on both sides agreed that the actions and words of less distant figures like Jesus and Paul mattered more. The new Gospel trumped the old Law. Southerners such as Fuller strove to fuse the Testaments, which, if successful, would support the claim that Providence ensured slavery’s endurance as a universal institution. That effort could prove counterproductive in a Christian nation, but as slavery’s sanction was clear among the Patriarchs and Israelites, drawing the Testaments together helped overcome the limitations of a proslavery reading of Greek scriptures. Some antislavery readers conceded the persistence of slavery from the times of one Testament to the other, but capitalized on

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<sup>76</sup> Ibid., 380.

<sup>77</sup> The New Testament evangelicalism and Christocentric focus of the Second Great Awakening also facilitated this process. See Shalev, *American Zion*, 151-84.

those limitations, taking the Gospels' universal teachings as a condemnation of the practice and using historical arguments to separate New Testament from southern slavery. This approach paralleled that of antislavery constitutionalists, who would read the Constitution in light of the Declaration's egalitarian statements and use historical arguments to contrast founding-era expectations about slavery with the protected position of the peculiar institution in the nineteenth century.

Despite Barnes' best efforts to refocus the discussion on whether or not the Bible sanctioned *southern* slavery, southern proslavery interpreters continued to insist that the question of consequence was whether or not slavery was always and everywhere wrong.<sup>78</sup> This approach did not make southerners less prone to assert that biblical figures justified American slavery, but it suggests their awareness of temporal differences. Contextual readings of the Bible allowed proslavery readers like Richard Fuller to argue that because God sanctioned different forms of slavery at different times, he sanctioned it now. But, such readings also helped antislavery readers attack southern slavery as archaic. Those who accepted slavery's existence in Old and New Testament times, such as Wayland and Channing, countered with interpretations focused on the *intentions* of Christianity's founders. This progressive historical view held that the seeds of universal antislavery principles would outlast and overcome particular sentiments and institutions peculiar to the times, reaching full fruition in the more democratic and progressive American present. While also an appeal to a past, this was not an argument to return to or reclaim the past. The emphasis on submerged universal principles under a surface of outdated teachings highlighted the foreign nature of the biblical past. As the number of

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<sup>78</sup> See Oshatz, *The Sin of Slavery*, 61-69.

the Bible's useful and permanent teachings shrunk to a few universal principles from a handful of texts, the remaining instructions and passages were relegated to the status of passing and particular peculiarities from a distant past. The argument that those universal principles would find fulfillment in the future drew attention to the distance between the biblical past and the present. This contention, which retained faith in the sacred texts and thus stood a better chance of winning adherents than antislavery attempts to dismiss the Bible as obsolete, held great potential to spread awareness of that distance.

### *The Sacred Founding Texts and the Shifting Grounds of the Constitutional Debate*

The emphasis on using certain portions from a favored past and on uncovering universal principles expected to flower in time found a clear parallel in constitutional debates. As demonstrated in Wayland's argument, appeals to the biblical past could overlap with appeals to the Revolutionary past, and, as his discussion showed, the recent American past could be valued as more enlightened than even the sacred Jewish and Christian pasts. According to Wayland, the universal truths inculcated in the New Testament received their clearest articulation in the Declaration of Independence. Around midcentury, the American past became more relevant in determining the fate of American slavery debates than the biblical past. This is not to say that the biblical debates subsided, but as politicians began to focus on finding a resolution to the crisis in their political rather than their religious tradition, even biblical scholars turned their attention to deciding the constitutional side of the debate. If the distance separating the favored biblical past from their American present proved too great to bridge in addressing contemporary problems, perhaps the more recent favored past could offer solutions. As

Americans appealed to the Revolutionary era for answers, it became clear that historical change separated even that recent founding moment from the present.

The debates over national religious texts traced in the preceding sections and chapters did not exactly parallel the debates over national legal texts outlined in the following sections and chapters, but, as the remainder of this chapter demonstrates, both came under the scrutiny of historical reasoning, which informed canonical distinctions. In the biblical argument the New Testament achieved a higher status than the antiquated Old Testament, despite some southerners' best efforts to hold them together. In the constitutional argument, the Constitution achieved a higher status than the Declaration of Independence, despite some antislavery proponents' best efforts to hold these founding documents together. In part, of course, this was because the Constitution was accepted as that nation's supreme legal document. But if the New Testament suffered in the eyes of some abolitionists from its connection with the Old Testament, to the same audience the Constitution achieved greater stature through its tie to the Declaration. Indeed, despite Garrisonian and proslavery efforts to sever the connection between these documents, the former to claim the Declaration and damn the Constitution, and the latter to damn the Declaration and claim the Constitution, the texts remained tied in the antislavery imagination. Though the Declaration predated the Constitution, interpreters did not consider it the product of a separate and peculiar past, as they did the Old in relation to the New Testament. Millennia separated Moses from John the Revelator, while some of the same figures that signed the Declaration helped craft the Constitution. To the extent that the later diverged from the former, then, antislavery advocates could consider it a retrogressive creation. But, regardless of how one positioned the Declaration in relation



to the Constitution, the growing emphasis on reading those texts in light of historical research exposed temporal distance from the founding era.

*“We Plant Ourselves upon the Declaration of Our Independence, and the Truths of Divine Revelation”: The Declaration, the Bible and the Beginnings of Garrisonian Anti-Constitutionalism*

One can read the constitutional debates as a bout between lightweight antislavery and heavyweight proslavery forces. Southern slaveholders’ successful efforts to shore up their institution in the Constitution might be interpreted as a preemptive strike against the potential threat posed by the *Somerset* case (1772), wherein Lord Mansfield determined that only positive law protected slavery.<sup>79</sup> Perhaps in response to that decision, which some interpreted as a natural-law condemnation of slavery, southerners ensured that the Constitution affirmed the federal consensus that slavery’s regulation should be left to the states.<sup>80</sup> After a time of relative quiet, events such as the War of 1812, the crisis of 1820,

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<sup>79</sup> *Somerset v. Stewart*, Lofft 1, 98 Eng. Rep., 499 (1772).

<sup>80</sup> Much of the recent scholarship on the Constitution concludes that it was or functioned as a proslavery document. See Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson* (Armonk, NY: M. E. Sharpe, 1996); Akhil Reed Amar, *America’s Constitution: A Biography* (New York: Random House, 2005); David Waldstreicher, *Slavery’s Constitution: From Revolution to Ratification* (New York: Hill & Wang, 2009); and Barbara Welke, *Law and the Borders of Belonging in the Long Nineteenth-Century United States* (New York: Cambridge University Press, 2010). Others contend that from the founding, and in the Constitution specifically, we can see the workings and dominance of a Slave Power. See Leonard L. Richards, *The Slave Power: The Free North and Southern Domination, 1780-1860* (Baton Rouge: Louisiana State Press, 2000); Gary Wills, *Negro President: Jefferson and the Slave Power* (Boston: Houghton Mifflin, 2003); and George Van Cleve, *A Slaveholders’ Union: Slavery, Politics, and the Constitution in the Early American Republic* (Chicago: The University of Chicago Press, 2010). William Lee Miller recognizes the “double legacy of the founders,” but posits that the Constitution and the institutions of representative government provided subsequent generations with the tools to abolish slavery. He relies

and Denmark Vesey's slave rebellion of 1822, brought slavery again to the surface. In the wake of the Missouri Compromise, which aggravated rather than alleviated the issue, proslavery and antislavery advocates more fully developed and articulated their views.<sup>81</sup> Up until this period, most Americans accepted the federal consensus position, which forbade federal involvement in determining slavery's fate. Thus, in the first decades of the nation's existence abolition societies worked in loose coalitions for gradual emancipation through the states. In the 1830s, however, new abolitionist societies began

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on Fehrenbacher's idea that the founders created two constitutions, one for their own time and one for the ages. William Lee Miller, *Arguing about Slavery: The Great Battle in the United States Congress* (New York: Knopf, 1995), 16-21. In perhaps the most detailed historical examination of the Constitution, Jack Rakove finds tensions over slavery in the text, but suggests that the document does not reveal the founders' prescription for how such tensions should unwind. Jack Rakove, *Original Meanings: Politics and the Making of the Constitution* (New York: Knopf, 1996), 85-92. I am less interested in the Constitution's relationship to slavery than I am in how antebellum Americans understood that relationship. On the Revolution as an incubator for antislavery thought and action, see Gordon Wood, *The Radicalism of the American Revolution* (New York: Knopf, 1992); and Lynn Hunt, *Inventing Human Rights: A History* (New York: Norton, 2007). Others emphasize the adoption of ideas such as liberty and equality in slave quarters during the Revolution. See Gary Nash, *Red, White & Black: The Peoples of Early North America* (Englewood Cliffs, NJ: Prentice Hall, 1974), esp. the last chapter; and Sylvia Frey, *Water from the Rock: Black Resistance in a Revolutionary Age* (Princeton, NJ: Princeton University Press, 1991).

<sup>81</sup> On the role of the War of 1812, see Adam Rothman, *Slave Country: U.S. Expansion and the Origins of the Deep South* (Cambridge, MA: Harvard University Press, 2005), 119-64; and Matthew Mason, *Slavery and Politics in the Early American Republic* (Chapel Hill: The University of North Carolina Press, 2006), 42-74. On the Missouri Compromise as, in some sense, a first step toward Civil War, see Robert Pierce Forbes, *The Missouri Compromise and Its Aftermath: Slavery and the Meaning of America* (Chapel Hill: The University of North Carolina Press, 2007). On the sources and development of antislavery thought in America, see David Brion Davis, *The Problem of Slavery in Western Culture* (Ithaca, NY: Cornell University Press, 1966); David Brion Davis, *The Problem of Slavery in the Age of Revolution*; David Brion Davis, *In the Image of God: Religion, Moral Values and Our Heritage of Slavery* (New Haven, CT: Yale University Press, 2001); David Brion Davis, *Challenging the Boundaries of Slavery* (Cambridge, MA: Harvard University Press, 2003); and David Brion Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (New York: Oxford University Press, 2006).

calling for immediate emancipation, which challenged the consensus and led Americans to look to the founding era for answers.<sup>82</sup>

William Lloyd Garrison, America's most determined abolitionist, raised the level of both the biblical and constitutional debates. He did not offer rigorous historical readings of the Bible or the Constitution, but his early uses and abuses of the nation's sacred and legal texts encouraged interpreters to either offer contextual explications to support their position or to dismiss such explication as unnecessary. Regardless of whether or not one decided to decipher these texts through historical exegesis, one had to at least recognize the contextual approach as the prevailing hermeneutic. As outlined below, Garrison's early efforts to be heard on the public stage spurred along the move to interpret the Constitution as a historical text in need of historical explication.

Garrison approached the American past in a conflicted way. He called on the Revolutionary legacy early and often, though his interest in that period, and in the Declaration in particular, rested less on past achievements than on the Revolution's potential power to revolutionize social relations in the present.<sup>83</sup> In 1829, while finding his voice in the expanding newspaper culture, the twenty-three-year-old Garrison answered the invitation of the American Colonization Society to speak on the Fourth of July at the Park Street Church in Boston. Addressing his audience on the existence of slavery in a presumably free nation, he excoriated American politics as "rotten to the

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<sup>82</sup> Much of the narrative on the general development of antislavery constitutionalism, including the use of the term "federal consensus," follows the account in William M. Wiecek's *Sources of Antislavery Constitutionalism*.

<sup>83</sup> On Garrison's use of the Declaration of Independence, see, for example, Pauline Maier, *American Scripture*, 197-99. Maier places debates over how far American equality extended in a tradition stretching back to the 1790s and explains its development in the antebellum period (ibid., 189-201).

core” and designated the Fourth “a day of great lamentation, not of congratulatory joy.”<sup>84</sup> Referring to “a very large proportion of our colored population,” he contended that “this is their country by birth, not by adoption. Their children possess the same inherent and unalienable rights as ours.”<sup>85</sup> Conceding that the free states “are constitutionally involved in the guilt of slavery,” he called on northerners to unshackle themselves from “unjust Constitutional provisions,” and urged that “moral influence, when in vigorous exercise, is irresistible.”<sup>86</sup> Here Garrison essentially rewrote “the Declaration of Independence to include African-Americans.”<sup>87</sup> In the course of the next few decades, he and other abolitionists made it hard to think about slavery without thinking about the enslaved.

In this speech and throughout his career, one finds an overlap between biblical and Revolutionary appeals.<sup>88</sup> Like his Quaker mentor Benjamin Lundy, who Garrison assisted in editing the *Genius of Universal Emancipation* from September 1829 until March 1830, Garrison rooted his antislavery ideas in the Declaration and the Bible.<sup>89</sup> In the inaugural issue of the *Liberator*, published on January 1, 1831, he referenced his efforts to “lift up the standard of emancipation in the eyes of the nation, *within sight of Bunker Hill and in the birth place of liberty*” and, after recanting his prior “unreflecting” assent to gradual emancipation, ascribed to the self-evident truths of the Declaration.

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<sup>84</sup> William Lloyd Garrison, “Address to the American Colonization Society, July 4, 1829,” in *William Lloyd Garrison and the Fight Against Slavery: Selections from The Liberator*, ed. William E. Cain (Boston: Bedford Books, 1995), 62.

<sup>85</sup> *Ibid.*, 64-65.

<sup>86</sup> *Ibid.*, 63, 66, 67.

<sup>87</sup> See Henry Mayer, *All on Fire: William Lloyd Garrison and the Abolition of Slavery* (New York: St. Martin’s, 1998), 33-35, 61-68, quotation on 67.

<sup>88</sup> In this speech he cited the Golden Rule injunction, “all things whatsoever ye would that men should do to you, do ye even so to them.” Garrison, “Address,” 65. See Matt. 7:12.

<sup>89</sup> *Ibid.*, 52-53.

Based on this foundation, he committed to “strenuously contend for the immediate enfranchisement of our slave population.”<sup>90</sup> Garrison grounded his immediatist position in the Revolutionary past. In the second issue of the *Liberator*, he held out hope for the nation’s redemption. “We do not give up our country as sealed over to destruction,” he wrote, “As long as there remains a single copy of the Declaration of American Independence, or of the bible, in our land, we will not despair.”<sup>91</sup> He left the Constitution out of his list of redeeming texts as a response to proslavery constitutional arguments, which exhibited an early lack of faith in the Constitution as an antislavery text, but his allegiance to the Bible and, especially, the Declaration remained firm.

In the early 1830s, awakened by the southern intransigence resulting from events such as Nat Turner’s slave rebellion and the nullification crisis, the immediatist movement confronted and gained numerous converts from the colonization effort, leading to the establishment of the American Anti-Slavery Society (AASS) in Philadelphia in December of 1833. Garrison’s continued valuation of the Bible and the Declaration was evident in the new organization’s “Declaration of Sentiments” and its constitution. The constitution opened the call for immediate emancipation by asserting humanity’s common creation under God, stressing the New Testament command to “love their neighbours as themselves,” and referencing the guiding egalitarian principles contained in the Declaration of ‘76.<sup>92</sup> The “Declaration of Sentiments” began with a reference to the egalitarian ideas espoused by the “band of patriots,” but it proceeded to

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<sup>90</sup> William Lloyd Garrison, “To the Public,” *Liberator*, 1 January 1831, 1 (APSO), emphasis in original.

<sup>91</sup> William Lloyd Garrison, “Our Trust,” *Liberator*, 8 January 1831, 1 (APSO). See Mayer, *All on Fire*, 110-15.

<sup>92</sup> *Proceedings of the Anti-Slavery Convention, Assembled at Philadelphia, December 4, 5, and 6, 1833* (New York: Dorr and Butterfield, 1833), 5-6.

contend that the mission of the AASS exceeded that of their Revolutionary forebears, holding that “we have met together for the achievement of an enterprise, without which, that of our fathers is incomplete; and which, for its magnitude, solemnity, and probable results upon the destiny of the world, as far transcends theirs, as moral truth does physical force.”<sup>93</sup> Harnessing the power of the Revolutionary past, Garrison asserted the unprecedented significance of the revolutionary present. Whereas Francis Wayland would find the full articulation of the New Testament’s universal truths in the Declaration, Garrison hoped to realize those truths through the AASS. Noting differences in cause and approach, he opined that the Revolutionaries’ “grievances, great as they were, were trifling in comparison with the wrongs and sufferings of those for whom we plead.”<sup>94</sup> Even his presentist reading of the Revolution posited historical distinctions in asserting the moral superiority of the present battle against slavery over the past struggle against tyranny. Garrison concluded with an affirmation of the twin pillars of his faith, Revelation and the Declaration, though, at the suggestion of Lucretia Mott, one of the prominent women in attendance, he changed the order: “We plant ourselves upon the Declaration of our Independence, and the truths of Divine Revelation, as upon the EVERLASTING ROCK.”<sup>95</sup> As with Francis Wayland’s appeal to the Declaration as a more complete articulation of inchoate New Testament truths, Mott’s suggestion and Garrison’s agreement hints at the gradual reordering of favored pasts among some antislavery thinkers. This reordering placed the Revolutionary era under the same kind of scrutiny that scholars had subjected the biblical past to. It also suggests that these

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<sup>93</sup> Ibid., 12.

<sup>94</sup> Ibid., 13, emphasis in original.

<sup>95</sup> Ibid., 15. On these proceedings, see Mayer, *All on Fire*, 173-76; and Wiecek, *Sources of Antislavery Constitutionalism*, 167-70.

abolitionists granted the Declaration a status similar to that of the New Testament, while, increasingly, they cast the Constitution as the Old Testament of the Revolutionary canon.

Rather than provide contextual interpretations of these texts, Garrison extracted abstract ideas and cited ready-made passages. But these efforts to use the Bible, the Declaration, and the Constitution in a debate of increasing significance led to more rigorous examinations of those texts as rooted in, instead of outside, of time. Attempts to use favored pasts in this period inspired critical calls for historical accuracy.<sup>96</sup> Americans were deeply invested in both the American and biblical pasts, and thus depictions of those pasts garnered special attention. Garrison's radical application of Christian and American texts also coincided with the emergence of historical criticism and the growing emphasis on contextual interpretation in biblical and constitutional hermeneutics. In short order, constitutional debates, as with biblical debates, became historical contestations, which led some, including Garrison, to reaffirm their faith in one founding document, the Declaration, while abandoning to the past other founding texts, including the Constitution and, later, the Bible.

The constitution and declaration of the AASS affirmed the federal consensus, admitting that "each State, in which Slavery exists, has, by the Constitution of the United States, the exclusive right to *legislate* in regard to its abolition in said State," and conceding "that Congress, *under the present national compact*, has no right to interfere

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<sup>96</sup> Such was the case with James Fenimore Cooper's novels. Even before Cooper published *Lionel Lincoln* (1825), the first volume in a planned series set in the Revolutionary period, attentive observers commented on the difficult task Cooper had set for himself. See, for example, "Literary Notices," *Collections, Historical and Miscellaneous, and Monthly Literary Journal* 3 (June 1824): 199-200 (APS).

with any of the slave States, in relation to this momentous subject.”<sup>97</sup> Garrison’s reference to the “present” national compact signaled his sense of its impermanence and anticipated his later call for its abrogation. Even at this early stage he believed that “all those laws which are now in force, admitting the right of slavery, are therefore before God utterly null and void,” specifically arguing that the representation, fugitive slave, and insurrection clauses “MUST BE BROKEN UP.”<sup>98</sup> Still, in issuing this call for constitutional emendation, he referenced “the highest obligations resting upon the people of the free States, to remove slavery by moral and political action, as prescribed in the Constitution of the United States.”<sup>99</sup> The AASS held that the Constitution empowered Congress to abolish slavery in the District of Columbia and to forbid its presence in the territories, and its members used the Fifth Amendment’s due process clause to develop equal protection arguments. These ideas set the parameters for later antislavery constitutionalism, but during the 1830s, Garrison’s tepid constitutionalism was replaced by a fiery anti-constitutionalism.<sup>100</sup>

In the early to mid 1830s, Garrison started casting aspersions on the Constitution in the pages of the *Liberator*, even while he retained faith in the Bible and the Declaration.<sup>101</sup> But even as the newspaper assumed a radical edge, there is reason to believe that he showed some restraint when addressing an American audience. In a letter to the London *Patriot*, which was published there in full and republished in the *Liberator*

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<sup>97</sup> *Proceedings of the Anti-Slavery Convention*, 6, emphasis in original, 15, emphasis in original.

<sup>98</sup> *Ibid.*, 14, 15.

<sup>99</sup> *Ibid.*, 15.

<sup>100</sup> For a description of Garrison’s role in the organization of the AASS and an analysis of its founding documents, see Mayer, *All on Fire*, 170-76. See also, Wiecek, *Sources of Antislavery Constitutionalism*, 150-71.

<sup>101</sup> See Mayer, *All on Fire*, 198-99, 224.



only in part, Garrison hoped to unmask the American Colonization Society and desacralize the Constitution. In a section excised from the *Liberator*, he wrote, “I know that there is much declamation about the sacredness of the compact which was formed between the free and the slave States. ... A sacred compact, forsooth! I pronounce it the most bloody and heaven-daring arrangement ever made by men for the continuance and protection of a system of the most atrocious villainy ever exhibited on earth.” The failure of the document was the failure of its framers, who “were men, like ourselves – as fallible, as sinful, as weak, as ourselves.” Abolitionists such as Theodore Parker and Garrison found venerated prophets, apostles, politicians, and statesmen susceptible to the failures and foibles of human nature. In crafting the time-bound Constitution, such imperfect men undercut the timeless Declaration, trampling “beneath their feet their own solemn and heaven-attested declaration, that all men are created equal, and endowed by their Creator with certain inalienable rights.” The flawed and sinful nature of the compact removed its power to demand present or future adherence. “They had no lawful power to bind themselves, or their posterity, for one hour – for one moment – by such an unholy alliance. It was not valid then – it is not valid now.”<sup>102</sup> Though “dripping ... with human blood,” Garrison still argued that the Constitution gave Congress power to restrict slavery in the territories and guaranteed blacks “their liberty and rights of citizenship,” but when this antislavery potential of the nation’s supreme legal text failed to bear fruit, his public

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<sup>102</sup> William Lloyd Garrison, “To the Editor of the London *Patriot*, August 6, 1833,” in *The Letters of William Lloyd Garrison*, ed. William M. Merrill and Louis Ruchames, 6 vols. (Cambridge, MA: Belknap Press of Harvard University Press, 1971-1981), 1:249 (hereafter as *Letters*).

condemnation of the Constitution gained traction.<sup>103</sup> As outlined below, this depended, in part at least, on the publication of Revolutionary era sources that uncovered slavery's dark presence at the nation's founding.

*"The Principle of the Declaration Was Embodied in the Constitution": Madison's Papers and the Articulation of Moderate Antislavery Constitutionalism*

Following the founding of the AASS, antislavery constitutionalism evolved, expanded, and diverged in the 1830s and 1840s, finding voice in two broad groups, the radical and the moderate constitutionalists, whose ideas overlapped at times. Opposed to Garrisonian nonresistance and disunionism, both of these groups found political embodiment in the form of the Liberty Party in 1840. Differences among its members led to the party's dissolution in 1845, and some of the dislocated moderates soon found a place in the more prominent Free Soil Party (1848) and, later, in the more influential Republican Party (1854). This group had powerful proponents in politicians such as Salmon P. Chase and William Seward. Moderates held that freedom was national and slavery local, conceding that abolition was up to the states, but holding that the federal government could not protect slavery or expand its reach.<sup>104</sup> The more radical members of the defunct Liberty Party formed the Liberty League in 1847, the first of a number of short-lived political parties that served as a platform for radical constitutionalists. Figures

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<sup>103</sup> Ibid., 1:250-51, 251. For a similarly conflicted use of the founders, see William Lloyd Garrison, "To Harrison Gray Otis, September 5, 1835," in *Letters*, 1:496-504, where Garrison dismisses the idea that "*they could do no wrong*" even while contending "the free spirit of our fathers still walks unshackled, in pristine boldness and majesty, among us" (ibid., 1:498, 502).

<sup>104</sup> On moderate antislavery constitutionalism, see Wiecek, *Sources of Antislavery Constitutionalism*, 202-27.

such as Alvan Stewart, William Goodell, Lysander Spooner, and Gerrit Smith articulated the radical position, advancing the idea that the Constitution itself opposed slavery.<sup>105</sup> Far from dismissing the Constitution as an outdated legal creed, antislavery constitutionalists continued to pay allegiance to the nation's supreme legal text, but their constitutional approaches still drew attention to historical change and distance.

The radical and moderate constitutional positions obtained their most public hearing at different points, but each of them received clear articulation in the early 1840s, following the publication of *The Papers of James Madison* (1840).<sup>106</sup> The publication might be interpreted as a nation's attempt to recover the words and deeds of a founding generation now gone. The passing of time, and of generations, created a desire for primary sources like Madison's papers, the publication of which contributed to the growing emphasis on the need for, or, in some cases, a stress on the irrelevance of, circumstantial and contextual interpretations of the Constitution. Regardless of how one valued such readings, debates about their merits spoke to the reality and fear of the fact that historical change and difference divided the founding past from the present.

Madison's published papers complicated efforts to read the Constitution as an antislavery text. As some antislavery biblical interpreters conceded slavery's existence in the Bible, even in the New Testament, some moderate antislavery constitutionalists acknowledged its presence in the Constitution. But, as with the antislavery biblical interpreters, they also located antislavery sentiment in the chosen founding era. They also observed that, due to unforeseen economic developments, slavery's hold on the nation

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<sup>105</sup> On radical antislavery constitutionalism, see Wiecek, *Sources of Antislavery Constitutionalism*, 249-75.

<sup>106</sup> Henry D. Gilpin, ed., *The Papers of James Madison*, 3 vols. (Washington: Langtree & O'Sullivan, 1840).

increased in spite of the framers' egalitarian expectations. Even when antislavery constitutionalists like Goodell and Spooner rejected historical sources as superfluous to constitutional interpretation—which only highlighted slavery's place in the founding era context—they also found antislavery expectations among the framers, which they believed the corrupting influence of slavery had betrayed. In other words, as in the biblical debate, antislavery interpreters asserted that the issue was not whether or not slavery existed in the favored past, many conceded that it did, but whether or not the favored past's prominent figures intended that the institution endure into the future. Even antislavery narratives that professed allegiance to the Constitution, then, could demonstrate how different the Revolutionary past was from the present in asserting that the time had arrived to fulfill the expectations of the framers, despite the anachronistic presence of the Slave Power.

In the wake of Madison's death on June 28, 1836, President Andrew Jackson asked Congress to demonstrate their respect to the nation's illustrious founder, to which its members responded with a number of resolutions, including one to accept Dolly Madison's request to assist in the publication of her husband's writings about the Congress of the Confederation and the Constitutional Convention. On November 15, 1836, the prominent widow wrote to Jackson, informing him of the provision in her husband's will, wherein he had written, in reference to the Convention, "it is not an unreasonable inference that a careful and extended report of the proceedings and discussions of that body, which were with closed doors, by a member who was constant in his attendance, will be particularly gratifying to the people of the United States."<sup>107</sup> In

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<sup>107</sup> Ibid., 1:xiv-xv.

light of such statements, Dolly proposed that “however prevailing the restraint which veiled ... this record of the creation of our Constitution, the grave which has closed over all those who participated in its formation, has separated their acts from all that is personal to him or to them.”<sup>108</sup> Madison and his fellow founders might have been uncomfortable with the level of scrutiny that would accompany the publication of such works, but Madison recognized that, as Jackson put it, such writings “cannot fail ... to confer ... accurate knowledge of the principles of their Government, and the circumstances under which they were recommended and embodied in the constitution, for adoption.”<sup>109</sup> In the congressional discussions relative to the publication of Madison’s papers, Senator Ashur Robbins of Rhode Island declared that “those who think (if any think) that the result itself, namely the Constitution ... will be enough for the instruction of mankind on this subject are much mistaken.”<sup>110</sup> The *Boston Recorder* agreed. Celebrating the publication, the paper asserted that “the exact and authentic information which they furnish of the feelings, the motives and the words of the illustrious men of those times, is becoming, if possible, more and more valuable with the lapse of each successive year. The further we recede from the birth of the constitution,” the paper stated, “the more precious do contemporary expositions of it become.”<sup>111</sup>

Most used the occasion to champion the founders and cherish their works. After hearing Jackson’s letter informing Congress of Madison’s death, Senator William Rives of Virginia praised the departed as “the founder and author of that glorious Constitution which is the bond of our union and the charter of our liberties; and it was graciously

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<sup>108</sup> Ibid., 1:xvi.

<sup>109</sup> Ibid., 1:xviii.

<sup>110</sup> Ibid., 1:xxii.

<sup>111</sup> “Literary Intelligence—U. States,” 170.

vouchsafed to him,” Rives continued, “in the order of Providence, to witness for a longer period than any of his illustrious colleagues, the rich blessings which have resulted from its establishment. He was the last surviving signer of that sacred instrument.” The deaths of prominent figures often inspire their sacralization, but the passing of a generation can also induce anxious attempts to reclaim their past deeds and words through historical research and reasoning. This was especially true of the founding generation. Such scrutiny, however, could undermine filio-pietistic veneration. If Madison’s death served to “canonize the works of his hands, and surround, with a new veneration, that precious relic of the wisdom of our departed patriots and sages,” the crisis over slavery demonstrated that no founders and no founding texts remained beyond reproach.<sup>112</sup>

The Madison papers spurred criticism of the founders even among moderate constitutionalists. In 1836, James Birney, who ran for president twice on the Liberty Party ticket, once in 1840 and again in 1844, established Cincinnati’s *Philanthropist*. He served as its editor before turning those duties over to Gamaliel Bailey in 1837. Like Theodore Weld, Bailey had become an ardent abolitionist through the Lane Seminary debates in February of 1834. Seven years later, in February of 1841, the *Philanthropist*, while under Bailey’s editorship, ran an article that drew on Madison’s papers. It cited the slave trade and fugitive slave clauses, among others, as “designed to secure Southern interests.” Casting the Constitution as a “shameful bargain between the Northern and Southern states,” the author noted that “in the Madison papers, the details of this dark transaction are given at length.” While noting that “we have been taught to venerate the character of the framers of the federal constitution,” the writer admonished readers “to

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<sup>112</sup> Gilpin, *Papers of James Madison*, 1:iv.

discriminate in bestowing our respect.” The article pointed out that Virginians Madison, George Mason and Edmund Randolph had opposed the slave trade and emphasized that Madison “thought it WRONG TO ADMIT IN THE CONSTITUTION THE IDEA THAT THERE COULD BE PROPERTY IN MEN.” However, the author concluded that the accursed compromising spirit dominated then just as it did now—“Like parents, like children.”<sup>113</sup> Historical evidence in the form of Madison’s papers qualified this reader’s view of the framers and threatened to bolster the ranks of those attacking the compromised Constitution.

In January of 1843, the *Philanthropist* published an article that better represented moderate constitutionalism. In outlining the Liberty Party’s central tenets, this article offered a radically different perspective of the founding. In a call for Liberty Party support, the author outlined the party position, “in favor of free-labor, impartial liberty, and a right construction of the Constitution.” In a moment of political passion and a surge of patriotic fervor, the author collapsed historical distance and conflated temporal distinction in fusing the Liberty Party with the Revolutionary party: “We proclaim no new doctrine—we desire to form no new party. We reiterate the doctrines of our fathers. We wish to revive the old Liberty party of the times that tried men’s souls. We stand where Hancock, Jefferson and other old patriots stood in 1776, when ... they proclaimed to all nations the great truths of humanity and freedom.” Without missing a beat, the writer vindicated the founders even while slighting the Slave Power:

They did not attempt, by subtle argumentation, to prove that slavery is the foundation of civil liberty.—They did not torture the pages of Inspiration itself into seeming sanction of that stupendous and criminal solecism, that man can hold

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<sup>113</sup> “Importation of Slaves--Original Compromise between North and South,” *Cincinnati Philanthropist*, 17 February 1841, 2-3, quotations on 2 (APSO).

property in man; they did not stultify, by any miserable limitation or exception, their grand and comprehensive declaration that ‘all men are created equal,’—that liberty is the inalienable, God-given right of every human being. They inscribed this declaration on their banners when they went into conflict for Independence. To maintain it, they poured out their generous blood like water. To establish it, they endured all the trials of that protracted and doubtful struggle, until God gave victory to the right.

Rather than provide a close contextual reading—though mentioning Madison, the author did not cite his published papers—the article called attention to a lack of specific words and emphasized the presence of egalitarian ideas and martial deeds. The paper’s antislavery portrayal of the founding era came, in part at least, as a reaction to the proslavery interpretation of the Bible and the Constitution. In this response, the author made a case for historical declension from both the biblical and Revolutionary eras, faulting the Slave Power for slavery’s and unexpectedly secure presence in the nineteenth-century republic.<sup>114</sup>

In characteristic fashion, the moderate author used the Declaration as a lens to read the Constitution, asserting that “when our National Independence was achieved, the principle of the declaration was embodied in the Constitution.” The article conceded that “the framers of the Constitution did not attempt to put an end to slavery in the states where it existed” and “incorporated into the Constitution, some provisions, such as the fugitive slave clause and the three-fifths rule, which experience has shewn to be subversive of justice and liberty. But,” the writer emphasized, “they did not nationalize slavery.” Rather than grant Congress “power to establish or continue slavery anywhere. ... the Constitution expressly denies any such power.” Instead, the author continued, the states maintained “this system, in opposition to the principles of the Declaration and of

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<sup>114</sup> “Address to the People of Ohio,” *Cincinnati Philanthropist*, 11 January 1843, 1 (APSO).



the Constitution and in violation of the plain precepts of Revelation.” The moderates did not allow the Garrisonians to lay sole claim to either the Bible or the Declaration, and faulted the states for failing to realize their egalitarian promises. Indeed, the author posited that the founders—citing Washington, Jefferson, and Madison—had anticipated that fulfillment. “It was confidently expected that the states . . . would speedily and voluntarily abandon [slavery], when the clause in the Constitution, having reference to it as existing under state authority, would become inoperative, while the sacred instrument itself would still remain a perfect and consistent expression of the National Will, breathing only the spirit of justice and human liberty.” The author believed that the farmers had thought historically in believed that the fruition of their founding prospects would cleanse the Constitution of its sinful features. Defiantly, the writer asserted that these “sayings of Revolutionary Fathers” proved “beyond all controversy,” that “the understanding of our ancestors, at the time of the formation of the Constitution” was “that slavery should be gradually and, speedily abolished by state authority.” Without ceding the proslavery reading, the author granted that the Constitution contained proslavery provisions, before positing an original expectation that time would wash them away.<sup>115</sup> The article asserted continuity between the Revolutionaries’ and the Liberty Party’s ideals, but in referencing an expectation of slavery’s abolition, it also asserted the importance of change. The change the author found, though, contradicted the antislavery expectations.

Had those expectations been realized? “Let History answer!” the author boomed, recalling the previous mention of “experience.” Citing concessions, including slavery’s

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<sup>115</sup> Ibid.

presence in the District of Columbia and the lands obtained through the Louisiana Purchase and the Adams-Onís Treaty, the writer issued a challenge: “Let any man examine the history of our government, especially since the overthrow of the friends of Liberty in the Missouri struggle, and he will be astonished to find how exactly the national policy has conformed to the interests of the slave-holder.” Though failing to provide a contextual antislavery interpretation of the Constitution, the author offered a historical narration of proslavery consolidation. In this article, rather than illuminate the founding period, history showed declension since that time. Consistent retrogression was made clear by the fact that “of the Presidents, the slaveholding States, have furnished SIX occupying the Presidential Chair FOR FORTY YEARS” and “a majority of the Judges of the Supreme Court are slave-holders.” Indeed, the author argued, “All the Departments of the Government are in the hands of the slave power, and are all opposed to the progress of Liberty principles.” The Liberty Party faced an uphill battle, but, in contrast to Garrison, believed that the present struggle was “not greater than our Fathers surmounted.”<sup>116</sup>

Finding corrosive change in the rise of the Slave Power, which redirected the founders’ intended trajectory of historical development by exploiting the Constitution’s proslavery provisions rather than allowing the organic growth of the antislavery spirit, the author closed with another appeal to the Revolutionary heritage: “We shall prove ourselves degenerate sons of the patriots of 1776, if we were not readily to enter into a second contest for the same great principles with courage and determination like theirs.” Aiming to “vindicate the reputation of our fathers by delivering the government ... from the corruptions fashioned upon it by slavery” and “make it what our fathers designed it to

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<sup>116</sup> Ibid.

be, a free government,” the article concluded with a broad national appeal. “We wish to rally an American party upon American principles—the principles of 1776 and 1787. We desire to vindicate the true construction of the Constitution, and to make the government conform to the Constitution.”<sup>117</sup> While some proslavery biblical interpreters who found corruption in abolitionism imposed a proslavery stance on Paul and even posited the apostles’ continued support, some antislavery constitutional interpreters who located corruption in the Slave Power saw themselves as the rightful legates of founders like Madison and believed in their continued support—“we have the example and spirits of our fathers on our side.” Both narratives cultivated awareness of historical change, in the form of rising abolitionism and an emerging Slave Power, respectively.

To be sure, when antislavery constitutionalists posited continuity between their ideas and those of the founding generation, it tended to conflate historical difference and collapse temporal distance. But their historical appeals did not always represent a naïve desire to recreate a pure past. Granting slavery’s presence at the founding and expressing a belief in the framers’ original expectations that time would make slavery obsolete exposed the foreignness of that past. And while proslavery consolidation might complicate that characterization, antislavery interpreters simply observed that the rise of the Slave Power was a lamentable anachronistic development. The belief in the framers’ original expectations, and the stark contrast antislavery observers found between those expectations and the prominence of the Slave Power in the present, further signaled the historical distance separating Americans from their founding.<sup>118</sup>

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<sup>117</sup> Ibid.

<sup>118</sup> For a similar understanding of the founding era from this period, see “Relations of the Federal Constitution to Slavery,” *New Englander* 3 (1845): 595-600.

*“Rules the Historian ... Out of the Witness Box”*: Madison’s Papers and William Goodell’s Articulation of Radical Antislavery Constitutionalism

A similar belief emerged among the more radical constitutionalists. While Bailey and politicians like Chase remained moderate in their antislavery constitutionalism, in the mid to late 1840s, Birney, and abolitionists such as Stewart and Goodell, adopted more radical positions. Radical constitutionalism found its clearest expression in two publications—Goodell’s *Views of American Constitutional Law* (1844) and Spooner’s *The Unconstitutionality of Slavery* (1845). Drawing on previous arguments, including Stewart’s, the authors of these works variously appealed to the due process, privileges and immunities, habeas corpus, and the guarantee clauses—which they read in light of the Declaration—while contending that the broad wording of the central clauses often portrayed as proslavery—including the three-fifths, importation, labor, insurrection and domestic violence clauses—demanded alternative readings.<sup>119</sup> While Garrison used the Declaration to justify a moral revolution aimed at convincing hearts and minds of the need to immediately abolish slavery, these interpreters joined with their moderate counterparts in using its egalitarian principles as a lens through which to read the Constitution as an antislavery text. And even if they dismissed historical evidence as extraneous, preferring instead to focus on the Constitution’s words alone, Goodell and Spooner also made historical arguments to uncover antislavery sentiment in the founding era and to posit that the perversion of constitutional interpretation hid the framers’ expectations that the Constitution would eventually bring about slavery’s demise. Their wariness of contextual interpretation, along with their historical narrations of pre- and

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<sup>119</sup> On these prior arguments, see Wiecek, *Sources of Antislavery Constitutionalism*, 119-20, 181-90.

post-founding era developments, contributed to a greater realization that one could not, nor would one want to, make the traditional assumption of an easy transference of ideas and beliefs from the Revolutionary past to the present.

Also a newspaper man, William Goodell had served as a leading temperance reformer and had been involved in the founding of the New-York Anti-Slavery Society and the AASS. He had helped form the Liberty Party in 1840 and in 1842 he turned his attention to church reform along abolitionist lines. He opened his 1844 publication with an appeal not to the “Blackstones and the Manfields of America,” but to “the public voice,” to “the people ... the divinely appointed arbiters of their own destinies ... not the framers, nor yet the arbiters of those original laws, immutable and eternal.”<sup>120</sup> As Albert Barnes had asserted the right of the public to interpret the Bible, Goodell placed his faith in the public to sanction or condemn constitutional interpretation. This position paralleled the conventional belief in common sense readings of the Bible. Though such approaches were at times dismissive of using extra-textual sources in interpretation, historical argumentation, once reserved for experts, found its way into non-expert settings. The popular constitutionalisms that emerged during this period accepted and engaged the historical nature of debates about slavery’s constitutionality. The very appeal to the public, however hopeful, was symptomatic of the belief that slavery could not keep pace with the spirit of the times.

From the outset, Goodell made clear his interest in a historical examination of the issue, valuing appeals to the spirit of the Constitution over strict construction, and writing of proslavery interpreters that, “beyond the Constitution of 1787-9 and the attendant

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<sup>120</sup> William Goodell, *Views of American Constitutional Law: In Its Bearing upon American Slavery* (Utica, NY: Lawson and Chapin, 1844), 5.

circumstances of its formation and adoption, the claimants are not accustomed to adventure.” He observed neglect of the Articles of Confederation, the Declaration of Independence, the principles of common law, and what he called the “unwritten Constitution.”<sup>121</sup> Still, Goodell preferred a strict construction. Referring to Article II, Section 4, which states that “no Person held to Service or Labour in One State, under the Laws thereof, escaping into another ... shall be delivered up on Claim of the Party to whom such Service or Labour may be due,” Goodell asked, “Who, unacquainted with the facts that have taken place, with the past and daily passing history of this country, would ever have conceived that *these words* described the case of a fugitive slave, and required his delivery to the slaveholder?” “No one!” he protested. Proper construction “rules the Historian ... out of the witness box.”<sup>122</sup> Goodell argued that a focus on the words of the three-fifths, importation, insurrection, and domestic violence clauses purged them of their assumed proslavery protections, while a similar focus upheld antislavery interpretations of the clauses on congressional power and due process. Here, he also cited Madison to posit the incongruence between slavery and the guarantee clause, writing that, “The meaning of ‘a republican form of government’ in this country, in 1789, is sufficiently ascertained.”<sup>123</sup>

In turning to an approach focused on the spirit of the Constitution, Goodell upheld words as important, but stressed that they should be read in light of the spirit of the Constitution, revealed in “external evidences,” which included the “spirit, design or

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<sup>121</sup> Ibid., 19.

<sup>122</sup> Ibid., 21, emphasis in original.

<sup>123</sup> Ibid., 56, 83.

intentions” of the framers and the ratifiers.<sup>124</sup> Goodell valued the intentions of the latter over those of the former, writing that “what the Convention of 1787, or a portion of it, *intended to effect* by the Constitution, is not to be confounded with the designs, especially the paramount object of THE PEOPLE *who adopted it*. The objects of the Convention, or members of it, may deserve our attention, and their testimony to the spirit of their times, may command respect. But *their* intentions are *not* to be substituted for the intentions of THE PEOPLE.”<sup>125</sup> This valuation, which supported Goodell’s call for a popular constitutionalism, followed Madison’s singular direction in 1796 to discover the “voice of the people” in examining the ratification debates even as it downplayed the importance of Madison’s papers, which did not show up in Goodell’s bibliography.<sup>126</sup> He positioned the sacred legal text itself against slavery, in large part through an assertion that “the

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<sup>124</sup> Ibid., 82. For a broader discussion of the concept the ‘spirit of the age’ and its relationship to common law in this period, see Kunal Parker, *Common Law*, 117-67.

<sup>125</sup> Goodell, *Views of American*, 83, emphasis in original.

<sup>126</sup> In the debates over the Bank of the United States, Madison delivered a speech before Congress in the spring of 1796, wherein he stated that “whatever veneration might be entertained for the body of men who formed our Constitution, the sense of that body could never be regarded as the oracular guide in expounding the Constitution. As the instrument came from them it was nothing more than a dead letter, until life and vitality were breathed into it by the voice of the people, speaking through the several State Conventions. If we were to look, therefore, for the meaning of the instrument beyond the face of the instrument, we must look for it, not in the General Convention, which proposed, but in the State Conventions, which accepted and ratified the Constitution.” US Congress, *The Debates and Proceedings in the Congress of the United States* (1825-1837), 4th Cong., 1st sess., v. 5, p. 776. On the exceptional nature of the interpretive direction that Madison gave on this occasion and the problems with determining who the framers were and what intentions they had, see Jack Rakove, “The Original Intention of Original Understanding,” *Constitutional Commentary* 13 (1996): 159-86. See also, Paul Finkelman, “The Constitution and the Intentions of the Framers: The Limits of Historical Analysis,” *University of Pittsburgh Law Review* 50 (1989): 349-98. Finkelman uses this instance as an example in critiquing the problems with the intentionalist approach, which often assumes that one can identify the framers and their intentions. For a similar discussion, see Paul Finkelman, “Thomas Jefferson, Original Intent, and the Shaping of American Law: Learning Constitutional Law from the Writings of Jefferson,” *NYU Annual Survey of American Law* 62 (2006): 45-84.

‘spirit of the Constitution’ is identical with the spirit of the Common Law.” Binding American common law to a narrow reading of British common law, and to a broad reading of the *Somerset* decision in particular, he argued that “to say that there can be *constitutional* slavery in the United States ... is the same thing as to say, that there is Common Law slavery, in the United States; an absurdity that, in its own proper form, no sane man, perhaps, has ever yet been found to utter.”<sup>127</sup> Goodell’s legal contention rested on a historical argument positing continuity between the Constitution and common law.

In turning from the Constitution itself to an exploration of “its earlier days, in its origins, its birth-place, its parentage, its nursing and swaddling,” Goodell called on what he later labeled “incontrovertible historical facts” to recover the “‘SPIRIT OF SEVENTY-SIX!’”<sup>128</sup> Similar to moderate readings, some radicals stitched the nation’s two founding documents together, but Goodell also bound the Declaration to what he referred to as the “ANTI-SLAVERY ‘SPIRIT OF THE AGE’ in which the Federal Constitution was framed and adopted.”<sup>129</sup> He wrote that the Declaration used “not only the language of the Common Law, but the language, likewise—almost to plagiarism—of the popular and widely current anti-slavery literature of those times.”<sup>130</sup> Again citing proslavery neglect of the Declaration, Goodell used it to write of “the claims of LIBERTY and EMANCIPATION,” that “they are of older date, and gain in freshness and vigor the farther they are traced.”<sup>131</sup> Unlike in the biblical debate, antislavery interpreters often focused on the older of the two canonical documents, a less problematic choice given the short time

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<sup>127</sup> Goodell, *Views of American*, 97, emphasis in the original.

<sup>128</sup> *Ibid.*, 102, 103, 137.

<sup>129</sup> *Ibid.*, 105.

<sup>130</sup> *Ibid.*, 104.

<sup>131</sup> *Ibid.*, 134.



frame that separated them. Furthermore, the Declaration, like the New Testament, was a relatively succinct statement of principles while the Constitution, like the Old Testament, set forth in greater details specific legal provisions. Antislavery interpreters found the former texts less limiting and more supportive of their arguments for freedom. Making a case for continuity, Goodell imposed constitutional status on the Declaration, writing that “the *fundamental basis and groundwork* of AMERICAN CONSTITUTIONAL LAW, remains unchanged, and in full force” since the Declaration’s signing.<sup>132</sup> The Constitution, then, served as “the more outward form, the minutely detailed *provisions* ... the *instruments*, of which [the Declaration’s] principles are the living spirit and substance.”<sup>133</sup> Because the Constitution came soon after the Declaration, Goodell could posit congruence between spirit and principles. Consequently, he concluded that there had been “no legal slavery in the United States, since the 4th of July, 1776.”<sup>134</sup> As proslavery interpreters bound the Testaments together to argue for southern slavery’s divine justification, so antislavery interpreters tied the Declaration and the Constitution together to argue against southern slavery’s legality. Goodell wrote that “our Declaration of Independence and the Constitution of 1787-9 taken as members of each other, considered as a *whole*, and construed by its *spirit*, constitute a creditable statement of Constitutional Law, and even without the amendments of which they are susceptible, are amply sufficient in their provisions, for either the legislative or judicial abolition of slavery.”<sup>135</sup> Making mention of the amendment process, Goodell maintained that historical facts attested to the

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<sup>132</sup> Ibid., 136, emphasis in original.

<sup>133</sup> Ibid., 138, emphasis in original.

<sup>134</sup> Ibid., 141.

<sup>135</sup> Ibid., 155, emphasis in original.

antislavery nature of the Constitution and to its inherent power to cleanse the national stain.

Goodell's argument centered on reading the Constitution in light of what he perceived as antislavery common law and an antislavery Declaration, but like the moderates, he also made mention of the framers' expectations. In the midst of his discussion about the antislavery sentiment of the founding era, he compiled "a list including the most prominent statesmen of the South as well as the North, proclaiming before the sun, that SLAVERY was a fast waning system, that must speedily fall."<sup>136</sup> Goodell cited a host of founders, including Madison, Jefferson, Rush, Hamilton, Franklin, and Jay, to posit an original expectation that slavery was on the road to extinction. Both moderate and radical antislavery constitutionalists read the founding American past as a number of antislavery biblical interpreters read the primitive Christian past: the founders worked to secure slavery's demise and believed that the cultivation and spread of egalitarian principles would realize that expectation. In both scenarios, the emphasis on original expectations of abolition highlighted the reality of slavery's presence in the biblical and Revolutionary pasts, which, for its opponents, signaled that the favored pasts were not golden ages to reclaim but troubled eras with universal promises to fulfill. And, in their view, the failure of fulfillment was attributable to the unexpected and anachronistic rise of the Slave Power. The founding era remained a usable past, but not in terms of recreation but of realizing its hopes and expectations.

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<sup>136</sup> Ibid., 105.

*“No Extraneous or Historical Evidence Shall Be Admitted” : Madison’s Papers and the Lysander Spooner’s Articulation of Radical Antislavery Constitutionalism*

Massachusetts man Lysander Spooner had left his career as a lawyer, which he began in defiance of the state regulation that required non-graduates to study with attorneys for a period of five years before setting up a practice, and had begun a new career in mail delivery in violation of federal statutes against private mail delivery services. In his 1845 publication, the radical provided a similar argument to Goodell’s, though where Goodell had read the Constitution in the light of the Declaration and common law, Spooner read the Constitution in the light of the Declaration and natural law. Insisting that there was “*no law but natural law*,” he proclaimed American slavery’s illegality, writing that slavery “has always been a mere abuse, sustained, in the first instance, merely by the common consent of the strongest party, without any law on the subject.”<sup>137</sup> Though he later dismissed historical evidence as inadmissible in constitutional interpretation, Spooner’s reading depended on a historical narrative tracing slavery’s unconstitutionality from the colonial period through the Revolutionary era to the present. As some antislavery biblical interpreters argued that slavery’s existence in the Bible did not signify divine sanction, so Spooner stated that “the fact, that slavery was *tolerated* in the colonies, is no evidence of its legality.”<sup>138</sup> Appealing to *Somerset*, he argued, “That decision ... settled the law both for England and the colonies. And if so, there was no *constitutional* slavery in the colonies up to the time of the revolution.”<sup>139</sup> Bringing his narrative up to 1776, Spooner, as with Goodell, proposed that “the

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<sup>137</sup> Lysander Spooner, *The Unconstitutionality of Slavery* (Boston: Bela Marsh, 1845), 8, emphasis in original, 23.

<sup>138</sup> *Ibid.*, 26-27, emphasis in original.

<sup>139</sup> *Ibid.*, 35, emphasis in original.

Declaration,” which established self-evident egalitarian truths, “was certainly the constitutional law of this country for certain purposes.”<sup>140</sup> Continuing his account, he contended that neither the Articles of Confederation nor the state constitutions of 1789 “*established, or recognized slavery,*” and proposed that state constitutional endorsements—“*inserted, by amendment, since the adoption of the constitution of the United States*”—resulted from corrupt deviations.<sup>141</sup> Spooner valued what he understood as the continuous unconstitutionality of slavery, and discountenanced what he viewed as post-founding era constitutional corruptions.

While resting his argument on a broad historical narrative, Spooner’s discussion of the Constitution itself, much more than Goodell’s, challenged the use of historical information in interpretation. While Goodell saw some value in intent, Spooner dismissed as “of no consequence what recognition or sanction the constitution of the United States may have intended to extend to [slavery].”<sup>142</sup> The appeal to intent, in Spooner’s opinion, made it clear that proslavery interpreters felt insecure in their use of the Constitution alone, which did not include such terms as *slave* or *slavery*. Unlike Barnes, who signaled that the mere appearance of certain words in the Old Testament did not signify the presence, much less the sanction, of a particular practice, Spooner stressed that the lack of certain words in the Constitution attested to its absence. He introduced a distinction between the intent of the framers and the Constitution itself, writing of proslavery interpreters who, “by the aid of exterior, circumstantial and historical evidence ... attempt to enforce upon the mind the conclusion that, as matter of fact, such was the intention of

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<sup>140</sup> Ibid., 42.

<sup>141</sup> Ibid., 46, emphasis in original, 61, emphasis in original.

<sup>142</sup> Ibid., 67.

those who *drafted* the constitution; and thence they finally infer that such was the intention of the constitution itself.”<sup>143</sup> Critiquing what he viewed as the manipulation of historical evidence, Spooner argued that one could only gauge intent via “the legal meaning of the words of an instrument.”<sup>144</sup> In seeming alignment with the prevailing common sense biblical hermeneutic, he narrowed the discussion to the “*words alone* of the constitution.”<sup>145</sup> Instead of following the conventional rules of interpretation, wherein a contextual reading overruled a straightforward one when a word or phrase held more than one meaning, Spooner measured possible meanings against natural law, writing that “no *extraneous or historical evidence* shall be admitted to fix upon a statute an unjust or immoral meaning, when the words themselves of the act are susceptible of an innocent one.”<sup>146</sup> Similar to Theodore Parker’s sense that historical facts taught but did not embody eternal truths, Spooner held that historical evidence could uphold but not contradict natural law. Under these rules, he wrote of the labor, three-fifths, importation, and domestic violence clauses as Goodell had of the labor clause alone: “no one would have ever dreamed that either of these clauses alone, or that all of them together, contained so much as an allusion to slavery, had it not been for circumstances extraneous to the constitution itself.”<sup>147</sup> Again, Spooner believed that proslavery interpreters had used historical evidence to twist the Constitution’s straightforward antislavery meanings. Turning to provisions for freedom, he argued that states could not withhold federal

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<sup>143</sup> Ibid., 69.

<sup>144</sup> Ibid., 70.

<sup>145</sup> Ibid., 71, emphasis in original.

<sup>146</sup> Ibid., 74, emphasis in original.

<sup>147</sup> Ibid., 105.

citizenship from those capable of becoming citizens, including blacks, and cited *habeas corpus* and the guarantee clause in favor of freedom.<sup>148</sup>

To drive home his point about the nuisance of historical evidence, Spooner distinguished between “the intentions of the framers” which “have nothing to do with fixing the legal meaning of the constitution” and “the intentions of the people at large” which “are the only ones, that are of any importance to be regarded in determining the legal meaning of that instrument.”<sup>149</sup> Like Goodell, he believed that while the original understandings of the ratifiers trumped the original intent of the framers, the original meanings of the document were most important. In dealing with uses of Madison’s papers, in particular, Spooner asked, “why do the partizans of slavery resort to the debates of the convention for evidence that the constitution sanctions slavery? Plainly,” he answered, “for no other reason than because the words of the instrument do not sanction it.” In opposition to what was quickly becoming the officially endorsed position that the original intent of the framers mattered most in constitutional interpretation, he proposed that “no evidence of their intentions, at *that* time, is applicable to the case.”<sup>150</sup> Depicting the framers as “the mere scriveners of the constitution,” he wrote that “their individual purposes, opinions or expressions, then uttered in secret cabal, though now revealed, can no more be evidence of the intentions of the people who adopted the constitution, than the secret opinions or expressions of the scriveners of any other contract can be offered to prove the intentions of the true parties to such contract.”<sup>151</sup> The value of the framers’ intent depended on their alignment with the people’s intent, and “if

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<sup>148</sup> Ibid., 106-34.

<sup>149</sup> Ibid., 135.

<sup>150</sup> Ibid., 136, emphasis in original.

<sup>151</sup> Ibid., 139.

the instrument had contained any tangible sanction of slavery, the people would sooner have had it burned by the hands of the common hangman, than they would have adopted it.”<sup>152</sup> Despite this equation, Spooner thought that it amounted to little in terms of determinative legal principles: “whether such were really the intention of the convention, or the people, is, at least a matter of conjecture and history, and not of law.”<sup>153</sup> As in biblical debates, interpreters highlighted the conjectural nature of historical research to advance their positions. After all, Spooner argued, “No two of the members of the convention would probably have agreed in their representations of what the constitution really was. No two of the people would have agreed in their understanding of the constitution when they adopted it.”<sup>154</sup> Spooner undermined the assumption of consensus among the founding generation to prize the words of the Constitution alone in interpretation. In his opinion, historical discussions about the founding era unnecessarily complicated otherwise straightforward legal issues. This contention drew attention to historical distance as it brought to mind the distinct context within which the framers’ crafted the Constitution.

Despite his contention that attention to historical context obfuscated rather than illuminated constitutional meaning, Spooner crafted a historical argument in labeling developments since the founding era as distractions. Dismissing governmental practice as irrelevant in unearthing original meaning, he wrote that “it is of no consequence ... what meaning the government *have* placed upon the instrument; but only what meaning they were *bound to place upon it* from the beginning.” Spooner covered all his bases.

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<sup>152</sup> Ibid., 140.

<sup>153</sup> Ibid., 142.

<sup>154</sup> Ibid., 143.

Discounting contextual interpretation meant to reveal the framers' intentions and historical narratives aimed at illuminating governmental use, he sought to recover original antislavery meanings: "Such was the character of the constitution when it was offered to the people, and before it was adopted. And if such was its character then, such is its character still. It cannot have been changed by all the errors and perversions, intentional or unintentional, of which the government may have since been guilty."<sup>155</sup> Spooner valued continuity if it corresponded with his sense of natural law, which, for him, was intrinsically antislavery, and condemned continuous practice that deviated from that sense. He thus proposed that despite developments which suggested the contrary, the Constitution was "designed to destroy slavery," an "arbitrary institution," "whenever its principles should be carried into full effect."<sup>156</sup> While dismissing contextual readings, Spooner used historical argumentation to posit the Constitution's original antislavery nature, which inherently worked to bring about slavery's abolition.

Both moderate and radical constitutionalists contended that unfortunate developments since the founding had derailed the nation from the course toward abolition that the founders had traced in the Constitution. Some moderates, like Gamaliel Bailey, proposed that although it contained proslavery provisions, the Constitution's creators expected that its general ideas would bring about slavery's end, an expectation that the slave states had aborted. Radicals Goodell and Spooner argued that Constitution articulated the antislavery principles of common law or natural law, respectively, and implemented the antislavery sentiments of the Declaration and the spirit of the Revolutionary age. Although they differed in their approach to historical evidence, most

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<sup>155</sup> Ibid., 146, emphasis in original.

<sup>156</sup> Ibid., 149, 154.



antislavery readers offered historical accounts that made the historical link between the Declaration and the Constitution. They insisted that the founding canon contained universal egalitarian principles and staked their claim to the Revolutionary heritage. Such efforts seemed to partake of a traditional proclivity to collapse the time separating a virtuous past from a corrupted present. However, their tales of declension did not demand a return to a Revolutionary pure period. When moderates acknowledged the Constitution's proslavery provisions and when radicals criticized the interpretive use of historical sources, it suggested that the founding era was a time to learn from rather than live in. And in positing the original expectation of slavery's demise, while also tracing the unexpected rise of a Slave Power out of step with the current era, these readings honored a past that anticipated change, and thus highlighted historical distance.

*"These Pages Prove the Melancholy Fact": Madison's Papers and the Constitution as a Proslavery Compact*

In the mid-1840s, Garrisonian Wendell Phillips dismissed these antislavery readings of the Constitution and used Madison's papers to do it. William Lloyd Garrison's anti-constitutionalism had developed in relation to his perfectionism, nonresistance, and disunionism, positions adopted and advanced in the late 1830s and early 1840s.<sup>157</sup> The publication of Madison's papers in 1840 buttressed his anti-constitutional position. The writings of the principal author of the Constitution facilitated the Garrisonian emphasis on contextual interpretation, an approach that lent credence to

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<sup>157</sup> Garrison became acquainted with John Humphrey Noyes and his perfectionism in the 1830s and though he resisted full conversion to the perfectionist creed, he incorporated much of Noyes' higher-law idealism into his abolitionism. See Papke, *Heretics in the Temple*, 38-43.

their proslavery readings of the Constitution and undermined the claims of their antislavery constitutionalist counterparts.<sup>158</sup> In short, Madison's papers assisted Wendell Phillips in his attempt to damn the Constitution as a proslavery compact conceived in a time since past and by men now dead.<sup>159</sup>

Phillips was also from Massachusetts and also had a career as a lawyer. Awakened by one mob's unsuccessful attempt to lynch Garrison and another's murder of Elijah Lovejoy, Phillips had left aside his lawyering to sound the call for abolition and disunion. In 1845, he published *The Constitution a Proslavery Compact: Or, Selections from the Madison Papers*, which provided extracts from "the [the ratification] Debates on those clauses of the Constitution which relate to slavery," along with other related documents.<sup>160</sup> These sources demonstrated, according to Phillips, that the Constitution granted "the slaveholder distinct privileges and protection for his slave property, in return for certain commercial concessions on his part toward the North," and that "the Nation at large were fully aware of this bargain at the time, and entered into it willingly and with open eyes."<sup>161</sup> He drew attention to the three-fifths, militia, slave trade, fugitive slave, and the guarantee clauses, and, in clear contrast to Spooner, wrote that "if indeed they were ambiguous in their terms, a resort to the history of those times would set the matter at rest forever."<sup>162</sup> While Spooner thought that the use of historical information in

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<sup>158</sup> On the evolution of Garrisonian anti-constitutionalism, including some discussion of his nonresistance and disunionism, see Wiecek, *Sources of Antislavery Constitutionalism*, 228-48; and Mayer, *All on Fire*, 224-26 250-63.

<sup>159</sup> Gilpin, *Papers of James Madison*, 1:iv.

<sup>160</sup> [Wendell Phillips, ed.] *The Constitution a Proslavery Compact: Or, Selections from the Madison Papers* (New York: American Anti-Slavery Society, 1845), v.

<sup>161</sup> *Ibid.*, v-vi.

<sup>162</sup> *Ibid.*, vii.

constitutional interpretation led to inconclusive findings, Phillips believed that a historical explication proved determinative.

Phillips aimed to correct those “few persons ... of late years,” who, “to serve the purposes of a party, have tried to prove that the Constitution makes no compromise with slavery.”<sup>163</sup> Believing that such individuals, which undoubtedly included Goodell and Spooner, had shut their eyes to the “clear light of history,” Phillips asked, “if the unanimous, concurrent, unbroken practice of every department of the Government, judicial, legislative, and executive, and the acquiescence of the whole people for fifty years do not prove which is the true construction, then how and where can such a question ever be settled?”<sup>164</sup> Rather than dismiss the government’s proslavery interpretations and uses as deviations from antislavery original meanings, Phillips spotlighted them to demonstrate the intrinsic proslavery nature of the Constitution. Believing that such an approach yielded the right interpretation, “It follows,” he resolved, “that at this time and for the last half century, the Constitution of the United States has been, and still is, a pro-slavery instrument.” Continuity since the founding, in interpretation and usage, demonstrated the legitimacy of the proslavery reading. Still, some “assert that that the known anti-slavery spirit of revolutionary times never could have consented to so infamous a bargain as the Constitution is represented to be, and has in its present hands become.” However, the present publication provided historical proof of the framers’ proslavery intentions. In Phillips’s narration, contextual explication buttressed the historical narration of proslavery continuity. “Now these pages prove the melancholy fact, that willingly, with deliberate purpose, our fathers bartered honesty for

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<sup>163</sup> Ibid.

<sup>164</sup> Ibid., vii, viii.

gain, and became partners with tyrants, that they might share in the profits of their tyranny.”<sup>165</sup> One might locate the appearance of antislavery sentiment in the founders’ writings, but in the context of “all that these Debates have to say on the subject,” one discovers “the fact, that the Constitution was meant to be, what it has always been esteemed, a compromise between slavery and freedom.”<sup>166</sup> And regardless of “what the Constitution may become a century hence,” the fact of what “it is” required immediate annulment and necessitated the stance, “NO UNION WITH SLAVEHOLDERS!”<sup>167</sup> Phillips seemed to allow that the Constitution might become antislavery in time, but the current climate of affairs made that untenable at present. The times called for a complete legal revolution rather than constitutional evolution.<sup>168</sup>

In 1847, Phillips followed up the publication of these selections with a lengthy review of Spooner’s work. Again noting prospects of a modified Constitution, he stressed its current status as a proslavery compact: “the Constitution will never be amended by persuading men that it does not need amendment.”<sup>169</sup> Regardless of its potential, or even its original meaning or intent, “no one has ever denied that the Supreme Court now construes the Constitution in a pro-slavery sense. This, then, is the law of the land until altered.”<sup>170</sup> The reliance on the Supreme Court to settle the constitutional debate increased among politicians during the next decade. Phillips referenced legal opinions to

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<sup>165</sup> Ibid., viii.

<sup>166</sup> Ibid., ix, emphasis in original.

<sup>167</sup> Ibid., viii, emphasis in original, x.

<sup>168</sup> As Wiecek notes, “Garrisonians denied the possibility of legal flexibility and adaptation. By insisting that the only acceptable change was total and revolutionary, they disdained more limited, yet more tangible, evolutionary change.” Wiecek, *Sources of Antislavery Constitutionalism*, 247.

<sup>169</sup> Wendell Phillips, *Review of Lysander Spooner’s Essay on the Unconstitutionality of Slavery* (Boston: Andrews and Prentiss, 1847), 4.

<sup>170</sup> Ibid., 6.

counter appeals to natural and common law, including *Somerset*, arguing that “positive law ... can,” in fact, “so establish even Slavery, that courts must treat it as legal.”<sup>171</sup>

Based on this position, he addressed the three-fifths, fugitive slave, insurrection, and domestic violence clauses and grounded his interpretation in “extraneous and historical evidence”—the very kind of information that Spooner had railed against.<sup>172</sup>

Despite his stated willingness to consider the Constitution without “aid from collateral history or national circumstances,” Phillips proceeded to contextualize.<sup>173</sup> In contradistinction to Spooner, he advocated the conventional rules of interpretation, proposing that “words, when doubtful and ambiguous, are to be interpreted by the context, by the object sought, and by contemporaneous usage.”<sup>174</sup> Citing the Federalist Papers and Madison’s notes, and following the examples of Justices John Marshall and Joseph Story, Phillips found it “evident that the understanding of the nation at the time” and the “history and customs of the country” helped determine “with irresistible clearness the meaning of the Constitution.”<sup>175</sup> Willing to set aside the intentions of the framers and focus on the people in discussing the three-fifths clause, Phillips made use of the 1792 census to evidence the clause’s relationship to slavery. He thus used historical information to propose that both the framers and the ratifiers understood the proslavery nature of the Constitution.

In one surprising instance, Phillips’s reading of the founding era matched those of his interpretive opponents. He granted that the prevailing opinion of the times was that

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<sup>171</sup> Ibid., 22.

<sup>172</sup> Ibid., 54.

<sup>173</sup> Ibid., 27.

<sup>174</sup> Ibid., 29.

<sup>175</sup> Ibid., 31.

the abolition of the slave trade “would *ultimately* put an end to Slavery,” but found “no evidence of any general expectation that the constitution would have any influence *otherwise* in producing such a result.”<sup>176</sup> Rather than use such prospects to read the Constitution as an antislavery document, Phillips stated that “time has shown they were mistaken. But that mistake does not free their children from the agreements made under it. . . . The only way their sons can free themselves, is to disown their fathers’ act, the Constitution itself.”<sup>177</sup> Albert Barnes had attempted to trace the gradual decline of slavery between the time of Moses and Christ and Spooner had aimed to outline its quick undoing from Mansfield to Madison. Phillips provided an alternative account, using historical evidence to argue that slavery was so engrained in English and colonial common law that it was taken for granted in the Articles of Confederation and the state constitutions. In a move reminiscent of liberal Christians’ antislavery biblical readings, which unhinged the Old from the New Testament, Phillips severed the tie between the corrupt Constitution and the divine Declaration, writing that “the Declaration had nothing to do with Slavery.”<sup>178</sup> In constitutional as opposed to biblical debates, where separating the New from the Old Testament seemed to support antislavery readings, the breaking up of canonical texts stood to hurt rather than help the antislavery interpretation of the Constitution. Garrisonians seemed to suggest that historical differences made the gap between past and present too wide to bridge. They strove to relinquish rather than recover the founding era. Let the dead bury the dead.

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<sup>176</sup> Ibid., 34, emphasis in original.

<sup>177</sup> Ibid., 34-35.

<sup>178</sup> Ibid., 87.

In some ways, Phillips's approach paralleled that of the antislavery constitutionalists even if most of his findings did not. Like them, he provided a historical account, but he traced slavery's continual and overriding presence before, in, and after the founding era. The only change he detected was in the newfangled antislavery readings of the Constitution. Despite important differences between the arguments of the antislavery constitutionalists and those of Phillips, like them he also identified an original expectation of slavery's ultimate abolition, an identification that gained prominence as an important piece to the antislavery constitutionalists' puzzle. However, in contrast to Goodell and Spooner, Phillips privileged contextual interpretation throughout his review. Of the Constitution, he wrote, "It is not so much a statute as a great national event, and is to be interpreted not by technical rules, but by liberal reference to the history of the times, the circumstances which produced it, the great parties and interests represented in it, and the national objects it has in view."<sup>179</sup> At this juncture in American constitutional interpretation, most interpreters, with a few antislavery holdouts, agreed with Phillips's premise that one needed to attend to context to rightly interpret the Constitution. Even in combatting Phillips's interpretation, radical constitutionalists like Joel Tiffany strung together "historical fact[s]" to "rebut the historical presumption that the founders ... would desire or even consent legally to recognize sanction, or in any manner gauranty [*sic*] slavery."<sup>180</sup> This development toward reading the Constitution as a historical production had a good chance of spreading a sense that one could not assume cultural and societal sameness across time. That sense further inspired either creative readings or clear

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<sup>179</sup> Ibid., 35.

<sup>180</sup> Joel Tiffany, *A Treatise on the Unconstitutionality of American Slavery: Together with the Powers and Duties of the Federal Government, in Relation to that Subject* (Cleveland: James Calyer, 1849), 5-6, 20.

dismissals of the Constitution. For a time, the later approach seemed like it was on the ascendant among abolitionists.

### *Conclusion*

As in the emergence of an awareness of historical distance through antebellum biblical exegesis, the spread of awareness of that distance through antebellum constitutional interpretation was far from straightforward. However, as in the biblical debates, while important ideational differences separated these antislavery proponents from each other, all of their arguments tended to draw attention to historical distance from the founding era. The publication of Madison's papers led each group to further articulate their constitutional understandings. Moderate constitutionalists recognized slavery's presence in the Constitution, but emphasized that it existed only as a state institution. Radical constitutionalists denied its presence, positing that a strict reading of the text yielded an antislavery construction. Garrisonians responded with historical facts and appealed to historical figures to argue that the Constitution was a proslavery compact. Despite their different and at times contrasting approaches to the use of historical sources, each of these responses highlighted historical distance. In using or dismissing historical evidence, these groups historicized the Revolutionary past. Affirming, through historical sources, or denying, through a strict reading, slavery's presence in the Constitution highlighted its place in the founding era. One can imagine someone like Phillips suggesting that the care that framers like Madison took to ensure that the words *slave* and *slavery* did not show up in the Constitution only belied the fact that the institution loomed large at the founding. The text's silences spoke volumes.



Each of these positions also proposed, to one degree or another, that the founding generation had expected slavery to die out and thus implied that the founders had anticipated historical change. That implication, too, was complicated by the differences among the various arguments. Moderates and radicals read the Constitution as consistent with the Declaration, which allowed them to assert that the framers expected that the spread of egalitarian ideas would arrest and abolish unjust acts. Even Phillips cited the importation clause as evidence of a similar prospect. However, while the constitutionalists posited that the corrupting influence of the rising Slave Power had perverted the framers' egalitarian expectations, Phillips found continuity in showing slavery's power over the nation. Proslavery interpreters went further in arguing that the rise of abolitionism as a whole was the era's most dangerous innovation, but Phillips attributed change to the antislavery constitutionalists, who had concocted new interpretations. Each of these positions conceded slavery's presence at the founding, posited an expectation of change in the form of slavery's abolition, and then identified corrupt change in the form of the Slave Power or irresponsible innovation in the form of antislavery constitutionalism. These opposing arguments about what constituted expected and unexpected changes spurred along an awareness of historical contingency. These varying interpretations also carried profound implications for the realization of historical distance. The constitutionalists' attention to original expectations implied that the crucial issue was not determining slavery's place in the founding era, but deciphering what the favored past's founding figures expected of the institution's future existence. They held that the framers had expected slavery's demise and characterized the rise of the Slave Power, which had squelched those expectations, as an anachronistic development. Even

narratives professing allegiance to the Constitution could demonstrate how different the Revolutionary past was from the present.

In 1845, the same year that Phillips published *The Constitution A Proslavery Compact*, Garrison wrote an article that demonstrated a willingness to transfer his constitutional approach to the Bible. He had once accepted the predominant hermeneutic in refusing to see the historical distance between his generation and the Bible. In 1831, his paper wrote of that sacred text—which he identified as God’s “Statute Book”—“It is immutable; the vicissitudes of time, the waves of revolution, the explosions of empires, cannot abrogate or change one of its acts. ... It is of universal application.”<sup>181</sup> However, Garrison eventually read and heard enough to know that the text he had once cherished as essential to the redemption of a fallen nation contained fabulous stories and outdated creeds. The Bible continued to inspire Garrison, but by 1845 he appreciated Thomas Paine’s use of reason in interpretation. The Bible was “to be examined with the same freedom as any other book.” Garrison rejected plenary inspiration—“To say that every thing contained within the lids of the Bible is divinely inspired ... is to give utterance to a bold fiction, and to require the suspension of the reasoning faculties”—and instead argued that it “must stand or fall by the test of just criticism, by its reasonableness and utility, by the probabilities of the case, by historical confirmation, by human experience and observation, by the facts of science, by the intuition of the spirit.” After all, Garrison wrote, echoing Theodore Parker, “Truth is older than any parchment, and would still exist, though a universal conflagration should consume all the books in the world.” Dismissing the idea that the Bible was to be the people’s “master, not their servant,”

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<sup>181</sup> [William Lloyd Garrison], “The Bible,” *Liberator*, 2 April 1831, 54 (APSO).

Garrison referenced its sanction of a host of sins, including the right “to enslave human beings!”<sup>182</sup> Slavery, much more than biblical criticism or even a late reading of Paine’s *Age of Reason*, shaped Garrison’s contention that the Bible must be measured according to reason, historical research, and intuition. Slavery brought together constitutional and biblical interpretation, and rhetorical became real overlap in the responses to the Fugitive Slave Law.

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<sup>182</sup> [William Lloyd Garrison], “Thomas Paine,” *Liberator*, 21 November 1845, 186 (APSO).

## CHAPTER 4

### “THE CULTURE OF COTTON HAS HEALED ITS DEADLY WOUND”: THE FUGITIVE SLAVE LAW, PROSLAVERY CORRUPTION, AND THE SPREAD OF ANTISLAVERY READINGS OF THE AMERICAN FOUNDING

Moses Stuart upheld the Compromise of 1850 and its attendant Fugitive Slave Law through a historical explication of both the Bible and the Constitution. By this point in the nineteenth century, most national commentators agreed about the authoritative nature of appeals to the Bible and the Constitution, and most interpreters accepted the historical grounds of interpretation. Stuart claimed status as both authorized interpreter and national commentator. According to him, the founders of the Christian religion and the American republic, two disparate groups from distinct pasts, sanctioned the present law. He recovered the views of past prophets and politicians through historical interpretation and then collapsed temporal distinction and distance to posit their current relevance. Most commentators and interpreters accepted Stuart’s reasoning, but his studied discussion left Theodore Parker unmoved. Historical criticism had nourished his understanding of historical progress, allowing him to accept Stuart’s interpretation as historically sound before dismissing the recovered biblical teachings and constitutional imperatives as dated. He found errant proslavery provisions of past centuries at odds with the antislavery spirit he described as characteristic of the nineteenth-century present.

This chapter describes how the Fugitive Slave Law incited responses in which commentators brought together decades of biblical and constitutional argumentation and demonstrates how the fugitive slave cases that followed turned erstwhile isolated theological and legal uses of favored pasts into important markers of political posture. It

also uses the writings and speeches of Frederick Douglass and Abraham Lincoln to trace the constitutionalization of the slavery issue in the 1850s, which reached its apogee in *Dred Scott* (1857). An examination of their writings shows that the new focus on slavery as a constitutional issue made the Revolutionary era more present than ever, but it also demonstrates how it carried unique potential to historicize that era. And the process of historicizing the most recent favored past seemed to suggest that all pasts, and indeed all existence, bore the marks of time. In the Compromise of 1850 and, later, in *Dred Scott*, the proslavery reading of the Constitution, as with the proslavery reading of the Bible, carried the day. But the argument about the founders' expediency and original expectations, which gained powerful adherents, overcame that reading in the Civil War era. Regardless of which uses of the founding era more influential, those on both sides of the debates cultivated awareness of historical distance from that period.

The use of the historical distance resulting from linked biblical and constitutional arguments about slavery, along with a shift of focus to the Constitution, found expression before the passage of the Fugitive Slave Law. In early January 1848, the New York *Christian Inquirer* demonstrated an almost Garrisonian willingness to slough off the nation's supposed supreme source of legal instruction. The article in question came on the heels of the final major battles of the Mexican-American War in late 1847, a conflict that further divided antislavery and proslavery forces and focused the debate on slavery's extension. It also came shortly after an unsuccessful motion to again table abolitionist petitions. In 1836, Congress had invoked a gag rule against such petitions as part of the Pinckney Resolutions. This ignited a drawn out battle against the rule, lead by the indefatigable John Quincy Adams, who ultimately succeeded when Congress rescinded

the resolution in late 1844.<sup>1</sup> In the 1848 article, the Unitarian paper applauded Senator Thomas Lanier Clingman of North Carolina who, though a “thorough going pro-slavery man,” had cast the deciding vote “against the rule excluding abolition petitions” in a session of the Thirtieth Congress in late 1847.<sup>2</sup> As in 1843, the Whig senator had been the only southerner who followed his hero Henry Clay in voting against tabling the antislavery memorials.<sup>3</sup> The *Inquirer* praised Clingman as a “calm, cool, sagacious, and even candid reasoner,” but his vote was a function of electioneering and was rooted in a belief that the petitions posed no threat to slavery. While noting the “care, distinctness, frankness, and courtesy with which [Clingman] has treated the subject in a recent speech,” the *Inquirer* disagreed about the power of the petitions. The author wrote that “those who are the intelligent and conscientious foes of the institution, know that its consideration is its condemnation; its trial, its doom.”<sup>4</sup> Further along in the discussion, the article seemed to suggest that the same might be said of the Bible and the Constitution. When weighed in the balance, these documents might be found wanting. Historical distance seemed to place them beyond the pale of present relevance.

From the outset, the paper distanced itself from antislavery disunionists, writing that “we are not among those who think that the Union may not be preserved and slavery abolished.” It further expressed “little sympathy with those who cannot conscientiously employ every constitutional means to obtain the great end of emancipation, or who will

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<sup>1</sup> On the gag rule and John Quincy Adams’ long struggle to abolish it, see Miller, *Arguing about Slavery*.

<sup>2</sup> “Discussion of Slavery in Congress,” *New York Christian Inquirer*, 8 January 1848, 50 (APSO).

<sup>3</sup> On the reasoning for and the response to Clingman’s 1843 and 1847 votes, see Thomas E. Jeffrey, *Thomas Lanier Clingman: Fire Eater from the Carolina Mountains* (Athens: University of Georgia Press, 1998), 44-46, 61-64.

<sup>4</sup> “Discussion of Slavery in Congress,” 50.

not patiently wait so long as they see that *any* progress is making towards this result.”

While finding evidence of such progress, the author proceeded to use most of the space to argue that “if it be proved that slavery *is* constitutional, and that we have no remedy against it, whatsoever ... and that nothing can be constitutionally done by us to arrest its growth, or to provide means for its diminution and utter extinction, then ... is the moment to determine that we will cut ourselves loose from that abomination, and take the consequences of dissolution.” While advocating moderation, like Theodore Parker the paper, rather than dismiss as untenable the proslavery interpretation, proved willing to accept it and then leave the Constitution and the South behind.<sup>5</sup>

A realization of the temporal distance from the founding informed this position, which broadened to include even the Declaration. The writer stated, “we are almost ready to believe with Mr. Clingman, that the framers of the Constitution did not provide, or intend to provide, against the spread of slavery.” If further examination demonstrated that the founding texts, including “the Declaration of Independence itself recognized the lawfulness of negro-slavery, (which of course it does not,) even then would it follow that, fifty years afterwards, we had no right to see our duty any more clearly than at the time we adopted it? If a gross inconsistency were wrought in our Constitution, have we no right to attempt to work it out?” The author expanded such reasoning further back in time. “Do we attempt to defend polygamy because it was practiced by the Patriarchs, or to adopt a monarchical form of government because the Gospel instructs us to honor the king, or to burn witches because we read, ‘though shalt not suffer a witch to live?’ Are all the errors and mistakes of good men to be forever maintained by those who see them to

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<sup>5</sup> Ibid., emphasis in original.

be such?” In most cases, the overlap in biblical and constitutional debate was rhetorical rather than real and inadvertent rather than intended. Here, though, the link was clear. And as in antislavery readings of the New Testament, a belief in the progress of human insight into moral issues—“Does increased light bring with it no obligation to act up to its illumination?”—warranted the move to disregard the ideas of the nation’s founding texts.<sup>6</sup>

Although the article referenced the ancient biblical past, it remained firmly focused on the recent Revolutionary era. Commentators’ increasing fixation on that favored past was in part a function of politics, but it also illustrated the growing belief that a resolution to the slavery debates rested in wrestling with the nation’s founding legal text. At the brink of relegating a benighted Constitution to a past fast losing its favor among radical abolitionists, the *Inquirer* proposed another solution. “We tell the South—in our judgment, ‘Slavery is a crime.’ She returns us for answer—‘It is Constitutional.’ ‘Very well,’ we reply, ‘suppose it is constitutional, we did not make the Constitution and ... we have not sworn not to see its defects, not to awaken to its immoral concessions and compromises, not to labor to have it changed and improved!’” The paper accepted that the Constitution was deeply compromised and seriously flawed, but instead of calling for its eternal abrogation, it proposed human emendation: “Do not tell us it is unchangeable, and that we shall not be permitted to remonstrate against the continuance of its sinful provisions. We seek to amend the Constitution. ... Should we not be traitors to God did we allow ourselves for a moment to hesitate whether we would continue the Union forever upon your understanding of it—an interpretation which makes it unconstitutional

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<sup>6</sup> Ibid.



for us to be anything but self-convicted oppressors and man-stealers?” The paper did not discuss the framers’ expectations of slavery’s eventual end or appeal to their conceptions that the Constitution should be amenable to change, ideas that achieved greater relevance over the next decade. Instead, it asserted that historical distance itself justified amendment. The article concluded with a demand: “It is time for Webster, and Davis, and Winthrop, to do something more than give sidewise blows for truth, and justice, and humanity.” Daniel Webster soon gave yet another sidewise blow, but, to antislavery proponents, it felt like it came from the enemy.<sup>7</sup>

*“It Is My Judgment That the South Is Right, and the North Is Wrong” : The Fugitive Slave Law and Daniel Webster on Post-Founding Era Change*

By the time Congress passed the Fugitive Slave Law as part of the Compromise of 1850 in September, Webster had long since pledged his support. The law gave federal teeth to the Fugitive Slave Act of 1793, which was meant to enforce the fugitive slave clause by encouraging free-state authorities to assist in returning fugitive slaves to their slave-state masters. In opposition to a number of personal liberty laws that northern states had enacted in response to the Supreme Court’s decision in *Prigg v. Pennsylvania* (1842), the new law strengthened the old one significantly. Whereas *Prigg* had opened the door to state legislation prohibiting the involvement of state officials, the new law imposed a fine system for federal marshals and local officers who failed to arrest and return fugitive slaves, while offering bonuses for their assistance. It also stipulated fines and imprisonment for those caught supporting fugitive slaves, who had no legal recourse.

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<sup>7</sup> Ibid., emphasis in original.

Some northerners interpreted the new law, along with the fugitive slave cases that followed, as a move to nationalize slavery. The law and the subsequent cases fanned the flames of antislavery discontent.

At times, as displayed in *Christian Inquirer* article of January 1848, interpreters attended to the founding texts of Christianity and of the new republic at once, and no more so than in the debate over fugitive slaves at midcentury. On March 7, 1850, while proclaiming allegiance to union over section, Senator Daniel Webster of Massachusetts delivered a speech in support of the Compromise of 1850 and its attendant Fugitive Slave Law. On a number of occasions, including at the groundbreaking of the Bunker Hill Monument in 1825, the constitutional lawyer, statesman, and celebrated orator had advanced what scholars describe as a sectional nationalism by imposing a New England historical account and New England interests on the nation writ large.<sup>8</sup> For example, in his *Second Reply to Hayne*, part of a debate resulting from the Nullification Crisis, he had cloaked his sectional stance in national attire, famously closing by issuing the motto: “Liberty and Union, now and forever, one and inseparable!”<sup>9</sup> The opening of his Seventh of March speech, then, seemed typical. Expressing a desire to speak “not as a Massachusetts man, nor as a Northern man, but as an American,” he set out to make a case “for the preservation of the Union” in addressing slavery, which, given recent

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<sup>8</sup> On Webster’s 1825 speech at the groundbreaking of the Bunker Hill Monument, see Sheidley, *Sectional Nationalism*, 141-47; Purcell, *Sealed with Blood*, 206-8; and Minardi, *Making Slavery History*, 76-79.

<sup>9</sup> Daniel Webster, *Speech of Daniel Webster, in Reply to Mr. Hayne of South Carolina* (Washington: Gales and Heaton, 1830), 85. On Webster’s sectional nationalism in his debate with Hayne, see Christopher Apap, “The Genius of Latitude: Daniel Webster and the Geographical Imagination in Early America,” *Journal of the Early Republic* 30 (Spring 2010): 201-23.

events, required a “fresh discussion.”<sup>10</sup> Webster, an unsuccessful Whig presidential candidate, proceeded to outline a position that accorded well with the reading of the moderate antislavery constitutionalists, who conceded slavery’s legality as a state institution, but stressed what they understood as federal restrictions against its spread.

Before entering into a constitutional discussion, Webster highlighted slavery’s existence during familiar historical eras, beginning with biblical times. He stated that “slavery has existed in the world from time immemorial” and “in the earliest periods of history,” specifically locating the institution “among the Jews,” the Greeks, and the Romans.<sup>11</sup> Slavery and civilization were not antithetical, Webster insisted, and neither were slavery and Christianity. He informed his listeners that “at the introduction of Christianity, 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.” Webster was cognizant of the belief among some northerners that “slavery ... whatever may be said of it in the modifications which have taken place, is not in fact according to the meek spirit of the Gospel.”<sup>12</sup> He also mentioned the stance of many slaveholders, noting that they “take things as they are.”<sup>13</sup> Webster likely had in mind the circumstantial argument that slavery’s very existence manifested its propriety as an institution in the American South. In contrast to antislavery readers of the Bible who contended that ancient allowance did not imply divine sanction, many slaveholders equated the institution’s endurance with providential approval. The

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<sup>10</sup> Daniel Webster, *Speech of Hon. Daniel Webster, on Mr. Clay’s Resolutions, in the Senate of the United States, March 7, 1850* (Washington: Gideon, 1850), 6, 11.

<sup>11</sup> *Ibid.*, 11-12, quotation on 11.

<sup>12</sup> *Ibid.*, 13.

<sup>13</sup> *Ibid.*, 14.

difference between these positions hinged on whether circumstances shaped and in some ways obscured God's revelation and providence, or whether circumstances simply reflected God's will. Believing the former, some antislavery proponents held that while long-term historical changes had removed obstructions to the spread of inspired antislavery sentiment, more recent historical changes had solidified slavery as a prominent southern institution. This understanding placed great emphasis on the role of human actors in realizing God's will. Webster thought that abolitionists went too far in this regard. Although he did not mention the antislavery New Testament argument, he used its logic against some of its purveyors. Citing Paul, he warned "that we are not to do evil that good may come."<sup>14</sup> He found abolitionists' "too impatient to wait for the slow progress of moral causes in the improvement of mankind."<sup>15</sup> Perhaps Christ and his apostles had planted the seeds of slavery's destruction, but the harvest season had not arrived. One could not force fruition.

Proceeding to the constitutional debate, Webster considered "the state of sentiment, North and South, in regard to slavery, at the time this Constitution was adopted."<sup>16</sup> He called forth the "historical research back to that day" and the "authentic records still existing among us."<sup>17</sup> While he found that "slavery did exist in the States before the adoption of this Constitution, and at that time," he also discovered "from all the eminent men of the time the clearest expression of their opinion that slavery was an evil."<sup>18</sup> Like Wendell Phillips, Webster proposed that the founders, and "Mr. Madison" in

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<sup>14</sup> Rom. 3:8.

<sup>15</sup> Webster, *Speech of Daniel Webster*, 16.

<sup>16</sup> *Ibid.*, 17.

<sup>17</sup> *Ibid.*, 17, 18.

<sup>18</sup> *Ibid.*, 18.

particular, “thought that slavery could not be continued in the country, if the importation of slaves were made to cease, and therefore,” he stated, “they provided that after a certain period the importation might be prevented, by the act of the new government.” According to Webster, this idea did not originate in a desire to spread egalitarian principles, but rather stemmed from a belief that “the white race would multiply faster than the black race, and that slavery would therefore gradually wear out and expire.”<sup>19</sup> Apparently, a racist notion of white superiority rather than a humanistic belief in human equality undergirded the founders’ expectations of slavery’s demise. However, seeming to contradict his overall argument defending the new law as constitutional, Webster went on to propose that Madison’s contempt for the idea of property in man accounted for why the word “slave, or slavery, is not used in the Constitution,” noting that “the Constitution does not require that ‘fugitive slaves’ shall be delivered up.”<sup>20</sup> Appearing to support these points, Webster made reference to the “concurrent and contemporaneous” transaction of Congress in passing the Northwest Ordinance. Historical evidence confirmed “historical truths,” including the “expectation that ... slavery would begin to run out”; that congressional power to prevent slavery’s spread “was executed in the most absolute manner, and to the fullest extent”; and that “the Convention meant to leave slavery, in the States, as they found it.”<sup>21</sup> Webster’s historical account contained the basic elements of moderate antislavery constitutionalism.

Once he had outlined the founders’ assumptions about slavery’s fate, he went on to trace developments since that time, finding that “opinions ... have changed, greatly

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<sup>19</sup> Ibid., 19.

<sup>20</sup> Ibid., 19, 20.

<sup>21</sup> Ibid., 20-22, quotations on 20 and 22.

changed, changed North, and changed South.”<sup>22</sup> While the North grew “much more warm and strong against slavery,” the South grew “much more warm and strong in its support.”<sup>23</sup> Webster cited proslavery gains in Louisiana, Florida, and Texas and seemed unsettled by the fact that “the general lead in the politics of the country for three-fourths of the period that has elapsed since the adoption of the Constitution, has been a Southern lead.”<sup>24</sup> Still, he described the change in the South’s stance as a natural progression.

If developments in the South were regrettable, yet reasonable, changes in the North’s views of slavery were dangerous. “There has been found at the North,” Webster observed, “among individuals and among legislators, a disinclination to perform, fully, their constitutional duties in regard to the return of persons bound to service who have escaped into the free States. In that respect,” he interjected, “it is my judgment that the South is right, and the North is wrong.” Although critical of slavery’s spread, Webster believed that allegiance to the Constitution required northerners to “deliver up fugitives from service.”<sup>25</sup> He had provided a strict reading of the importation clause in his previous mention of Madison’s careful word choice, but here he left no doubt that the clause referred to fugitive slaves. He believed that the Constitution originally placed enforcement in the hands of the state, but, believing that *Prigg v. Pennsylvania* had nationalized the issue, now he deferred to “the power of Congress and the national judicature.” That deferral informed his decision to support the proposed Fugitive Slave Law “with all its provisions, to the fullest extent.”<sup>26</sup> The wayward abolitionists lacked

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<sup>22</sup> Ibid., 23.

<sup>23</sup> Ibid., 24.

<sup>24</sup> Ibid., 24-26, quotation on 26.

<sup>25</sup> Ibid., 47.

<sup>26</sup> Ibid., 48.

justification in rejecting it, both “in the forum of conscience ... [and] before the face of the Constitution,” and might have been at fault for its passage.<sup>27</sup> According to Webster, the Virginia slavery debates of 1831-1832 showed that southerners had considered abolition, but then came the reckless abolitionists and “every thing that this agitating people have done has been, not to enlarge, but to restrain, not to set free, but to bind faster the slave population of the South.”<sup>28</sup> He agreed that present circumstances placed the North in a situation that “it never did expect to find itself when they agreed to the compact of the Constitution,” but faulted northern agitation instead of southern intransigence for the current crisis.<sup>29</sup> And believing disunion to be “a moral impossibility,” Webster thus championed “Liberty and Union.”<sup>30</sup> He illuminated the founding through historical investigation and although he discovered an expectation of slavery’s dissolution, he argued that the North had to recognize the proslavery provisions that post-founding era events bolstered rather than banished. After all, northern abolitionists were the cause of this unfortunate effect.

*“Men Will Be Astonished in the Next Century to Learn That the ‘Model Republic,’ Had Such an Affection for Slaveholders” : Theodore Parker’s Double Helix of American Progress and Corruption*

To those attentive to Theodore Parker’s observations on the slavery crisis in the late 1840s, his condemnation of Webster’s speech came as no surprise. Like Webster, Parker narrated the rise of the Slave Power and of abolitionism, but with other antislavery

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<sup>27</sup> Ibid., 49.

<sup>28</sup> Ibid., 53.

<sup>29</sup> Ibid., 55.

<sup>30</sup> Ibid., 59, 63.

readers he damned proslavery gains as deviations from founding era ideas and glorified the spread of the antislavery spirit as evidence of history's progress toward freedom; as a clear sign that the harvest season had arrived. By 1850, Parker's reading of the Constitution in many ways mirrored the approach to the Bible he had developed in the preceding decades. He had learned to divide transient teachings from permanent truths in constitutional as well as biblical interpretation, particularly when dealing with slavery.

Like William Garrison, Parker held a somewhat conflicted view of the Revolutionary era. Recent developments shaped that view. In early February of 1848, American and Mexican representatives signed the Treaty of Guadalupe Hidalgo, ending conflict between two nations while fomenting discord between two sections. The territorial gains stirred northern fears of slavery's spread. Over a month after the war's completion, in late March, Parker delivered a discourse praising the recently deceased John Quincy Adams. He acknowledged that "at the making of the Constitution, the South out-talked the North," but, like Garrison, argued that in doing so the South was "violating the ideas of the Revolution," or, the "American idea," as he called it, "the idea that each man has unalienable rights."<sup>31</sup> That idea found clearest expression in the Declaration. Parker praised Adams for going "back of the Constitution, to the Declaration of Independence, for the ideas of the Constitution; yes, back to the Declaration to Human Nature and the Laws of God, to legitimate these ideas." Parker noted that Adams also found the idea of liberty in common law. By reading the Constitution in this light, Parker diverged from Garrison and found resonance with Goodell and Spooner. But he did not

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<sup>31</sup> Theodore Parker, "A Discourse Occasioned by the Death of John Quincy Adams," in *Speeches, Addresses, and Occasional Sermons*, 3 vols. (Boston: Ticknor and Fields, 1861), 2:266, 271 (hereafter *Speeches*).



attempt to explain away the Constitution's proslavery provisions. He noted that, in Adams' view, "the Constitution was not an idol; it was a means, not an end." As "a compromise between those ideas and institutions and prejudices existing when it was made," Adams "saw that the Constitution is 'not the work of eternal justice, ruling through the people,' but the work 'of man; frail, fallen, imperfect man, following the dictates of his nature, and aspiring to be perfect.'"<sup>32</sup> As in his biblical criticism, Parker drew attention to the imperfections of the authors and their textual creation. Even though he recognized what he viewed as transient proslavery clauses, with Adams he could read the Constitution "as an instrument for the defence of the Rights of man."<sup>33</sup>

Parker thus described slavery as "a lion who rent the Constitution, trampled under foot the Declaration of Independence, and tore the Bible to pieces."<sup>34</sup> Slavery stood in opposition to the American ideas that "shine out in all our history—I should say, our early history."<sup>35</sup> Parker's qualification implied that something had changed since the founding era. In a December 1848 discourse on the Free Soil Party, Parker described the change as an unexpected divergence from founding-era ideas. He linked the Free Soil attack on slavery's extension to the founding era, insisting that "it does not appear that the men who framed the Constitution, or the people who accepted it, ever contemplated the extension of slavery beyond the limits of the United States at that time. ... The principle of the Wilmot Proviso boasts the same origin as the Declaration of

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<sup>32</sup> Ibid., 2:272-74, quotations on 272.

<sup>33</sup> Ibid., 2:276.

<sup>34</sup> Ibid., 2:278.

<sup>35</sup> Ibid., 2:272.

Independence.”<sup>36</sup> Webster echoed some of these sentiments in his subsequent Seventh of March speech. Indeed, he would use words similar to Parker, who stated that “in 1787, the best and the most celebrated statesmen were publicly active on the side of freedom. Some thought slavery a sin, others a mistake, but nearly all in the Convention thought it an error.” Parker traced out a familiar antislavery declension narrative, noting that while “the North granted the southern demands” and “the anti-slavery spirit cooled down. ... The Missouri Compromise again disturbed the public mind. But that was soon forgotten.”<sup>37</sup> Since that time, pecuniary interests sapped Americans’ moral stamina and muffled antislavery voices. These changes, along with more recent developments, led to the devolution of the original federalist and anti-federalist parties into new parties, “in which guise some of their fathers would scarcely recognize the family type.”<sup>38</sup> Slavery’s growing presence in American politics made it clear that theirs was not the republic of their ancestors.

This kind of narration of declension alone did not signal a new awareness of historical distance. The jeremiad had long been part of the human and the American experience. But this was not a simple narration of decline or a nostalgic call to recover the past. Rather than despair, Parker posited the parallel progress of antislavery sentiment. “Where sin abounded,” he stated, “grace doth much more abound. There rose up one man,” meaning Garrison, “who would not compromise, nor be silent,—who would be heard.”<sup>39</sup> Parker, who expected new Christs to appear, compared conscientious

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<sup>36</sup> Theodore Parker, “Some Thoughts on the Free Soil Party, and the Election of General Taylor,” in *Speeches*, 2:370.

<sup>37</sup> *Ibid.*, 2:374-75.

<sup>38</sup> *Ibid.*, 2:370.

<sup>39</sup> *Ibid.*, 2:375.

abolitionists to the Galilean in his intended understatement that “a Man who had not where to lay his head ... has had some influence on the history of the world.”<sup>40</sup> Christianity’s humble beginnings matched those of American abolitionism. The antislavery idea was the American idea—the Declaration’s assertion that all are created equal—and it was “bottomed on Christianity.”<sup>41</sup> Similar to Francis Wayland, Parker linked Christianity with the Declaration, but he located fulfillment not in Revolutionary era legal texts, but rather in present ideas and actions. He described abolitionism as the “idea of the time” and as consistent with “the spirit of the age.”<sup>42</sup> This idea “went on, spite of the most entire, the most bitter, the most heartless and unrelenting opposition ever known in America.”<sup>43</sup> Parker agreed with Garrison that the current crisis outmatched that of the Revolution. The antislavery idea had not found a home among a political party yet—the Free Soil Party fell short—“the time has not come for that.”<sup>44</sup> Thus, “the revolution in ideas is not over till” the “motto ‘No more slave territory’” gives way to “‘No slavery in America,’ nor the corresponding revolution in deeds while a single slave remains in America. A man who studies the great movements of mankind feels sure that that day is not far off.”<sup>45</sup> This historical narration of the post-founding era paralleled Webster’s later account in many ways, but Parker described the oft-submerged development of antislavery sentiment as natural, and proposed that it would overcome what he understood to be the unnatural growth of the Slave Power. The scalpel of antislavery sentiment would cut out the cancerous tumor of proslavery power.

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<sup>40</sup> Ibid., 2:378.

<sup>41</sup> Ibid., 2:383.

<sup>42</sup> Ibid., 2:377, 383.

<sup>43</sup> Ibid., 2:379-80.

<sup>44</sup> Ibid., 2:385.

<sup>45</sup> Ibid., 2:385.

Although he had shown a willingness to follow antislavery constitutionalists in making the Constitution cohere to the Declaration, Parker's loyalties lay with the idea of freedom rather than with the nation's written legal creed. He stated that if the Free Soil Party embraced "the idea of freedom, no constitutional scruple will long hold them from destroying the 'peculiar institution.'" Parker felt sure that the long-awaited day was near. He observed, "What slavery is in the middle of the nineteenth century is quite plain; what it will be at the beginning of the twentieth it is not difficult to foresee." Plainly, slavery belonged in a ruder time and place, and the further spread of antislavery ideas would ensure its erasure from America. In his Seventh of March speech, Webster placed the blame for slavery's continuance at the feet of the abolitionists. Here, Parker conceded that that "the slave power has gained a great victory" in election of Zachary Taylor, but then declared that "one more such will cost its life."<sup>46</sup> Proslavery forces won a few more victories—including the Fugitive Slave Law (1850), the Kansas-Nebraska Act (1854), and *Dred Scott* (1857)—but Parker was not far off as such victories bolstered the antislavery ranks. While he was confident that antislavery ideas would triumph over proslavery politics, slavery qualified his view of America as exceptional. "Men will be astonished in the next century to learn that the 'model republic,' had such an affection for slaveholders."<sup>47</sup> America could seem ancient rather than modern. Citing a deed of sale in which a slave had been sold to President Zachary Taylor, Parker demonstrated a remarkable sense of historical distance, "If this document had been discovered among some Egyptian papyri, with the date 1848 before Christ, it would have been remarkable as a sign of the times. In a republic, nearly four thousand years later, it has a meaning

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<sup>46</sup> Ibid., 2:386.

<sup>47</sup> Ibid., 2:390.

which some future historian will appreciate.”<sup>48</sup> The meaning, one might surmise, was that the peculiar institution was anachronistic.

Parker’s account highlighted historical contingency and distance. More than other antislavery interpreters, he demonstrated an ambivalence about change since the founding era. He believed that the lamentable rise of the Slave Power was only matched by the glorious spread of antislavery sentiment. This kind of narration, coupled with the idea that slavery challenged exalted understandings about the American republic, created a sense of the contingent nature of historical change. It also spread awareness of historical distance. On the one hand, Parker depicted the sale of slaves as a barbaric practice characteristic of ancient times. On the other hand, he described the spread of antislavery sentiment as representative of the “spirit of the [present] age.” In turn, that portrayal made sharper the claim that the Slave Power flowed against the nineteenth-century current. In allowing that slavery fit comfortably in the biblical past, and even in the Revolutionary past, and then arguing that it had an awkward existence in the present, Parker drew attention to and used historical distance to damn the peculiar institution.

Expressing concern that “another compromise is to be feared,” Parker remained certain of the ultimate triumph of the American idea.<sup>49</sup> But when that compromise came in 1850 and it received Webster’s stamp of approval, Parker’s optimism seemed to waver. In a 25 March speech at Boston’s Faneuil Hall, Parker noted the solemnity of the present century, stating that “this age is full of great questions, but this of Freedom is the chief.” That seminal question meant political conflict between “the party of Slavery” and

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<sup>48</sup> Ibid., 2:392.

<sup>49</sup> Ibid., 2:396-98, quotation on 396.

“the party of Freedom,” one of which “is to swallow up all the other parties.”<sup>50</sup> In that battle, the Massachusetts Senator had struck a blow in favor of the former through his Seventh of March speech, which Parker considered the “most cowardly” of all Webster’s wrongs.<sup>51</sup> He drove home his point with a historical comparison: “I know no deed in American history, done by a son of New England, to which I can compare this, but the act of Benedict Arnold!”<sup>52</sup> Even abolitionists who drew attention to historical distance, like Parker, continued to find the Revolution useful, at least to highlight current cowardice. Adding to his prior historical narration, he located antislavery victories in 1774 (a resolution against slave importation), 1776 (the Declaration), 1778 (a Confederacy without a fugitive slave provision), and 1787 (the Northwest Ordinance). In this strained account, the Constitution was neutral. Parker noted an antislavery blow in the 1808 abolition of the slave trade, but then traced proslavery advances in 1803 (the Louisiana Purchase), 1819 (the acquisition of Florida), 1820 (the western expansion of slavery), 1845 (the Texas annexation), and 1848 (Mexican cession).<sup>53</sup> The narration placed emphasis not on the Constitution, but on pre and post-founding-era developments and on Webster’s politically motivated approval of the “Bill of abominations,” which soon passed as the Fugitive Slave Law. The new law stood in line with a string of proslavery successes since 1808.<sup>54</sup> Projecting retrogression into the future, Parker lamented, “In 1750, in all the United States, but two hundred thousand” slaves labored beneath the republic’s false banner, “now, three millions. In 1950, let Mr. Webster’s

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<sup>50</sup> Theodore Parker, “A Speech at a Meeting of the Citizens of Boston in Faneuil Hall,” in *Speeches*, 3 vols. (Boston: Ticknor and Fields, 1861), 3:2.

<sup>51</sup> *Ibid.*, 3:3.

<sup>52</sup> *Ibid.*, 3:33.

<sup>53</sup> *Ibid.*, 3:6-7.

<sup>54</sup> *Ibid.*, 3:19-30, quotation on 22.

counsels be followed, there will be thirty millions.”<sup>55</sup> Parker showed that he could create a useful future just as well as he could create a useful past, and that future looked bleak. Perhaps the proslavery compromise would not translate into antislavery success after all.

Though he passed over it earlier in the speech, close to his conclusion Parker trained his focus on the Constitution and its framers. If, at times, he read that document as antislavery in spirit, he did not overlook its errors, nor forgive the failures of the framers, but he attributed those failures to the limitations of that age. He explained that in framing the Constitution, “Our fathers made a political, and a commercial, and a moral error—shall we repeat it?” he asked. “They did a wrong shall we extend and multiply the wrong? Was it an error in our fathers; not barely a wrong—was it a sin? No, not in them; they knew it not. But what in them to establish was only an error, in us to extend or to fester is a sin!”<sup>56</sup> Parker’s sense of historical progress—by which errors became sins—could encourage a rather sympathetic approach to the actions and teachings of past figures, although that corresponded with a move to place the past on a lower moral standing relative to the present rather than an effort to understand the past on its own terms. Parker believed that, like Paul, the framers’ eyes were not open to evil. However, time and progress made contemporary Christian Americans culpable. Developments since the founding had made the sin of slavery even more apparent, and thus to overlook its continued existence implicated the entire nation. In 1850, Webster had more light than Paul or Madison and thus merited greater condemnation. It was left to see how his contemporaries would respond.

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<sup>55</sup> Ibid., 3:35.

<sup>56</sup> Ibid.

*“Even a Bad Bargain Must Be Kept”: Moses Stuart and the Valuing of Original Meanings over Original Expectations*

When religious radicals such as Parker damned Webster’s placating stance, a number of New England’s prominent citizens rose to defend him, including the venerable Congregationalist Moses Stuart, who had resigned from his post at Andover in 1848. In *Conscience and the Constitution* (1850), Stuart, America’s most eminent biblical scholar, applied his learning to the nation’s religious *and* legal texts. The significance of the moment did not escape him. He wrote that “never, since the Declaration of Independence, and the formation of the United States Constitution, has there been so much deep feeling excited, or so much effort called forth.”<sup>57</sup> Early on, Stuart, who prided himself for staying out of politics in the past but who wanted to avoid violence at all costs, made clear his position, declaring, “I am ready to support every shade of sentiment, on every topic upon which Mr. Webster’s speech touches.”<sup>58</sup> Although he provided a constitutional as well as a biblical defense of Webster, Stuart was particularly worried that respondents might dishonor Paul, writing, “that the great apostle himself may be brought into some disrepute, among a certain class of readers, by my exposure of his sentiments on the present occasions, is what I fear.”<sup>59</sup> Some of slavery’s opponents believed that an open consideration of the issue would bring about its demise. Stuart worried that a similar fate might await Paul’s standing through a discussion of his teachings on slavery. In the early 1840s, Parker had already written that “Paul had not his eye open to the evil, but sent

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<sup>57</sup> Stuart, *Conscience and the Constitution*, 5.

<sup>58</sup> *Ibid.*, 7.

<sup>59</sup> *Ibid.*, 3-4.



back a fugitive.”<sup>60</sup> Stuart’s argument allowed Parker to further articulate his disapproval of the ancient apostle’s teaching.

Following Webster’s lead, Stuart began with the Bible. Before addressing the New Testament debate, he aimed to settle the argument from the Old Testament. He first established “the great *antiquity* of slavery.” In the antebellum era, Americans often authorized an idea or an institution by appealing to its antiquity, but that justification became increasingly precarious when new light seemed to show that the ancients’ words and deeds were immoral rather than immortal. Historical research, though, could also place them in a positive light relative to modern practices. While showing that Abraham had a vast cadre of slaves, Stuart acknowledged that the patriarch’s “relation to these slaves was somewhat different from that of master to slave among us.”<sup>61</sup> Too much of a scholar not to notice historical differences, Stuart granted that in Abrahamic slavery, which he compared to Eastern servitude, slaves were “generally treated with less rigor, and more as human beings should be treated, than they are in most countries called *Christian*.”<sup>62</sup> Patriarchal slavery still possessed features that were distasteful to modern sensibilities. For example, bondwomen often acted as concubines. Slavery, in this instance, suffered from its Old Testament association with polygamy, though Stuart, as with other proslavery interpreters, believed the gospel had replaced the latter vice with the original institution of monogamous marriage. Though Stuart held that the Patriarchs did not intend to do wrong in this regard, he wrote that “this will not justify us in imitating them. ... They do not concern us; for the blessed God, by his gospel, having

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<sup>60</sup> Parker, *Discourse of Matters*, 1st ed., 375.

<sup>61</sup> Stuart, *Conscience and the Constitution*, 23, emphasis in original.

<sup>62</sup> *Ibid.*, 24, emphasis in original.

scattered the darkness of early ages, has made us to walk in the clear light of the Sun of Righteousness. ... Every man's conduct is to be judged of in most cases, at least in some good measure, by the light he has, and by the age and circumstances in which he lived."<sup>63</sup> Stuart, in essence, agreed with Parker and other antislavery interpreters in emphasizing the progress of human understanding relative to God's revelation. In gaining a more complete and accurate picture of biblical times, all of these interpreters recognized that historical distance separated the past, especially the patriarchal past, from the present. Becoming more familiar with a past period, and thus with its peculiarities, drew attention to its estrangement from current era.

Similar to Theodore Weld's analysis, Stuart dismissed the idea that the Patriarchs were worthy of imitation and also distinguished between the Patriarchal and the "Mosaic Constitution and Laws."<sup>64</sup> Using Exodus 21 as his text, he outlined "the picture of the slavery of Hebrews among Hebrews." He noted that at Sinai Moses "declared that Hebrew *man-servants* should be free after six years," but only forty years later did he make that law applicable to female servants. To account for this inconsistency, Stuart applied the argument from expediency, often used to explain the apostles' actions also applied to the framers of the Constitution, to Moses. He wrote that the ancient lawgiver "had common sense and judgment enough to see, that legislation could not change the established internal structure of a nation or common wealth in a day."<sup>65</sup> Here appealing to historical particularity to explain Moses's actions, Stuart proceeded to assume temporal sameness by contrasting such actions with those of the abolitionists, who "think that his

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<sup>63</sup> Ibid., 25-26, quotation on 25.

<sup>64</sup> Ibid., 26.

<sup>65</sup> Ibid., 29.

eyes were but half opened.”<sup>66</sup> Although historical distance made the ancient Patriarchs’ actions irrelevant, for some reason the laws of the less ancient Moses remained pertinent. Citing Deuteronomy 23, Stuart explained that if a slave had escaped from a heathen master he might find asylum among the Hebrews, but not so for a slave who had escaped from a Hebrew master, for “reclamation of him could be *lawfully* made.”<sup>67</sup> With this understanding, Stuart wondered “how can we appeal to the passage in question, to justify, yea even to urge, the retention of fugitive bond-men in our own country?”<sup>68</sup> While highlighting historical difference to undermine antislavery uses of the Old Testament, Stuart all but conflated Mosaic religion with modern American Christianity in suggesting that Moses sanctioned the Fugitive Slave Law. He granted that “the Mosaic dispensation was a *preparatory* one,” writing that “none can now crave liberty to purchase slaves of the Gentiles or Jews, on the ground of Mosaic permission.”<sup>69</sup> As Molly Oshatz argues, slavery alone directed Stuart to recognize the archaic nature of some biblical texts. He did not believe that the Old Testament sanctioned American slavery.<sup>70</sup> However, he still appealed to the Old Testament to defend the Fugitive Slave Law. Indeed, he proposed that “if Abolitionists are right in their position, then Moses is greatly in the wrong.”<sup>71</sup> Similar to Richard Fuller, Stuart simply wanted to demonstrate that slavery was not *malum in se* (sinful in itself), but in doing so he suggested that despite significant historical differences and vast historical distances, the Old Testament stood on the side of fugitive-seeking slaveholders.

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<sup>66</sup> Ibid., 30.

<sup>67</sup> Ibid., 31, emphasis in original.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid., 36, emphasis in original

<sup>70</sup> Oshatz, *Slavery and Sin*, 108.

<sup>71</sup> Stuart, *Conscience and the Constitution*, 35.

He granted that the Mosaic Law “was confined to one nation, and was never designed to be a permanent and universal religion,” but proceeded to argue that “the *moral* and *spiritual* part of it ... has its basis in the relations of God to man, and of men to God and to each other,” and thus concluded that “they are unrepealed and irrevocable.”<sup>72</sup> Finding continuity between Moses and Christ on this matter, Stuart again used the argument from expediency, this time applying it to the New Testament. He believed that “the Saviour uttered sentiments, which, in their ultimate effects, must abolish—totally and forever abolish—all slavery. ... But where did he intermeddle with the then existing relations between master and slave? Not a word is to be found in the Gospels indicative of such an interposition.”<sup>73</sup> In essence, this argument paralleled that of Stuart’s student Francis Wayland and Stuart’s Unitarian correspondent William Channing, both of whom only later adopted immediate emancipationist views. It even matched that of the more radical Albert Barnes. But while these figures had come to believe that enough time had passed to cultivate the antislavery seeds sowed in New Testament times, Stuart seemed to forget the historical distance he had referenced in stating that Christ’s “policy differed ... from that of the immediate Emancipationists.” After inculcating principles that “would banish slavery from the face of the earth,” Christ left “the completion of the work to time, and to the slow but sure operation of the principles which he inculcated. ... He, it would seem, believed that the sudden breaking up of the then existing frame-work of society, would have occasioned evils greater than slavery.”<sup>74</sup> Stuart, as with Wayland, Channing, and Barnes, believed that Jesus had planted antislavery seeds, but apparently thought that

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<sup>72</sup> Ibid., 43.

<sup>73</sup> Ibid., 45.

<sup>74</sup> Ibid., 46.

time had not yet nourished them. 1800 years later, Christ still counseled patience and perseverance. Despite his keen awareness of historical difference, Stuart seemed to suggest that little, with regard to slavery, had changed since Jesus introduced the gospel.

Turning to Paul, who had encouraged obedience amongst slaves, Stuart feared that some “do not think that any serious regard be paid to his teachings or his example, in respect to the matter before us.” Chiding his American contemporaries, he wrote that “an honest deist ... might consistently ignore Paul. But this will not do for *Christians*.”<sup>75</sup> If Moses’s morals still applied, then certainly Paul’s injunctions still mattered. Stuart called on biblical criticism to assist in his interpretation. He read a passage from 1 Corinthians 7 as evidence that Paul did not believe that conversion changed the convert’s status. Building a contextual case, he noted that “even De Wette, (who for his high liberty-notions was banished from Germany), in his Commentary on the passage, seems plainly to accede to the force of this reasoning.”<sup>76</sup> Servants and slaves “are not to be anxious and uneasy and discontented. ... It should suffice, that they are the Lord’s *freemen*.” It was De Wette, of course, who was largely responsible for Parker’s response to Stuart. Stuart affirmed that the gospel was for slaves as well, but like Joseph Buckminster, he held that eternal salvation had no bearing on temporal servitude. Again comparing the abolitionists to the first Christians, Stuart worried that “if the great apostle himself were to reappear on earth, and come now into the midst of us ... he would unquestionably incur the danger of being mobbed.”<sup>77</sup> Despite this conflation of temporal distinction, Stuart referenced the

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<sup>75</sup> Ibid., 46, 48, emphasis in original. In this portion of his analysis, Stuart cited a number of New Testament passages, including Eph. 6:5-9, Col. 8:22-25, 4:1, 1 Tim. 6:1-4, Titus 2:9, 10, and 1 Pet.2:18.

<sup>76</sup> Stuart, *Conscience and the Constitution*, 52. See 1 Cor. 7:20-24.

<sup>77</sup> Ibid., 54, emphasis in original.

difference between Mosaic theocracy and the American democracy and even of the civil conditions of the early Christians he declared, “How entirely different were those from our own!”<sup>78</sup> While Wayland had contrasted ancient and American governance to assert the present possibility of popular legislation—“we make our own laws”—Stuart contrasted the Mosaic and Christian dispensations with nineteenth-century America to explain the biblical figures’ inability to change legislation. “Paul, Peter, and other disciples, thought it best to wait with patience for the greater prevalence of Christianity, and its more matured state, before they urged obligations on masters to free their slaves.”<sup>79</sup> Stuart failed to notice that the changes in governance he referenced might allow Americans to do what the apostles could not: create laws to abolish slavery. As with most American commentators, Stuart did not consider the implications of his argument. He did not recognize that in pointing out the historical distinctions between the biblical pasts and the American present, he undermined his historical comparisons. The new realization of historical distance and difference resulting from biblical and constitutional interpretation emerged in relation to the persistence of traditional interpretive assumptions.

Stuart concluded his treatment with a discussion of how Christian principles should inform Americans’ behavior in regards to slavery. In doing so, he coupled his biblical interpretation with a constitutional reading of the fugitive slave clause. He brought the Declaration and the Constitution together, as he had the Old and New Testaments, but rather than read the latter in the light of the former, he reversed the relationship, denying that the Declaration was meant to condemn slavery before strongly dismissing the idea of a “palpable disagreement between the Declaration of

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<sup>78</sup> Ibid., 42, 55.

<sup>79</sup> Ibid., 56.

Independence, and the Constitution of the United States!”<sup>80</sup> Though he had joined biblical and constitutional arguments in defense of the Fugitive Slave Law, he left little question as to which canonical text mattered most in this discussion. In what might have been a surprising concession, earlier in the text he had argued that “even if the Bible had neither said nor implied anything in relation to this whole matter, the solemn *compact* which we have made, before heaven and earth, to deliver up fugitives ... is enough to settle the question of *legal* right on the part of the master, whatever we may think of his claim when viewed in the light of Christianity.”<sup>81</sup> Stuart understood that in terms of legality, constitutional law trumped Christian sentiment, and grasped that the debate increasingly revolved around question of legality rather than those of morality. The qualitative nature of Stuart’s statement—“the question of *legal* right”—guarded readers from the conclusion that he, like some radical abolitionists, had also privileged the Revolutionary over the biblical past, but even this orthodox biblical scholar understood that constitutional interpretation carried unmatched consequences in the political environment of 1850. Stuart still held up the Bible as the central moral guide, and believed that both it and the Constitution trumped conscience.

Turning to the oft-debated New Testament passage wherein Paul sends Onesimus, an escaped slave and recent Christian convert, back to his master Philemon, Stuart used historical reasoning to dismantle claims, put forth by antislavery writers, including Channing and Barnes, that Onesimus was something other than a slave. His orthodoxy demanded a literal reading of the text and a unilateral application of its moral lessons. “Paul’s Christian *conscience*,” in contrast to the abolitionists’ rejection of slaveholders’

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<sup>80</sup> Ibid., 57.

<sup>81</sup> Ibid., 32-33, emphasis in original.

rights, “would not permit him to injure the vested rights of Philemon.”<sup>82</sup> Returning his attention to the nation’s more recent sacred text, he argued that the Constitution protected the sovereignty of southern states and their property laws, and then dismissed claims that valued conscience over Constitution. Stuart called on the nation’s founding generation as he castigated abolitionists like Parker, asking his contemporaries, “can we respect a conscience, which puts the broad seal of disgrace and infamy on those immortal men and patriots, who formed our Constitution, and who in all our States accepted and approved of it?”<sup>83</sup> Stuart appealed to past figures of originating moments, biblical and Revolutionary, and illuminated their views through historical explication, only to again collapse temporal distance. If the apostle Paul “were now among us” his life would be in danger; if the founder John Jay could see his son William Jay, an active member of the AASS, this “immortal ancestor” would look on “with a mixture of sorrow and of frowning.”<sup>84</sup> Stuart accepted history as the common discursive currency, but other factors, including religious beliefs and political motivations, constrained his historical sensibilities. He reached into the past and used historical explication to recover and apply the original meanings of founding documents of church and state.

In this somewhat erratic discussion, Stuart went on to argue that slavery “is a glaring contradiction of the first and fundamental principle, not only of the Bible which declares that all are *of one blood*, but of our Declaration of Independence, which avers, that all men are born with an *inherent and inalienable right to life, liberty, and*

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<sup>82</sup> Ibid., 61.

<sup>83</sup> Ibid., 62.

<sup>84</sup> Ibid., 63, 64. See also 71 and 98.



*property*.”<sup>85</sup> His mention of property must have drawn wry smiles from proslavery readers and dim frowns from their antislavery counterparts. Stuart further tied together the New Testament and the Declaration, and bound both to the spirit of the Revolutionary age, writing that the latter reiterated the Golden Rule, “a truly Christian and gospel principle. It is the unquestionable index of all but universal American feeling in 1776.” Stuart seemed to agree with the antislavery constitutionalists that at the ratification of the Constitution “it was then universally understood among all the States who formed it, that slavery was to be got rid of,” though he added, “just as soon as it could be done peaceably and with safety.”<sup>86</sup> With Webster, Stuart argued that the time for abolition had not arrived, in large part due to abolitionism. He opined that “the liberation of the slaves is put back at least half a century, by this ill-timed, violent, and most injudicious movement.”<sup>87</sup> Far from representing the spirit of the age, abolitionism kept America behind the times. Like Parker, Stuart did believe that “the spirit of freedom is waking the world to new life.”<sup>88</sup> However, he maintained that the North remained bound “so long as the Article in the Constitution remains,” for “even a *bad* bargain must be kept.”<sup>89</sup>

*Parker’s “Short and Easy Method”: An Archaic Bible and an Outdated Constitution*

Stuart’s lengthy and studied defense of Webster’s position had no impact on Parker, who had arrived at his heterodox view of the New Testament in the early 1840s and since then had adopted a similar view of the Constitution. According to him, both

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<sup>85</sup> *Ibid.*, 103-4, emphasis in original. In his argument against slavery from the New Testament, he relied on Matt. 22:39, 7:12, Acts 17:26, Rom. 3:29, and Eph. 2:14.

<sup>86</sup> Stuart, *Conscience and the Constitution*, 110.

<sup>87</sup> *Ibid.*, 109-10, quotations on 109.

<sup>88</sup> *Ibid.*, 113.

<sup>89</sup> *Ibid.*, 71, 81, emphasis in original.

texts had been written by good men, who nonetheless could not escape the influence of the erroneous notions of their times. In a speech delivered at the New England Anti-Slavery Convention in late May, two months after he gave his response to Webster at Faneuil Hall, Parker somberly retraced the advances of the dominant Slave Power in the irreconcilable conflict between the “idea of Freedom” and the “idea of Slavery.”<sup>90</sup> Finding “much to discourage a man who believes in the progress of his race,” he outlined developments since 1789, lamenting that “since the adoption of the Constitution, protected by that shield, mastering the energies of the nation, and fighting with that weapon, slavery has been continually aggressive.”<sup>91</sup> In this narrative the Constitution was no longer neutral, but signaled rather a fatal first step in the proslavery rise to its present political prominence in 1850. Parker’s depiction of proslavery advances as aggressive matched his belief that slavery itself was out of step with the general sentiment of the nineteenth century. The state of affairs in 1850 reminded him of “the spirit which prevailed in the Roman Senate, A. D. 62, when about four hundred slaves were crucified.” He found Tacitus’s account of the event “instructive, too, at these times.”<sup>92</sup> In contrast to some of Stuart’s historical comparisons, Parker’s was meant to evidence the regressed state of the American nation rather than condemn the actions of the abolitionists or confirm the current relevance of ancient deeds.

In their speeches, Webster and Stuart specifically supported the Fugitive Slave Law, but in 1850 such support was tantamount to a defense of slavery itself. Viewing Webster’s speech as the latest in a long line of proslavery consolidations, Parker still held

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<sup>90</sup> Theodore Parker, “A Speech at the New England Anti-Slavery Society Convention in Boston,” in *Speeches*, 3:41-42.

<sup>91</sup> *Ibid.*, 3:46.

<sup>92</sup> *Ibid.*, 3:43.

out hope. He expected that the people of Massachusetts would not countenance Webster's act, which he again compared to "the treachery of Benedict Arnold."<sup>93</sup> He did not believe that the Bay State would "efface Lexington and Bunker Hill from her memory."<sup>94</sup> Although the Constitution marked the beginning of the current crisis, Parker still knew how to use the Revolutionary past for his purposes. Referencing the "orthodox minister" from Andover, he proposed "a 'short and easy method' with Professor Stuart, and all other men who defend slavery out of the Bible. If the Bible defends slavery, it is not so much better for slavery, but so much the worse for the Bible."<sup>95</sup> Parker did not discriminate among biblical texts or between patriarchs, prophets, and apostles. "If Christianity supports American slavery, so much the worse for Christianity," he declared, "We all know it does not, never did, and never can. But if Paul was an apologist for slavery, so much the worse for Paul."<sup>96</sup> Parker's wry comment carried awful weight; if and when the traditional canon contradicts conscience, conscience trumps canon. Rather than argue, as Barnes had, that Paul had instructed Philemon to receive Onesimus as a brother and a freeman in Christ, or, as Channing and Wayland had, that Paul, aware of his circumstances, had inculcated principles meant to abolish slavery, Parker granted the accuracy of Stuart's understanding of the passage's original meaning only to then devalue its relevance as a moral guide in the present. What, though, of Stuart's enlistment of the Constitution? Parker made it clear that he was no respecter of founding documents. Earlier in the speech, he referenced the Free Soil Party's effort to oppose "slavery so far

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<sup>93</sup> Ibid., 3:58.

<sup>94</sup> Ibid., 3:64.

<sup>95</sup> Ibid., 3:68.

<sup>96</sup> Ibid., 3:79.

as it is possible to do, and yet comply with the Constitution.”<sup>97</sup> He honored Salmon Chase and William Seward, who offered up “very noble words against slavery; heroic words in behalf of freedom,” but he called on them to go further in putting an end to the institution, warning that “if the Constitution of the United States will not allow it, there is another Constitution that will.”<sup>98</sup> Rather than struggle to salvage the nation’s founding religious and legal texts through creative interpretations, Parker stood ready to admit that those documents had worn out their welcome in the antislavery nineteenth-century.

Webster, Stuart, and Parker each provided interpretations of the Bible and the Constitution and offered historical accounts that drew attention to real temporal distinctions dividing biblical from modern times and that highlighted real historical changes separating the founding era from the present. Webster and Stuart agreed that Christ and his apostles had inculcated principles meant to extinguish slavery’s searing flames and that the framers had expected the clinging of chains to eventually cease, but both attributed the republic’s failure to realize the egalitarian promises found in the Revolutionary and, presumably, the biblical pasts to the counterproductive efforts of the American abolitionists. In their attempts to quench the flames, the abolitionists had only added fuel to the fire. Stuart, in particular, denied the importance of historical distinctions when he used biblical precedent to condemn the actions of the abolitionists. However, in defending the actions of Moses and the apostles as expedient, his argument highlighted those historical distinctions. Slavery forced Stuart to recognize, a greater extent than before, that the sacred writers and actors had accommodated to their times. Such

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<sup>97</sup> Ibid., 3:54.

<sup>98</sup> Ibid., 3:55, 85.

recognition drew attention to historical distance, even when Stuart still made cross-temporal applications in his biblical interpretations.

Parker offered an alternative account that made more direct use of historical distance. He placed the blame for unfulfilled promises at the feet of the Slave Power and its conspirators in the North. He explained the failures of both Christian and national founders through a historical explanation that stressed the progress of moral understanding. The sin of slavery was not in the unenlightened mothers and fathers whose eyes were shut to evil but in the illuminated sons and daughters who knew better. The emphasis on corruptions in the form of the rise of abolitionism or, in Parker's case, of the Slave Power suggested that historical development was a contingent process and that historical distance left a chasm between present and past. In conjunction with his sense of the progress of moral understanding, Parker's depiction of proslavery actions as anachronistic stressed that substantial historical changes had created a gulf between Americans and their favored biblical and Revolutionary pasts. It also checked a sense of America's status on the world stage, but Parker remained convinced that the nineteenth century was an age of freedom, an age to fulfill the promises of the fathers. So did Frederick Douglass.

*"The Original Intent and Meaning of the Constitution ... Makes It a Pro-Slavery Instrument": Frederick Douglass's Early Garrisonian Approach to the Constitution*

Each of these interpreters recognized the importance of the Bible in the slavery debates and spent some time explicating its meaning. However, even theologians and ministers such as Stuart and Parker recognized that constitutional interpretation had taken

on a determinative role in the debates. Most parties involved came to believe that the fate of four million slaves did not rest in biblical exegesis but rather in constitutional construction. Even the Declaration of Independence, a sacralized text, retained relevance only to the extent that it could be used as the key to unlocking the Constitution's meaning. The constitutionalization of slavery during the 1850s directed an unprecedented level of scrutiny toward the Constitution and the founding era, fulfilling a potential inadvertently created by the founding generation.<sup>99</sup>

In the controversy surrounding the Fugitive Slave Law and the subsequent fugitive slave cases, Frederick Douglass, once America's most famous fugitive slave—his English supporters had purchased his freedom in 1846—changed his opinion of the Constitution. In the spring of 1851, the onetime anti-constitutional Garrisonian converted to Gerrit Smith's radical constitutionalism. Most of the prominent antebellum antislavery approaches to the Constitution found a voice in Douglass at one time or another. The evolution of his constitutional views demonstrates the lure of radical constitutionalism but also the lingering influence of the Garrisonian interpretation, with its emphasis on contextual and historical reasoning. Even as Douglass, convinced by the arguments of antislavery constitutionalists such as Alvan Stewart, William Goodell, and Lysander Spooner, adopted Smith's position, he retained an interest in understanding the intentions and expectations of the framers. Before these interpretive approaches to the Constitution

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<sup>99</sup> On the proclivity to constitutionalize pressing issues in the antebellum period, including slavery, see Burt, *Lincoln's Tragic Pragmatism*, 34-35.

found their most public hearing in *Dred Scott*, they clashed among various groups of antislavery advocates and within the mind of Douglass.<sup>100</sup>

Illuminated through the dark aftermath of the Fugitive Slave Law, Douglass's path to antislavery constitutionalism was a gradual climb. In the same year that Spooner published *The Unconstitutionality of Slavery* and Phillips published *The Constitution a Pro-Slavery Compact*, the famous fugitive published his autobiography, *Narrative of the Life of Frederick Douglass, an American Slave* (1845), and immediately set sail for a speaking tour to Ireland and Britain. It was clear that, at this point, Douglass was a Garrisonian. Free to speak his mind about his country before a foreign audience, including the foreign newspaper reporters who recorded his words, Douglass often highlighted the hypocrisy of the supposed democracy, which "proclaimed to the world that all mankind were created freeborn; and for the maintenance of that principle she solemnly swore before high Heaven that she would vindicate and uphold it by force, at expense, at the sacrifice of life. ... But alas! how had she carried out her pledge: what was the condition of slavery there?"<sup>101</sup> Douglass believed in the egalitarian principles he located in the Declaration of Independence, principles for which black Revolutionaries had died—"for it was a negro who shed the first blood"—but, like Garrison, he found

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<sup>100</sup> For an outline of the antislavery constitutional arguments and for a discussion of Douglass's slow and studied adoption of Smith's position, see David W. Blight, *Frederick Douglass' Civil War: Keeping Faith in Jubilee* (Baton Rouge: Louisiana State University Press, 1989), 26-35. See also Foner, *Fiery Trial*, 43-44.

<sup>101</sup> Frederick Douglass, "Slavery Corrupts American Society and Religion: An Address Delivered in Cork, Ireland, on 17 October 1845," in *The Frederick Douglass Papers, Series One; Speeches, Debates, and Interviews*, ed. John W. Blassingame, 5 vols. (New Haven, CT: Yale University Press, 1979-1992), 1:46 (hereafter *Frederick Douglass Papers, Series One*).

treachery in the states' union "under one constitution," a Constitution that "protected and supported slavery."<sup>102</sup>

In Douglass, too, one finds a deep interest in the Bible as well as the Constitution. Unlike Parker, his critique of the latter text did not follow from or transfer to his view of the former. He often criticized the so-called Christian nation, where "Bibles and slaveholders go hand in hand," for corrupting scripture, and during his tour he frequently discouraged the Irish Free Church from accepting funds from their false brethren in the American South.<sup>103</sup> The corroding power of slavery and the resulting proslavery interpretation of the Bible, rather than the Bible itself, was the problem. Indeed, whereas proslavery biblical interpreters fused the Testaments together to defend slavery, Douglass united them to condemn the institution. In one 1845 speech, he cited a letter from Moses Stuart, whom he described as "an advocate for slavery," wherein the Andover divine instructed his correspondent that Paul had sent back Onesimus "into slavery for life." Douglass referenced a passage from Deuteronomy, the very one Stuart wrestled from antislavery interpreters in *Conscience and the Constitution*, to argue that because "there was no such thing known among the Jews as slavery for life," Paul must have sent back

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<sup>102</sup> Frederick Douglass, "Slavery and America's Bastard Republicanism: An Address Delivered in Limerick, Ireland, on 10 November 1845," in *Frederick Douglass Papers, Series One*, 1:79, 80. Douglass was speaking of the battle of Bunker Hill, or Breed's Hill, on this occasion, and he referenced black soldiers of the Revolution, or compared black actions to those of the revolutionaries, on other occasions as well. See, for example, Frederick Douglass, "American Prejudice Against Color: An Address Delivered in Cork, Ireland, 23 October 1845," in *Frederick Douglass Papers, Series One*, 1:60-70. For other moments from this tour in which he condemned Americans as "political hypocrites," see, for example, Frederick Douglass, "The Free States, Slavery, and the Sin of the Free Church: An Address Delivered in Paisley, Scotland, on 19 March 1846," in *Frederick Douglass Papers, Series One*, 1:186-88.

<sup>103</sup> Frederick Douglass, "I Am Here to Spread Light on American Slavery: An Address Delivered in Cork, Ireland, on 14 October 1845," in *Frederick Douglass Papers, Series One*, 1:44. See also Douglass, "Slavery Corrupts," 1:49.



Onesimus “not as a slave who could be sold in the market, but as a beloved brother.”<sup>104</sup> According to the record of a May 1846 speech, he again made the same argument. “I do not agree with the opinion that the apostle Paul recognised Onesimus as the property of Philemon. The Jewish law says: ‘Thou shalt not deliver a man back to his master; he shall dwell with thee in the land.’ I do not think, that if, under Moses and the prophets, it would have been wrong to return me back to bondage, that in the nineteenth century of the Christian era it would be right to send me back. I think, however, it would be right to send back the money.” Douglass’s demand on the Free Church drew laughter and cheers from his audience.<sup>105</sup> Even as he selectively called on both the Old and New Testaments, and collapsed time in his application of the scriptures, his reference to the current century exposed the vast temporal gap from the times in which the sacred writers had penned them. The slavery debates cultivated a sense of historical distance even among those who still assumed contemporaneity with the past. Although he was unfamiliar with biblical criticism, Douglass believed in progress and implied historical distance from the biblical past, which could make appeals to the Bible problematic.

Similar to Parker, Douglass believed that although “there never was so great a determination among large numbers to get rid of [slavery] as at the present time,” the southern institution had a stranglehold on the American nation, which he described as

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<sup>104</sup> Frederick Douglass, “Baptists, Congregationalists, the Free Church, and Slavery: An Address Delivered in Belfast, Ireland, on 23 December 1845,” in *The Frederick Douglass Papers, Series One*, 1:115, 116. For a specific reference to Deut. 23:15, see Douglass, “Slavery and America’s Bastard Republicanism,” 1:79.

<sup>105</sup> Frederick Douglass, “Emancipation Is an Individual, A National, and An International Responsibility: An Address Delivered in London, England, on 18 May 1846,” in *Frederick Douglass Papers, Series One*, 1:260.

“the sheet-anchor of slavery throughout the world.”<sup>106</sup> In Douglass’s mind, the United States was the last great defender of slavery and slavery was the last great barrier to human progress. American slavery stood in strange juxtaposition to the spread of antislavery sentiment. The endurance of the former depended on “slave-holding religion in the south and a pro-slavery religion in the north,” and its secure status rested on proslavery constitutional provisions and a proslavery government. In an August 1846 speech in England, Douglass set out to “give the meeting a history of the American government.” According to contemporary reports, he explained that “there was a clause in the general Constitution to the effect that the general government should not interfere with institutions in the states. Thus whilst the general government could not put down slavery, it had been prostituted to uphold it, and thereby slavery was made a national institution.” Douglass referenced “one clause in the American Constitution” in particular, “which made it the duty of the several states to return the slave to his master when he escaped from bondage.”<sup>107</sup> This particular clause soon received a major renovation, and that renovation turned up the heat in constitutional debates.

In 1847, Douglass returned from his speaking tour a free and independent man, set on establishing a newspaper through which an independent African American voice could enter the public sphere. With assistance from the same friends who had purchased his freedom, Douglass soon established the *North Star*. Scholar T. Gregory Garvey describes the paper’s creation as a strategic move to claim structural equality on the public stage and to shift the center of attention from Douglass himself to the Constitution.

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<sup>106</sup> Ibid., 1:261.

<sup>107</sup> Frederick Douglass, “American Slavery and Britain’s Rebuke of Man-Stealers: An Address Delivered in Bridgwater, England, on 31 August 1846,” in *Frederick Douglass Papers, Series One*, 1:364.

Douglass aimed to become a participant in, rather than just an object of, debate. Garrison, his mentor, had successfully applied the revivalistic methods of the Second Great Awakening to secular debates, which assisted him in efforts to reject conventional discourse and “come out” from traditional religious and political institutions. In order to embrace come-outerism like Garrison one had to be firmly situated within American society and thus Douglass was in no such position to imitate his friend. Instead, he struggled for recognition in the political culture of the time. His move to reposition himself away from the stance of his erstwhile guide was emblematic of a greater defection from come-outerism and disunionism to political abolitionism around 1850, when many abolitionists determined that Garrison’s approach was unrealistic and ineffective. Douglass’s evolving view of the Constitution accompanied his own move away from Garrisonian disunionism.<sup>108</sup>

The question of constitutional interpretation started to weigh heavily on his mind in the late 1840s. When pressed on the issue in early 1849, he agreed that, if strictly construed, the Constitution was “not a pro-slavery instrument.” However, retaining a Garrisonian approach at this point, he wrote in the *North Star* that “I now hold, as I have ever done, that the original intent and meaning of the Constitution (the one given to it by the men who framed it, those who adopted, and the one given to it by the Supreme Court of the United States) makes it a pro-slavery instrument.”<sup>109</sup> Douglass’s statement, which echoed Wendell Phillips’s argument of continuity between the intent of the Constitution’s

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<sup>108</sup> T. Gregory Garvey, *Creating the Culture of Reform in Antebellum America* (Athens: University of Georgia Press, 2006), 121-60.

<sup>109</sup> Frederick Douglass, “The Constitution and Slavery,” *North Star*, 9 February 1849, in *The Life and Writings of Frederick Douglass*, ed. Philip S. Foner, 5 vols. (New York: International Publishers, 1950-1975), 1:353 (hereafter *Life and Writings*).

framers and ratifiers and its subsequent interpretations, generated a response from New York abolitionist Gerrit Smith. The recent Liberty Party candidate's reply led Douglass to offer clarification, which demonstrated how closely he followed along the path that Garrison and Phillips had paved during the last decade. He wrote that "the Constitution of the United States, standing alone, and construed *only* in the light of its letter, without reference to the opinions of the men who framed and adopted it, or to the uniform, universal and undeviating practice of the nation under it, from the time of its adoption until now, is not a pro-slavery instrument."<sup>110</sup> Again, he granted that if one read the words of the text and determined its meaning without an appeal to context or history, the Constitution was neutral on the issue. But Douglass did interpret that text in light of its framers' original intent and its subsequent use and thus he continued to reject antislavery readings.

Laying stress on the Constitution's temporal nature, Douglass emphasized that "it is human, and must be explained in the light of those maxims and principles which human beings have laid down as guides to the understanding of all written instruments, covenants, contracts and agreements, emanating from human beings. ... In this light," he explained, "we hold it to be a most cunningly-devised and wicked compact."<sup>111</sup> This approach, claiming to use "facts, rather than theory," allowed Douglass to damn the document as the creation of imperfect and time-bound beings. The Constitution, like the Bible, was becoming a text among texts and as such, it could be read without legal expertise. "Having a terrestrial, and not a celestial origin," he wrote, "we find no

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<sup>110</sup> Frederick Douglass, "The Constitution and Slavery," *North Star*, 16 March 1849, in *Life and Writings*, 1:362, emphasis in original.

<sup>111</sup> *Ibid.*, 1:362.

difficulty in ascertaining its meaning in all the parts which we allege to relate to slavery. Slavery existed before the Constitution, in the very States by whom it was made and adopted.—Slaveholders took a large share in making it. It was made in view of the existence of slavery, and in a manner well calculated to aid and strengthen that heaven-daring crime.”<sup>112</sup> Slavery, it seemed, was not only part of the framers’ original intent, but its continued existence seemed to be part of their original expectation. Dismissing the arguments of Spooner and others, just as Phillips had, Douglass interpreted the three-fifths, insurrection, slave trade, fugitive slave, and domestic violence clauses in light of statements made by members of the Convention. Satisfied that he had made manifest the document’s temporal and corrupt nature, he proposed that “it is truly a compact demanding immediate disannulment.”<sup>113</sup> Douglass’s reading implied that because the Constitution was a human document, created in time and subject to temporal vicissitude, it was not immutable and could be and should be replaced with a more suitable guide.

He retained this position for about two more years, but even here he expressed an openness to considering Smith’s contentions and invited his interpretive opponent to use the *North Star* to further explain them. Douglass wrote, “If the Constitution can be so turned, and [Smith] can satisfy us of the fact, we shall readily, gladly and zealously turn our feeble energies in that direction.”<sup>114</sup> Douglass backed up his claim in accepting proposals to further debate the issue, as in New York City in May 1849, when he engaged Samuel Ringgold Ward, an African American Congregationalist minister and orator. While Ward believed that if the Constitution had acknowledged the “right to hold

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<sup>112</sup> Ibid., 1:363.

<sup>113</sup> Ibid., 1:366.

<sup>114</sup> Ibid.

property in person ... it would be a direct violation of the principles for which the fathers of the Republic struggled,” the gist of his argument rested in a familiar focus on words alone and a disregard for the “intentions and sentiments of the framers of the Constitution.”<sup>115</sup> In response to Ward, Douglass read “from the *Madison Papers*” to show that “the North bowed to the mandates of Slavery.”<sup>116</sup> He believed that historical evidence unlocked the Constitution’s true meaning, and he found it supportive of a proslavery interpretation.

Douglass, though, remained open to debate. At a multi-day antislavery conference in Syracuse in early 1850, he found himself again discussing the issue with Ward, Smith, Parker Pillsbury—a Congregationalist minister and a lecturing agent for antislavery societies—and other abolitionists. Douglass, in the absence of Garrison, outlined the anti-constitutional position. “We want to say to slaveholders,” he said to his fellow abolitionists, “we admit your views of the Constitution, but we war on that and on you.”<sup>117</sup> Douglass emphasized the hypocrisy of the framers, who “laid down the doctrines of equality, consent, and [taught] that resistance to tyrants is obedience to God” but, “after they had achieved independence,” who then “attempted to unite Liberty in holy wedlock with the dead body of Slavery, and the whole was tainted.”<sup>118</sup> To counter the prevalent filiofetism, Douglass declared, “I know they were slaveholders. This *one fact*

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<sup>115</sup> “Resolved, that the Constitution of the United States, in Letter, Spirit, and Design, is Essentially Antislavery: A Debate between Samuel Ringgold Ward and Frederick Douglass in New York, New York, on May 11, 1849,” *New York Daily Tribune*, 15 May 1849, in *Frederick Douglass Papers, Series One*, 2:195.

<sup>116</sup> *Ibid.*, 2:196, 197.

<sup>117</sup> “Is the Constitution Pro-Slavery? A Debate between Frederick Douglass, Charles C. Burleigh, Gerrit Smith, Parker Pillsbury, Samuel Ringgold Ward, and Stephen S. Foster in Syracuse, New York, on 17 January 1850,” *National Anti-Slavery Standard*, 31 January 1850, in *The Frederick Douglass Papers, Series One*, 2:221.

<sup>118</sup> *Ibid.*, 2:222-23.

is enough for me.” He was just getting started. “Talk to me of the love of liberty of your Washingtons, Jeffersons, Henrys. ... He who does not love Justice and Liberty for all, does not love Liberty and justice. They wrote of Liberty in the Declaration of Independence with one hand, and with the other clutched their brother by the throat! These are the men who formed the union. ... Give me NO UNION WITH SLAVEHOLDERS!”<sup>119</sup> In essence, the abolitionists all agreed that the framers, based on extra-constitutional historical evidence, intended to sanction slavery, but while the radical constitutionalists wanted to turn attention from those intentions to the language of the Constitution itself, the anti-constitutionalists focused on those intentions. While many Americans, including those in the slavery debates, claimed affinity with the founders, the anti-constitutionalists strove to distance themselves from them and their proslavery compact.

Ward responded with the familiar appeal to “*plain language*,” and went so far as to suggest that “almost the words of the Declaration are enacted in the Constitution—to be found in the fifth amendment. Truth in the Declaration, and Good in the Constitution, are one.”<sup>120</sup> Once again, an interpreter brought together these founding documents, just as Douglass had brought together the Old and New Testaments, to attack the proslavery position. The discussion was soon sidetracked when attendees began debating the status of the Liberty Party. Douglass set them straight. The tangential deliberation “hinders the discussion of the constitutional questions,” he stated, “which is THE QUESTION OF THE DAY, as far as Anti-Slavery in this country is concerned.”<sup>121</sup> The question of the

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<sup>119</sup> Ibid., 2:223, emphasis in original.

<sup>120</sup> Ibid., 2:227.

<sup>121</sup> Ibid., 2:230-31.

day would soon become the question of the decade. The constitutionalization of the issue began in earnest during this period. Returning his fellow abolitionists to the question at hand, Douglass restated a willingness to be persuaded. “He wished to address himself to the ‘bridge’ to be passed over, till we reach the spot where we are to have an Anti-Slavery interpretation of the Constitution.” Douglass, however, still could not accept that interpretation. Like Phillips, he believed that because politicians “all concede to the Supreme Court, the right to determine the meaning of that instrument,” their interpretation “is LAW to all intents and purposes.” The observed deference shown to the Supreme Court increased leading up to *Dred Scott*, but that development coincided with the emergence of popular constitutionalisms, which placed interpretation in the hands of the people rather than the Court. Douglass, like Parker, would promote such an approach. Smith, showing him the way, asked him to “suppose Justice in this city bring in a false or corrupt judgment; would you overturn the government? No! turn out the Justice. ... You may have the wisest and purest Constitution, and have it perverted. Your only security is in the sentiment of the country.” At this point, Douglass remained unmoved. The “overwhelming array of testimony” created too large a chasm to traverse.<sup>122</sup>

*“We Are in the Presence of No Ordinary Assembly”*: Benjamin Robbins Curtis’s *Time Travel and the Founders on Fugitive Slaves*

The Fugitive Slave Law and the cases that followed provided the impetus that Douglass needed to bridge that chasm. The controversies that erupted through attempts to reclaim fugitive slaves led some abolitionists, like Douglass, to reconsider, and other

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<sup>122</sup> Ibid., 2:231.



abolitionists, like Theodore Parker, to further articulate, their positions. Indeed, as the human element became undeniable and as conflict seemed more inevitable, people in prominent positions felt compelled to verbalize and defend their constitutional interpretations. More than the Fugitive Slave Law itself, the fugitive slave cases that followed incited northerners to stake their grounds. Even before 1850, fugitive slave cases had deepened existing divisions. For example, the arrest of fugitive slave George Latimer in 1842 cemented the Garrisonian view of the Constitution as a proslavery compact.<sup>123</sup> The cases that succeeded the Compromise of 1850 brought the constitutional issue further to the fore, leading some to dig in their heels in defense of slaveholders' constitutional rights, while also radicalized much of New England against slavery. During this time, decades of seemingly isolated constitutional debating provided judges and policy-makers with national talking points.

Parker dramatically depicted the volatile situation in a September 1850 speech on “The Function and Place of Conscience, in Relation to the Laws of Men.” Finding a loophole in the contractual obligation to uphold the land’s supreme source of legal authority, he contrasted the constant laws of God—“they never change”—with the changing laws of man—they “depend ... on the finite will of man.”<sup>124</sup> Parker explained that though the static laws of God reside within man as conscience, conscience was “relatively perfect. ... It is often immature in the young, who have not had time for the growth ... and in the old, who have checked and hindered its development.”<sup>125</sup> This

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<sup>123</sup> See, for example, *Liberator*, 4 November 1842, 174 (APSO).

<sup>124</sup> Theodore Parker, “The Function and Place of Conscience, in Relation to the Laws of Men; A Sermon for the Times, preached at the Melodeon, on Sunday, September 22, 1850,” in *Speeches*, 3:133, 133-34.

<sup>125</sup> *Ibid.*, 3:138.

description matched Parker's sympathetic approach to eminent historical figures, who sanctioned slavery in their ignorance, and his damning attack on present proslavery supporters, who sanctioned slavery in spite of their illumination because they had allowed it to canker their souls. Sin, Parker believed, resulted when individuals knew evil but did not cast it out. Those who listened to conscience would acknowledge the sin of slavery and would be obligated to cast aside the Constitution to cleanse the nation. "Suppose," Parker directed, that "a man has sworn to keep the Constitution of the United States, and the Constitution is found to be wrong in certain particulars: then his oath is not morally binding, for ... he is morally bound to keep the law of God as fast as he learns it."<sup>126</sup> Parker identified the fugitive slave clause, especially in its most recent iteration, as wrong. Indeed, God's law told him that "the man who attacks me to reduce me to slavery, in that moment of attack alienates his right to life, and if I were the fugitive, and could escape in no other way, I would kill him with as little compunction as I would drive a mosquito from my face."<sup>127</sup> A particular kind of historical understanding underlay Parker's violent rhetoric. Believing in the progress of conscience, he found moral blindness but no sin in Paul, nor even in framers like Madison, though they had done wrong, but he could not hold nineteenth-century Americans guiltless, including the "eminent theologian of New England," who bound himself to compact.<sup>128</sup> As for himself, Parker preferred "conscience to cotton," to the Bible, and to the Constitution.<sup>129</sup>

Parker outlined the path of conscience for citizens. "It is plain to me," he stated, "that it is the natural duty of citizens to rescue every fugitive slave from the hands of the

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<sup>126</sup> Ibid., 3:170.

<sup>127</sup> Ibid., 3:154.

<sup>128</sup> Ibid., 3:171.

<sup>129</sup> Parker, "Speech at the New England Anti-Slavery," 3:86.

marshal who essays to return him to bondage.”<sup>130</sup> A number of Boston’s residents followed that path when the Fugitive Slave Law placed William and Ellen Craft in imminent danger, while others valued Constitution over conscience. Successfully escaping from Georgia to Boston in late 1848, the Crafts had publicly recounted their harrowing and clever getaway to great effect on numerous occasions. But in October of 1850 their popularity almost cost them their freedom when bounty hunters nearly captured them. In this tense setting, Harvard graduate and Massachusetts lawyer Benjamin Robbins Curtis prepared a legal opinion defending the constitutionality of the Act for US Marshal Charles Devens, who was charged to apprehend the Crafts. Within a week Benjamin Curtis further outlined his defense in a “Constitutional Meeting,” which his younger brother George Ticknor Curtis, also a Harvard graduate and a Massachusetts lawyer, had helped organize.<sup>131</sup>

On November 26, 1850, “the Citizens of Boston and its vicinity, who reverence the Constitution of the United States; who wish to discountenance a spirit of disobedience to the laws of the land,” met in the famed Faneuil Hall, a virtual battleground for groups claiming the Revolutionary legacy.<sup>132</sup> Indeed, John C. Warren, a Boston surgeon and a nephew of famous Revolutionary martyr Joseph Warren, who had been memorialized in various forms, including John Trumbull’s painting *The Death of Warren* (1786), presided over the meeting. In his brief speech, Warren described the Constitution not as a legal text but as an epochal divider between dark and light, stagnancy and progress, savagery

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<sup>130</sup> Parker, “Function and Place of Conscience,” 3:153.

<sup>131</sup> On the fugitive slave cases and Benjamin Curtis’s role in them, see Streichler, *Justice Curtis*, 38-65.

<sup>132</sup> *Proceedings of the Constitutional Meeting at Faneuil Hall, November 26th, 1850*. (Boston: Beals and Greene, 1850), 3.

and civilization. Speaking with the authority of honor and experience, he outlined the desperate state of the colonies “during a period when there was no Constitution and no Union; when there was no commerce, no manufactures, little of agriculture, or of any of the arts calculated to make a powerful and happy people. ... It was a period when men’s hands were turned against their neighbors,” he explained, “when the courts were beset with armed men, when law and justice were trampled under foot, when our best towns and villages were threatened with pillage, fire, and the sword; when the soil was polluted with the blood of its own citizens. ... What a dark moment was this!”<sup>133</sup> Warren painted a sad scene, but it was not without its happy features.

“In the midst of this gloom,” he recounted to his listeners, “a ray of light showed itself. A Constitution was proposed, and ... adopted as a bond of everlasting union. Under this Constitution,” he observed, “a new order of things has arisen. Commerce and agriculture have revived. Manufactures have everywhere grown up. Education, literature, and science, have been diffused in all our cities and towns. The highest prosperity has pervaded the nation, and presented to the wondering eyes of Europe the spectacle of a federal republic, free without licentiousness, and rich without luxury.” The Constitution had ushered in a new and unmatched era; an unprecedented period of peace and prosperity. Having provided this triumphalist narrative, Warren wondered, “is there any one desirous of returning to the disunion of 1786?”<sup>134</sup> The implication was that anti-constitutionalism and disunion would undo over a half-century of progress, leaving Americans in a dark and dilapidated past state. Warren did not mention the Declaration. The Revolution was not meant to be lived in but to be learned from. Like the opposite

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<sup>133</sup> Ibid., 4-5.

<sup>134</sup> Ibid., 5.

narrative of decline since the founding era, this sort of historical narration of progress alone stood little chance of spreading a sense of the historical change that would induce Americans to reconsider their relationship to favored pasts and their readings of sacred texts. Indeed, these sorts of narratives differed little from Puritan calls for renewal or enlightenment pronouncements of progress. Warren's narration demonstrates that traditional narratives of historical change and development persisted alongside those more capable of raising historical awareness. But in focusing on a specific moment in time and on a specific historical text, Curtis's tale of temporal division did draw further attention to that moment and that text, encouraging further exploration.

Speaking next, Benjamin Curtis, who had helped organized Boston's reception for Webster following his Seventh of March speech, echoed Warren's pledge to "the whole CONSTITUTION and the whole UNION."<sup>135</sup> He made explicit what Warren had implied about disunionism. Making reference to a number of recent dangerous declarations, including the blasphemous higher-law proposition, made by abolitionists in Faneuil Hall, "that an article of the Constitution of the United States shall not be executed, *law or no law*," and Parker's violent statements in his September sermon, he damned anti-constitutional ideas as radical and deserving of "the rebuke of every good citizen."<sup>136</sup> Curtis compared the minority position he attacked, which aimed at revolution, with that of the more prominent if less defined Free Soilers, who recognized the constitutional presence of the fugitive slave clause and, in general, saw the need to keep the contract, but could not consent "to its being done in a particular way, or by any

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<sup>135</sup> Ibid.

<sup>136</sup> Ibid., 8, emphasis in original, 9. On the aforementioned abolitionist meeting at Faneuil Hall, see Streichler, *Justice Curtis*, 41-42.

particular means, or in any *modern* instance.” Aware of the antislavery emphasis on temporal distinction in their efforts to dismiss the Constitution’s proslavery injunctions, Curtis sought to close the gap between the time of ratification and the present.

To determine the lawfulness of the anti-Fugitive Slave Law propositions, Curtis turned to history. He found that all legal theorists, from the early modern Dutch jurist Hugo Grotius to the contemporary German-American jurist Francis Lieber, had held as binding and enforceable interstate contracts dealing with the legal status of persons traveling among states. Locating this legal maxim in the Constitution itself, Curtis carried his listeners back to the Massachusetts ratification debates. “The question is,” he explained, “whether this Commonwealth, acted within the bounds of right, in 1788, when it entered into the compact in question.”<sup>137</sup> Curtis’s speech was not simply a history lesson, but an experiment in time travel. “We are in the presence of no ordinary assembly,” he wrote, awakening the imagination of his audience. “In the chair is John Hancock. . . . There is Theophilus Parsons. . . . There is Samuel Adams.”<sup>138</sup> Curtis wondered if such illustrious men as these had made “a compact so grossly immoral, that their children may not fairly execute it, but must now overthrow and destroy the work of their hands.” Figures like Parker and Douglass might have responded that the founders had expected that time would save their children the trouble. Curtis, though, conflated time. “It is but the other day,” he noted, “we were shedding our blood to obtain the Constitutions under which we live—Constitutions of our own choice and making—and now we are unsheathing the sword to overturn them.”<sup>139</sup> While Parker stressed the

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<sup>137</sup> *Proceedings of the Constitutional Meeting*, 11, emphasis mine.

<sup>138</sup> *Ibid.*, 13.

<sup>139</sup> *Ibid.*, 14.

historical distance between the founding generation and his own to implicate the latter group, Curtis drew those generations together, which made the abolitionists' position seem violently schizophrenic. "May the State make a promise to-day," he railed on, "and to-morrow say, 'On the whole, our interest did not require that promise, and it is not to be kept?'"<sup>140</sup> Curtis's argument represented a striking example of the ways in which conventional conceptions of the close relationship between the present and a favored past maintained their hold on the antebellum American imagination. Indeed, it suggests that in some respects, slavery, encouraged and deepened the proclivity to conflate distinct historical contexts.

And yet, while his speech tended to collapse time in ways that might leave modern hearers dizzy, Curtis recognized time's passage in positing his own version of original expectation. He stated that "men of forecast must then have foreseen, and subsequent events have demonstrated ... that without an obligation to restore fugitives from service, Constitution or no Constitution, Union or no Union, we could not expect to live in peace with the Slaveholding States."<sup>141</sup> As in the biblical debates, wherein interpreters stressed the prophets and apostles' expedient approach to ancient servitude, Curtis highlighted the framers' reasoned approach to American slavery. As historian Stuart Streichler notes, "Curtis suggested that the framers recognized the issue as potentially divisive and, for that reasons, establish guiding principles."<sup>142</sup> However, this version of original expectation emphasized continuity in slavery's protection rather than change in its eventual abolition. "History proves" Curtis wrote, that the nation cannot

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<sup>140</sup> Ibid., 15-16.

<sup>141</sup> Ibid., 16.

<sup>142</sup> Streichler, *Justice Curtis*, 47.

endure without a compact. As evidence, he referenced George Washington's efforts in 1789 to stop Georgia fugitives from escaping to Spanish Florida.<sup>143</sup> Stating that the Constitution "comes as near to perfection as the lot of humanity permits," Curtis concluded his argument in warning that breaking the "promise which our wise and good fathers made" would produce fatal results.<sup>144</sup> Like Douglass, Curtis recognized that laws were man-made, but it was for that very reason he thought it unreasonable to measure them according to a standard of natural or divine justice. And although he believed that common law and even the Constitution must be flexible and adapt to changing circumstances to a certain extent, he believed that clear provisions, such as the fugitive slave clause, did not allow for change. He believed that the founding generation had thought historically, but did not seem to think that fact justified historical thinking among their sons and daughters. Indeed, because he did not believe in the progress of moral sentiment as did Parker and assumed temporal contemporaneity with the founding era, he could reject the idea that the time since then had created new imperatives with respect to fugitive slaves.

In an 1850 Thanksgiving Day sermon, Parker responded to both Stuart and Curtis. He never embraced the Garrisonian contention that the Constitution must be scrapped for slavery to be abolished, but he proved willing to cast it aside, along with the Bible, if other means fell short. He wondered if "the professor," meaning Stuart, "was mistaken more than the apostle," but repeated his position that if the Old and New Testaments justify slavery, "so much the worse for them both."<sup>145</sup> Parker continued to believe that the

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<sup>143</sup> *Proceedings of the Constitutional Meeting*, 16-17, quotation on 16.

<sup>144</sup> *Ibid.*, 17.

<sup>145</sup> Theodore Parker, "The State of the Nation," in *Speeches*, 3:206.



people of 1787 expected slavery “would die ‘of a rapid consumption,’” and mourned that “the culture of cotton has healed its deadly wound.”<sup>146</sup> Given the direction of the nation, soon the only resolution might rest in replacing the Constitution. Speaking of Curtis and his ilk, Parker noted, “Men say there is danger of disunion, of our losing fealty for the Constitution. I do not believe it yet!” he announced. “Suppose it be so,” he continued, “The Constitution is the machinery of the national mill; and suppose we agree to take it out and put in new; we might get worse, very true, but we might get better. There have been some modern improvements; we might introduce them to the State as well as the mill.”<sup>147</sup> Once again, Parker narrated both the corrupt rise of the Slave Power and the progress and spread of antislavery sentiment—“the spirit of the age, which is the public opinion of the nations, is against slavery.”<sup>148</sup> He believed that the latter sentiment, one characteristic of the nineteenth century, might require a new Constitution to overcome the former power, one characteristic of former centuries.

*“The Statesmen of That Early Period Held Slavery to Be an Expiring Institution”:*

*Frederick Douglass’s Smithian Approach to the Constitution*

While the controversy over fugitive slaves prompted some abolitionists to show at least a willingness to adopt Garrisonian measures, it helped others in their conversion from anti-constitutionalism to antislavery constitutionalism. In April of 1850, Frederick Douglass still maintained, “for the present, that the Constitution, being at war with itself,

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<sup>146</sup> Ibid., 3:203-4.

<sup>147</sup> Ibid., 3:216.

<sup>148</sup> Ibid., 3:206.

cannot be lived up to.”<sup>149</sup> John Stauffer places Douglass’s conversion to Gerrit Smith’s reading of the Constitution at the anti-fugitive slave bill convention held a few months later, in August, in Cazenovia, New York.<sup>150</sup> It was six months after that, in January of 1851, that Douglass wrote to Smith, explaining that although he could “not yet see that instrument in the same light in which you view it, I am so much impressed by your reasoning that I have about decided to let Slaveholders and their Northern abettors have the Laboring *oar* in putting a proslavery interpretation upon the Constitution.”<sup>151</sup>

Douglass still believed that the slaveholders “are doubtless right so far as the intentions of the framers of the Constitution are concerned” and wondered, “may we avail ourselves of legal rules which enable us to defeat even the wicked intentions of our Constitution makers?” Soon enough, he joined Smith in flinging those intentions, to the extent that they could be proven authentic, “to the winds.”<sup>152</sup> Meanwhile, the furor over fugitive slaves soon escalated.

In April of 1851, George Curtis, Benjamin Curtis’s brother and Boston’s US Commissioner, issued a certificate of removal for Thomas Sims, another Georgia fugitive living in Boston. George Curtis had also been in charge of issuing arrest warrants for the Crafts and for Virginia native Shadrach Minkins, also known as Frederick Jenkins. However, the Boston Vigilance Committee, one of a number of such committees organized to assist fugitive slaves threatened with capture and re-enslavement, had hid

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<sup>149</sup> Frederick Douglass, “Oath to Support the Constitution,” *North Star*, 5 April 1850, in *Life and Writings*, 2:119.

<sup>150</sup> John Stauffer, *The Black Hearts of Men: Radical Abolitionists and the Transformation of Race* (Cambridge, MA: Harvard University Press, 2002), 163-64.

<sup>151</sup> Frederick Douglass to Gerrit Smith, 21 January 1851, in *Life and Writings*, 2:149, emphasis in original.

<sup>152</sup> *Ibid.*, 2:149, 150.

the Crafts in various dwellings, including Parker's home, and had helped them escape to England in late 1850. To the chagrin of Benjamin Curtis, they also successfully saved Shadrach from his would-be captors in February of 1851. In his journal, Parker placed Shadrach's rescue on par with famous Revolutionary acts, estimating the event to be "the most noble deed done in Boston since the destruction of the tea in 1773."<sup>153</sup> Sims was not as fortunate. Beginning on April 4, 1851, his lawyers, including prominent local attorneys Richard Henry Dana Jr. and Charles Sumner, made arguments to free him in a courtroom that doubled as a federal prison. A week later, George Curtis, through his certificate of removal, placed 300 policemen in position to march Sims back to bondage.

Such developments corresponded with Douglass's decision to make his transformation public. On May 21, he informed Gerrit Smith that he had adopted antislavery constitutionalism months before and asked his correspondent to give "a little attention to any controversy which may arise between my old friends and me, in regard to my present position on the *Constitution* questions."<sup>154</sup> Then, on May 23, feeling pressure from the AASS to state his position, Douglass announced in the *North Star* that "we have arrived at the firm conviction that the Constitution, construed in the light of well established rules of legal interpretation, might be made consistent in its details with the noble purposes avowed in its preamble; and that hereafter we should insist upon the application of such rules to that instrument, and demand that it be wielded in behalf of

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<sup>153</sup> Theodore Parker, Journal, 16 February 1851, in *The Life and Correspondence of Theodore Parker*, ed. John Weiss, 2 vols. (New York: Appleton, 1864), 2:103.

<sup>154</sup> Frederick Douglass to Gerrit Smith, 21 May 1851, in *Life and Writings*, 2:157, emphasis in original.

emancipation.”<sup>155</sup> Douglass had been blinded in seeking “its meaning in the history and practice of the nation under it,” but a “careful study of the writings of Lysander Spooner, of Gerrit Smith, and of William Goodell” had given him sight.<sup>156</sup> As the rise of abolitionism had incited southerners’ to craft proslavery defenses, proslavery incursions encouraged more and more antislavery northerners to adopt antislavery readings of the founding and the Constitution. As Parker proved willing to move toward Garrison’s reading of the Constitution, Douglass gave up the Garrisonian interpretation for a Smithian one, while also maintaining his distance from the views of figures like Curtis.

Douglass was not prepared to fully leave behind the Garrisonian approach, however. He now believed that he was “only in reason and in conscience bound to learn the intentions of those who framed the Constitution *in the Constitution itself*,” but the extra-constitutional intentions continued to bother him, in part because of certain abolitionists’ “resolute determination to see slavery in the Constitution.”<sup>157</sup> Douglass soon discovered a way to read those intentions differently. In a July 1851 editorial in his newly formed eponymous paper, which resulted from the merger of the *North Star* and Smith’s *Liberty Party Paper*, Douglass referenced the *Pennsylvania Freeman*, an abolitionist newspaper that claimed Quaker poet John Greenleaf Whittier as a past editor. The *Freeman* had taken umbrage with Douglass’s new constitutional stance and

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<sup>155</sup> Frederick Douglass, “Change of Opinion Announced,” *North Star*, 23 May 1851, in *Life and Writings*, 2:155.

<sup>156</sup> *Ibid.*, 2:155-56, 156.

<sup>157</sup> Douglass to Smith, 21 May 1851, 2:157, emphasis in original; Frederick Douglass, “Is the United States Constitution for or Against Slavery?” *Frederick Douglass’ Paper*, 24 July 1851, in *Life and Writings*, 5:192. Mark E. Neely Jr. references Douglass’s lingering interest in intentions, though in relation to the views he held in the early 1860s. Mark E. Neely Jr., *Lincoln and the Triumph of the Nation: Constitutional Conflict in the American Civil War* (Chapel Hill: University of North Carolina Press, 2011), 55.

countered it with an interpretation based on the framers' intentions and the practice of the government since the founding era, an approach that Douglass had once defended. Rather than dismiss their findings as irrelevant, he proceeded along a new line of inquiry. Citing the *Freeman's* statement that they could "hardly conceive of a fact in law or history being proved more conclusively, than is the fact that the Constitution was intended to protect slavery," Douglass then asked "who the persons were who intended that the Constitution should protect slavery?" and who was "the name of the author of that history who has so conclusively proved that the Constitution was intended to protect slavery."<sup>158</sup> The paper might have supplied names like Madison and Phillips, but Douglass's playful point had a serious edge. In terms of "traditional history ... we shall find many conflicting versions about the very point which is so conclusively proved."<sup>159</sup> Similar to a number of biblical interpreters, Douglass introduced historical pyrrhonism into the debate, which called into question all historical accounts. The move, though, also opened the door to alternative narratives.

Douglass outlined a range of prominent readings. He first described a version he identified with the late leading southern political theorist, John C. Calhoun. This Calhounian version found slavery "co-extensive with the Constitution" and understood the right to property in men as holding the same constitutional status as the right to other forms of property. Douglass then explained what amounted to the federal consensus position, which designated slavery as a state institution. He then expounded a third view, prominent among antislavery interpreters, which held, "that contributing to the extension and perpetuity of slavery was never dreamed of by the men of the Revolution, and their

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<sup>158</sup> Douglass, "Is the United States," 5:193, 194.

<sup>159</sup> *Ibid.*, 5:195.

immediate descendants; but that, on the contrary, the fathers of the Revolution sought to limit, circumscribe, and to hasten the extinction of slavery.”<sup>160</sup> Douglass’s own version of the founding era followed from the third.

Earlier in the article he had written of the founders, “It does seem to us highly commendable to take the most favorable possible view of the motives and intentions of men, and especially of those men who lived in the stormy and trying time in which the Constitution was originated [*sic*] and adopted.”<sup>161</sup> Similar to Parker’s reading, this sympathetic approach to the Revolutionary generation valued context and circumstance. But where Parker’s reading allowed him to dismiss their views, Douglass’s supported his antislavery interpretation. He offered a reading that most northern interpreters seemed to agree with, including figures like Webster and Stuart. He wrote that, “In reading the sentiments of the most influential men of the period, and to which the Constitution was framed and adopted, it is evident that slavery was looked upon as a great evil. . . . The writings of Washington, Franklin, Jefferson, Adams, Madison, Monroe, Hamilton, Luther Martin, Patrick Henry, John Jay, and a host of other great men, fathers of the Republic, all go to establish this conviction.” To this, Douglass added another frequently expressed belief about the founders. “We take to be true—that the statesmen of that early period held slavery to be an expiring institution. We doubt if there were more than a dozen men in the Convention . . . who did not expect that slavery in this country would cease forever long before the year 1851.” Combined with the precise language of the Constitution, Douglass believed that these historical facts are “no slight testimony in proof of the

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<sup>160</sup> Ibid.

<sup>161</sup> Ibid., 5:192.

intention to make the Constitution a permanent liberty document.”<sup>162</sup> Historical evidence could be used to develop a range of narratives, even one countering the version Wendell Phillips presented in *The Constitution A Proslavery Compact*, a version that Douglass himself had promoted. Ultimately, Douglass argued that the real question rested with the language of the Constitution and if it was discovered that the slaveholding founders sought to protect slavery as an institution, then “their intention was wicked, and contrary to the spirit and letter of the Constitution.”<sup>163</sup> Douglass’s emphasis on spirit, which echoed antislavery readings of the Bible, as well as William Goodell’s antislavery constitutional interpretation, supported his move to stress the interpretive role of the people. He remained concerned with the framers’ intentions, but if those fell short other means existed to read the Constitution as “a permanent liberty document.”

In closing his discussion, Douglass again drew attention to the difficulty of discovering the true intentions of the framers, a problem that he believed would only increase over time. “How are we to know now, or a century hence, what were the motives and intentions of the various parties to the Constitution of the U.S.A.” he asked. In emphasizing the messiness of the past, Douglass echoed Lysander Spooner and contradicted Wendell Phillips. The problem was further complicated by proslavery incursions since the founding era. “Nothing is more evident,” he wrote, “than that as slavery becomes strong, the pretensions of slaveholders range higher and broader, and their claims to be protected under the Constitution become more and more unreasonable and audacious.”<sup>164</sup> Proslavery gains obscured the Constitution’s original intent and

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<sup>162</sup> Ibid., 5:196.

<sup>163</sup> Ibid., 5:198.

<sup>164</sup> Ibid.

meaning. And if one was going to appeal to intent outside of the Constitution, “there must be no ambiguity about it.”<sup>165</sup> Ambiguity about the framers’ intentions authorized Douglass to introduce his own historical narrative, one that located antislavery sentiments and expectations at the writing and ratification of the Constitution and then traced slavery’s corrupting and obscuring influence since that time.

Even though Douglass now read and would continue to read the founding era through an antislavery lens, he still had occasion to refer to the framers’ failures. The idea that they held divergent and conflicting opinions on slavery permitted him to suggest that the evolving views of the people mattered most in constitutional interpretation. One might expect him to appeal to the intentions of the people who ratified the Constitution, but the ratifiers’ views were even more ambiguous than the intentions of the framers. The voice of the people in the present matter most.<sup>166</sup> Of course, Douglass had like-minded contemporaries in mind. In a speech on the Fugitive Slave Law, given at the National Free Soil Convention in August of 1852, Douglass, now “proud to be one of the disciples of Gerrit Smith,” separated his enlightened listeners from their shortsighted forefathers. “It has been said that our fathers entered into a covenant for this slave-catching,” he told his audience. “Who were your daddies?” he asked, drawing their laughter. “I take it they were men, and so are you. You are the sons of your fathers; and if you find your fathers exercising any rights that you don’t find among your rights, you may be sure that they have transcended their limits. If they have made a covenant that you should do that which they have no right to do themselves, they transcended their own authority, and surely it is

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<sup>165</sup> Ibid., 5:198-99.

<sup>166</sup> On Douglass’s attention to the conflicted nature of the Constitution and his appeal to the people as interpreters, see Garvey, *Creating the Culture of Reform*, 156-60; and Neely, *Lincoln and the Triumph*, 53-55.



not binding on you.” The transient laws of the illustrious ancestors held no claim on their illuminated descendants. “The binding quality of law,” Douglass explained, “is its reasonableness,” and the reasonableness of the fugitive slave clause had long since expired, if it every existed at all.<sup>167</sup> Like Parker, Douglass believed that “he who has God and conscience on his side, has a majority against the universe. Though he does not represent the present state, he represents the future state.”<sup>168</sup> The abolitionists anticipated a glorious millennium even while hell extended its borders.

Despite his future projections rooted in present fears, like Parker, Douglass believed that the nineteenth-century was an age of freedom, and as he had made clear in his cutting 1852 speech, “What to the Slave is the Fourth of July,” he believed that this should be especially applicable in the American republic. By describing slavery as the great contradiction of a supposed free land and by highlighting the hypocrisy of slaveholding in a presumably Christian nation, Douglass was not simply pointing out America’s most glaring flaw; he was also claiming a right to its most glowing promises. During the 1850s, his antislavery reading of the founding period, which he had briefly outlined in the July 1851 article, evolved to a point where he revalued the intentions of the framers in constitutional interpretation. In contrast to his use of intentions in the 1840s, which he used to highlight the Constitution’s proslavery provisions, in the 1850s Douglass stressed the framers’ egalitarian expectations. He again privileged contextual

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<sup>167</sup> Frederick Douglass, “The Fugitive Slave Law,” in *Life and Writings*, 2:208.

<sup>168</sup> *Ibid.*, 2:209.

interpretation, but unlike Parker he had come to believe that the Garrisonian contention was without merit.<sup>169</sup>

Tracing Douglass's changing approach to the Constitution displays the central features of the period's most prominent antislavery approaches to the Constitution and also shows how the Fugitive Slave Law and the fugitive slave cases initiated a move among some northerners to adopt an antislavery view of the Constitution and the founding era. It also demonstrates that constitutional interpretation, even more than biblical interpretation, was "THE QUESTION OF THE DAY." In Douglass's case, this shift in focus may have allowed him to hold onto his rather blunt antislavery reading of the Bible, which increasingly escaped the public penetrating readings of Stuart and others. But even with the Bible, Douglass grasped the temporal barrier between ancient and modern times. Perhaps the very distance separating biblical times from the nineteenth century, which was much greater than the gap dividing Revolutionary times from the present, allowed readers of the Bible, in contrast to readers of the Constitution, to more easily ignore troubling historical evidence. On the other hand, as was the case with Douglass, the greater availability of historical knowledge about the more recent founding era revealed certain discrepancies, allowing readers to introduce alternative accounts.

Regardless of the exact nature of the relationship between an awareness of historical discrepancies and approaches to historical texts, in constitutional interpretation both the Garrisonian and Smithian approaches carried implications for how one thought about the relationship between the founding era and the present. Like Parker, sometimes

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<sup>169</sup> On Douglass's 1852 Fourth of July speech as a claim to the Revolutionary past and on his gradual revaluing of the framers' intentions, see Oakes, *The Radical and the Republican*, 3-38.

Douglass drew attention to the nation's failure to realize the founders' expectations, and sometimes he exposed the failures of the founders themselves. That dual emphasis indicated historical distance in highlighting original context, but also in sounding the discordance between original expectations and actual circumstances. And when these figures went on to contrast slavery's corrupting presence with the current era's call for freedom, it further signaled that historical distance.

The figure of Frederick Douglass, a fugitive turned freeman, served as a constant reminder that behind the high-level debates in which he participated stood suffering men, women, and children. At times, as with Theodore Weld's *American Slavery As It Is* (1839), which he had authored with Angelina and Sarah Grimké, abolitionists strove to highlight the sad situation of the blacks in bondage in hopes of stirring northern sympathies.<sup>170</sup> But antislavery readings of the Constitution and the founding era often remained at the level of abstraction. A number of realities, including the presence of free African Americans in the North, could bring their enslaved brothers and sisters in the South to the minds of white northerners. In a strange irony, attempts to enforce the Fugitive Slave Law in the 1850s placed other African Americans on the national stage, making it harder for northerners to forget the human lives at stake. These developments anticipated *Dred Scott*, when the focus on another African American turned attention to black Revolutionary forebears. The place of former slaves such as Frederick Douglass

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<sup>170</sup> For examinations of how abolitionists drew on new ideational currents to engender sympathy for slaves and raise awareness of their rights as human beings, see Elizabeth B. Clark, "'The Sacred Rights of the Weak': Pain, Sympathy, and the Culture of Individual Rights in Antebellum America," *Journal of American History* 82, no. 2 (1995): 463-93. See also, Gregg D. Crane, "Dangerous Sentiments: Sympathy, Rights, and Revolution in Stowe's Antislavery Novels," *Nineteenth-Century Literature* 51, no. 2 (1996): 176-204.

and slaves such as Dred Scott in the national consciousness made it rather difficult to discuss slavery without discussing southern slaves, or, rather, without discussing blacks and their status in America as slaves but also as freemen.

*“Giving up the OLD for the NEW Faith”: Anthony Burns, a Burning Constitution, and Abraham Lincoln’s Juxtaposition of Founding-Era Expectations and Slavery’s Extension*

Between Douglass’s shift in constitutional views and Scott’s trial before the Supreme Court, another black figure captured the nation’s, or at least New England’s, attention. Back in November of 1851, after receiving an appointment to the US Supreme Court at the recommendation of Daniel Webster, Benjamin Curtis presided over a grand jury charge against African American lawyer Robert Morris for his alleged participation in the rescue of Shadrach. Almost three years later, in the summer of 1854, Morris and Richard Henry Dana Jr. acted as attorneys for Anthony Burns in perhaps the most important fugitive slave case in American history. Having escaped from Richmond in early 1854, Burns was arrested and jailed in a Boston courthouse in late May. When abolitionists drummed up resistance during the proceedings, as they had successfully done during previous cases, President Franklin Pierce sent federal troops to maintain order. And when US Commissioner Edward G. Loring remanded Burns to his Virginia owner and directed federal troops to escort him to a ship bound for slavery, New England burst into a panic. The already animated Garrison declared that Loring had pronounced Burns “no man, but a thing ... the Declaration of Independence to be a lie, George Washington and his associates traitors and cutthroats, the Golden Rule an absurdity, and

Jesus of Nazareth an impostor.”<sup>171</sup> Notably, he left out the Constitution. Amos Adams Lawrence of Groton, Massachusetts wrote of the marked results of the federal show of force, “We went to bed one night old-fashioned, conservative, compromise Union Whigs & waked up stark mad Abolitionists.”<sup>172</sup> Most conservatives remained conservative, but many of those on the fence joined the emboldened radicals on the ground.

In the aftermath of this trial, Supreme Court Justice Benjamin Curtis issued an indictment against Phillips and Parker. The indictment did not lead to convictions, though it did provide more fodder for Parker’s attack on Curtis as a pawn of proslavery powers.<sup>173</sup> Burns’s forced return to servitude heightened the exchange in this tug-a-war between conciliatory government action and antagonistic abolitionist response. Abolitionists’ fury had already been sparked with the passage of Illinois Senator Stephen A. Douglas’s Kansas-Nebraska Act, which Pierce had signed into law on May 30. The new law repealed the Missouri Compromise and instituted popular sovereignty, which permitted settlers to decide whether or not to introduce slavery into territories previously closed to that institution. In the wake of these seeming proslavery advancements, the Massachusetts Anti-Slavery Society declared the Fourth of July a day of public mourning. If the society needed a death for the occasion, Garrison would provide them one in his immolation of a prominent document.

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<sup>171</sup> [William Lloyd Garrison], “The Deed of Infamy Consummated,” *Liberator*, 9 June 1854, 90 (APSO).

<sup>172</sup> Amos Lawrence to Giles Richard, 1 June 1854, quoted in James M. McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988), 120.

<sup>173</sup> See Theodore Parker, *The Trial of Theodore Parker, for the “Misdemeanor” of A Speech in Faneuil Hall against Kidnapping* (Boston, 1855).

During the society's meeting in Framingham, Massachusetts, Henry David Thoreau, the Transcendentalist who had refused to pay taxes in opposition to the Mexican-American War and had written *Resistance to Civil Government* (1849), urged that "the law will never make men free; it is men who have got to make the law free."<sup>174</sup> Similar to the idea expressed in Francis Wayland's biblical argument, Thoreau suggested that Americans had the power to legally abolish slavery. This might involve an amendment process, but Garrison had a more radical resolution in mind. Once again, he praised the Declaration of Independence, but, in his view, this was the nation's only fireproof document. First, Garrison burnt a copy of the Fugitive Slave Law. Next came Loring's decision in the Burns case and the grand jury's indictment that followed. Finally, the unrelenting abolitionist put the nation's sacred legal document, the US Constitution, to the torch. The visible act symbolized what Garrison had been preaching for over a decade. It represented the culmination of his contempt. When prominent judges and politicians, including Justice Curtis and President Pierce, commanded Americans to recognize and obey the proslavery provisions, some abolitionists had no other choice but to raze a corrupt Constitution and break with an unsalvageable South. The outmoded document and the old-fashioned region deserved each other.<sup>175</sup>

Other options, though, were available. Although the fugitive slave cases boosted the ranks of the abolitionists and raised their temperatures, to many more antislavery advocates, including both newcomers like Amos Lawrence and veterans like Frederick

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<sup>174</sup> Henry D. Thoreau, "Slavery in Massachusetts: An Address, Delivered at the Anti-Slavery Celebration at Framingham, July 4th, 1854," *Liberator*, 21 July 1854, 116 (APSO).

<sup>175</sup> On Garrison's involvement in resisting the Fugitive Slave Act, including a discussion of his actions during this meeting, see Mayer, *All on Fire*, 406-45.

Douglass, it signaled the need to use political, constitutional, and even violent means. These trends further undermined Garrison's come-outerism and his non-violence. Especially in the wake of the late European revolutions, slavery's enemies in America began to call on the martial legacy of their own Revolution, which raised questions about Garrison's particular claim on the Declaration and his push for a revolution in sentiments.<sup>176</sup> His anti-constitutionalism also found few adherents during this period. Douglass's own appeal to the Constitution grew stronger in the creation of the Radical Abolition Party that he helped organize with William Goodell, Gerrit Smith, and James McCune Smith, a black physician and one of the era's most avid abolitionists. These figures cherished the Constitution, along with the Bible, as sacred creeds. Millenarian in their mindset, this interracial alliance launched a holy crusade against the last great obstacle to the establishment of heaven on earth: slavery. Such ideas informed John Brown's religiously motivated violent foray into the belly of the beast, but they also influenced those more interested in political measures.<sup>177</sup>

More specifically, the kind of constitutional reading that Douglass had adopted and advanced began to show up in the speeches of a certain Illinois lawyer in the mid-1850s. Abraham Lincoln had served a two-year term in the US House of Representatives between 1847 and 1849 before returning to practice law in Springfield, Illinois. The Kansas-Nebraska Act led him back to politics. He ran for but did not fill a seat in the US Senate in late 1854. Two years later, he placed second in the bid for the vice presidential candidate of the newly formed Republican Party. In 1858, Stephen A. Douglas defeated

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<sup>176</sup> See Mayer, *All on Fire*, 450.

<sup>177</sup> On the ideas and efforts of the interracial alliance of Frederick Douglass, James McCune Smith, Gerrit Smith, and John Brown, see John Stauffer, *Black Hearts of Men*.

him in a race for the US Senate. Then, in 1860, six years after his reentry into politics, Lincoln, the Republican Party's presidential candidate, won election over his rival Douglas. Lincoln's position on slavery was key to his politics in the 1850s, and that position rested on an antislavery reading of the Constitution and the founding era.

Lincoln voiced that reading in his "Peoria Speech," given on October 16, 1854, which marked his return to politics and signaled the rise of slavery as the central issue in his political thought. After the passage of the Kansas-Nebraska Act in late May, Lincoln holed himself up in the Illinois state library in Springfield and, as historian James Oakes writes, dedicated his time to "researching the history of slavery in the United States."<sup>178</sup> Armed with historical evidence, Lincoln took to the political battlefield in August. Eventually, he convinced Douglas, his political foe, to engage in a fight of words. In their 16 October debate, Lincoln neatly summarized his position.

Following Douglas's evening speech, Lincoln adjourned the meeting until seven o'clock in the evening, when he arose to discuss the recent repeal of the Missouri Compromise. He made clear the distinction between slavery as an "EXISTING institution" and its unfortunate "EXTENSION," showing allegiance to the federal consensus.<sup>179</sup> Informing his listeners of his historical findings, Lincoln began with pre-ratification legislation. Of the Northwest Ordinance, he stated that Jefferson "conceived of the idea of taking that occasion, to prevent slavery ever going into the north-western territory." Lincoln's historical narration posited continuity on this point. "Thenceforward," he explained, "for sixty-one years, all parties acted in quiet obedience

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<sup>178</sup> Oakes, *The Radical and the Republican*, 53.

<sup>179</sup> Abraham Lincoln, "Speech at Peoria, October 16, 1854," in *Collected Works*, 2:248.



to this ordinance. It is now what Jefferson foresaw and intended—the happy home of teeming millions of free, white prosperous people, and no slave amongst them.” Training his focus on slavery’s extension allowed Lincoln to posit continuous assent to Jefferson’s founding expectations. Further, in highlighting extra-constitutional documents and developments, Lincoln avoided the criticism that figures like Lysander Spooner faced when they appealed to the Constitution’s words alone to interpret it as an antislavery document. In using pre-ratification enactments, Lincoln also diverted attention from the Garrisonian emphasis on the ratification debates. Or, rather, as with Frederick Douglass and other antislavery readers, Lincoln used the Declaration and the Revolution to illuminate those debates. In contrast to John C. Warren’s fear of returning to the period before ratification, he hoped to rediscover the time “away back of the constitution, in the pure fresh, free breath of the revolution.”<sup>180</sup>

Returning to post-founding era developments, Lincoln proceeded to trace continuity from the Northwest Ordinance to the Missouri Compromise and from the Missouri Compromise to the Compromise of 1850. In contrast to Garrisonians, who posited consistency between a proslavery Constitution and the Fugitive Slave Law, or antislavery constitutionalists, who outlined decline from an antislavery Constitution to the Fugitive Slave Law, Lincoln traced efforts to contain slavery from the period before the founding to the present. His narrow focus on slavery’s extension permitted that reading. In his account, the aberrant Kansas-Nebraska Act interrupted the sequence. “*Now* new light breaks upon us,” he scoffed, “Now congress declares this ought never to have been.” Of slaveholders’ desire to take slaves into Nebraska he stated, “That *perfect*

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<sup>180</sup> Ibid., 2:249.

liberty they sigh for—the liberty of making slaves of other people—Jefferson never thought of.”<sup>181</sup> Over the next decade plus, Lincoln’s position came to rest on what he believed founders like Jefferson did and did not intend. In his political speeches of the late 1850s, Lincoln began to emphasize the various ways in which the founders’ expectations had failed to reach fruition. With the dissemination of these high profile speeches, the potential awareness of historical change and thus distance from the founding era became more pronounced.

Lincoln contrasted the principles underlying the repeal of the Missouri Compromise—which he described as “covert *real* zeal for the spread of slavery”—with those of the founding era. He could “not but hate” the former, especially because “it forces so many really good men amongst ourselves into an open war with the very fundamental principles of civil liberty—criticising the Declaration of Independence, and insisting that there is not right principle of action but *self-interest*.” Although southerners had voiced such criticism from the time of the Missouri crisis, Lincoln described it as a new development, which gave his narrative bite. He stressed that he was not after social or political equality for blacks. He did not go so far as to agree with southerners who argued that their institution ensured progress, but he acknowledged that “they are just what we would be in their situation.”<sup>182</sup> He confessed that he knew not how to best resolve the situation and acknowledged slaveholders’ “constitutional rights,” expressing, in particular, his willingness to uphold the Fugitive Slave Law and stating firmly that despite a number of degrading provisions, he did not “propose to destroy, or alter, or

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<sup>181</sup> Ibid., 2:250, emphasis in original.

<sup>182</sup> Ibid., 2:255, emphasis in original.

disregard the constitution.”<sup>183</sup> Lincoln even stated that, as much as he hated slavery, he “would consent to the extension of it rather than see the Union dissolved.”<sup>184</sup> This preservationist position guided Lincoln’s politics throughout the remainder of his life. However, even as he eased southerners’ fears of abolition, he indicted them for their immoral institution. He believed that the consciousness of the southern people told them that “there is humanity in the negro.”<sup>185</sup> He held up as “the sheet anchor of American republicanism” the principle he found in the Declaration’s Preamble that “no man is good enough to govern another man, *without that other’s consent*.”<sup>186</sup> This appeal to what he understood as founding-era axioms guided his attack on slavery’s extension, “the great Behemoth of danger.”<sup>187</sup>

Glad that Douglas had referenced the examples of the “revolutionary fathers,” Lincoln expressed a love for “the sentiments of those old-time men; and” noted that he “shall be most happy to abide by their opinions.” He granted the Constitution’s emphasis on state sovereignty, but wondered if it had “any reference to the carrying of slavery into NEW COUNTRIES?” The answer depended on a historical examination. “We will let the fathers themselves answer it,” Lincoln stated, before pointing out that it was the men of the Revolution and the Constitution who had passed the Ordinance of 1787. Of their views and Douglas’s on this issue, he held that “it is a question of discrimination between them and him.”<sup>188</sup> Lincoln’s historical examination again broadened to back his anti-extension position. He objected to the idea of a moral right to enslave fellow humans

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<sup>183</sup> Ibid., 2:256, 269.

<sup>184</sup> Ibid., 2:270.

<sup>185</sup> Ibid., 2:264.

<sup>186</sup> Ibid., 2:266.

<sup>187</sup> Ibid., 2:270.

<sup>188</sup> Ibid., 2:267.

“because the fathers of the republic eschewed, and rejected it. The argument of ‘Necessity’ was the only argument they ever admitted in favor of slavery. ... They cast blame upon the British King for having permitted its introduction. BEFORE the constitution, they prohibited its introduction into the north-western Territory...AT the framing and adoption of the constitution, they forbore to so much as mention the word ‘slave’ or ‘slavery’ in the whole instrument.” Lincoln’s “argument of necessity” supported his own expedient approach to slavery and placed geographical and chronological limits on the Constitution’s proslavery provisions. The founders “hid away” those provisions “just as an afflicted man hides away a wen or a cancer, which he dares not cut out at once, lest he bleed to death; with the promise, nevertheless, that the cutting may begin at the end of a given time.”<sup>189</sup> Rather than focus on the spread of antislavery sentiment, as did Theodore Parker, after referencing an original expectation of slavery’s removal, Lincoln traced post-founding era acts aimed at realizing those expectations, including laws limiting and prohibiting the non-domestic slave trade and plans for gradual emancipation in slave states. It seemed that the new nation was on track to fulfill the founders’ promises.

“The institution was rapidly becoming extinct within these limits,” Lincoln proposed, “but NOW it is to be transformed into a ‘sacred right.’” The innovation was a deviation from founding era ideals, a “giving up [of] the OLD for the NEW faith. Near eighty years ago we began by declaring that all men are created equal; but now from that beginning we have run down to the other declaration, that for SOME men to enslave OTHERS is a ‘sacred right of self-government.’ These principles can not stand together.”

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<sup>189</sup> Ibid., 2:274.

Much distinguished Parker's and Douglass's positions from Lincoln's, but the aspirant for an Illinois senatorial seat agreed that slavery in the present and founding era ideals of self-government stood in stark opposition. Indeed, he proposed that if the Declaration had been called "a self-evident lie" in "old Independence Hall" as it had been in a recent statement supporting the Kansas-Nebraska bill, "the very door-keeper would have throttled the man, and thrust him into the street." Lincoln did not assert that the founders, if present, would support or attack the Kansas-Nebraska Bill, as Moses Stuart had in reference to the Fugitive Slave Law, but he argued that "the spirit of seventy-six and the spirit of Nebraska, are utter antagonisms," lamenting that "the former is being rapidly displaced by the latter."<sup>190</sup> This development had temporal implications. Quoting a recent article from the *Daily News* (London), Lincoln noted the apprehension of "the liberal party throughout the world ... 'that the one retrograde institution in America, [was] undermining the principles of progress, and fatally violating the noblest political system the world ever saw.'" The work echoed Frederick Douglass's prior claim that America was behind the times in its protection of an anachronistic institution. Lincoln agreed with Stephen Douglas that, "in point of mere fact," the "government was made for the white people and not for the negroes," but he feared that turning from the "earliest practice, and first precept of our ancient faith" would threaten "even the white man's charter of freedom."<sup>191</sup> Unlike the abolitionists, Lincoln cherished the memory of Henry Clay and Daniel Webster and his focus on extension led him to describe only the most recent developments as evidence of the deterioration of founding-era ideals, but like the abolitionists, his narration tended to expose temporal distance since that time.

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<sup>190</sup> Ibid., 2:275.

<sup>191</sup> Ibid., 2:276, 281.

## *Conclusion*

Lincoln never went as far as Douglass in reading the Constitution as an antislavery document. He certainly never proposed the position of Parker, much less Garrison or Phillips, in showing a willingness to abandon the nation's legal creed. Indeed, in many respects, Lincoln's position was closer to the unionism of Webster, Stuart, and Curtis than that of the abolitionists. In stating his intention to uphold the Constitution and its proslavery clauses, including the fugitive slave clause, and to respect slavery where it already existed, Lincoln swore allegiance to the federal consensus. The contextual reading he presented in his Peoria speech granted the presence of slavery at the founding and stressed the efforts to limit its spread as a state institution. Indeed, Lincoln found continuity in this containment policy from before ratification until 1850. He believed his expedient approach to slavery matched his own. However, his narrative echoed that of certain abolitionists in important respects. His focus on the Declaration, which only increased over the next decade, and his reading of the Constitution as consistent with that document paralleled the speeches and writings of figures such as Parker and Douglass. While Parker saw a gradual growth of the Slave Power since the founding era, Lincoln discovered radical proslavery intrusions only in 1854, but both identified southern betrayal from founding era principles meant to eventually stamp out slavery. While Douglass sought racial equality, Lincoln focused on containing slavery, but both insisted on the contradiction between the peculiar institution and the principles found in the Declaration's Preamble. And both began to use historical insights to highlight what they heralded as the founders' original antislavery expectations.

Although important differences distinguished these historical narratives from each other, the similarities among them drew attention to historical distance. In identifying the founding fathers' original expectations of slavery's ultimate abolition, the narratives of Parker, Douglass, and Lincoln granted the legal presence of slavery in the founding era. Indeed, their emphasis on original expectations rested on the fact that proslavery forces had exerted a prominent role in the founding era. That emphasis, coupled with their assertions that enough time had passed—as a result of the spread of antislavery sentiment or of federal acts that hemmed in slavery—to fulfill the framers' expectations exposed that times now were quite different than at ratification. In tracing deviations from the framers' original expectations, either since ratification or since the passing of the Kansas-Nebraska Act, these accounts identified unexpected change resulting in the solidification of an anachronistic institution. In doing so, they did not signal their authors' desire to return to the favored past, as did most previous narratives of decline and corruption. Rather, they represented the hope that Americans could finally complete the struggle that the nation's founders had started in 1776. Even in 1854, Lincoln condemned slavery itself, though he focused on its extension. His more moderate approach served his political cause, but his prominent position on the public stage also exposed the antislavery historical narrative, and its implications, to a broad American public. Paradoxically, that narrative received perhaps its most public forum in *Dred Scott* (1857).

Indeed, *Dred Scott* gave a national platform for both the proslavery and the antislavery readings of the Constitution. In a strange twist of irony, the radical Garrisonian reading received the imprimatur of the US Supreme Court through Chief Justice Roger Taney's decision. The irony worked both ways, however. In focusing

attention on Dred Scott and his ancestors, the Court's decision placed an unprecedented amount of attention on blacks and their Revolutionary era ancestors. Turning attention to the historical question of whether or not blacks had been citizens at the nation's founding shifted focus away from the Constitution's proslavery clauses, including the fugitive slave clause. The change in historical focus inspired a change in political stance. Benjamin Curtis, who abolitionists had often attacked as a proslavery man, stood opposite the Court in arguing that in some states blacks had, in fact, voted as citizens during the ratification process. Even though the debate following the decision revolved around the second major question involved, that of whether the Constitution authorized or prohibited slavery in the territories, it was Curtis's argument about blacks in the founding era that reverberated in antislavery publications. Similar to the narratives advanced by his erstwhile abolitionist opponents, that argument posited the presence of antislavery sentiments at the founding and highlighted the unfortunate deviation from the framers' antislavery expectations. Here, Curtis's understanding of the Constitution as a flexible document served him well. He advanced his argument through a careful explication, and then returned it in more articulate form for politicians like Lincoln to use. This synergistic process spread the potential to realize the extent of historical distance since the founding era.



## CHAPTER 5

### “TIMES NOW ARE NOT AS THEY WERE”: THE *DRED SCOTT* DECISION AND SLAVERY’S INTRODUCTION OF HISTORICAL DISTANCE

One respondent to *Dred Scott* contended that Chief Justice Roger B. Taney’s deciding opinion “does not rest so much upon any interpretation of the law as it does upon a construction of the facts of history.”<sup>1</sup> Though perhaps mistaken in assuming a clear distinction between legal and historical interpretation, especially given the then-recent trend toward using historical argumentation in constitutional debates, the respondent had a point. The decision did rest on a historical argument, which demonstrated that the Chief Justice accepted the historical grounds of debate that had been prepared through decades of interpretive emphasis on the historical explication of sacred religious and legal texts. Taney believed that a historically grounded decision would settle the constitutional debate over slavery. He insisted that slavery’s constitutional viability in the nineteenth-century present depended on an understanding of

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<sup>1</sup> “History, as Expounded by the Supreme Court,” 541. Mastering the vast scholarship on *Dred Scott* is a formidable task. Attending to works addressing the role of history in the decision, however, requires much less fortitude. In his classic text, *The Dred Scott Case*, Don Fehrenbacher finds Taney’s historical arguments defective. A number of historians agree. See, for example, David M. Potter, *The Impending Crisis: America Before the Civil War, 1848-1861*, ed. Don E. Fehrenbacher (1976; repr., New York: Harper, 2011), 267-96; and Forbes, *The Missouri Compromise*, 286-90. Some, though, argue for the firmness of Taney’s constitutional and historical argument. For example, in *Origins of the Dred Scott Case: Jacksonian Jurisprudence and the Supreme Court, 1837-1857* (Athens: The University of Georgia Press, 2006), Austin Allen argues that histories which castigate Taney’s decision as a politically-driven perversion of history obscure the Court’s more immediate motivations to protect slavery and corporate capitalism, and also betray the ambiguity of the historical record to which Taney appealed. In *Dred Scott and the Problem of Constitutional Evil* (New York: Cambridge University Press, 2006), Mark Graber reached a similar conclusion. While focused on the importance of historical argumentation in this case, I am less interested in the historical soundness of the arguments than in their implications for a growing awareness of historical distance and change.

its place in the Revolutionary past. In the syllabus of the decision, written by Taney himself, he asserted that “when the Constitution was adopted, they [blacks] were not regarded in any of the States as members of the community which constituted the State, and were not numbered among its ‘people or citizens.’” Based on this observation he concluded that “the special rights and immunities guaranteed to citizens do not apply to them,” and, consequently, “they are not entitled to sue ... in a court of the United States.” Taney conflated blacks at the founding with blacks in the present through his fluid use of pronouns—from “they” to “them” and back to “they.” His historical narration designated blacks as non-citizens in 1787 and thus, given his assumption of the Constitution’s timelessness, he rendered “African American” a misnomer in 1857.<sup>2</sup>

The static nature of the Constitution seemed to place blacks, once and for all, beyond the pale of American citizenry, but what about the contingent and fluid nature of the republic’s history? Perhaps the Revolutionary generation had denied their black contemporaries citizenship, but some radical abolitionists had raised the question: what if their sons and daughters wanted to grant their descendants that status? Figures such as Parker and Douglass had contended that regardless of what the framers had intended, the current generation was duty bound to embrace the spirit of the present age by abolishing slavery and extending the blessings of liberty. Even in declaring that the words of the fathers held sway, Taney himself demonstrated an awareness of a cultural shift: “The change in public opinion and feeling in relation to the African race which has taken place since the adoption of the Constitution cannot change its construction and meaning, and it must be construed and administered now according to its true meaning and intention

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<sup>2</sup> *Scott v. Sandford*, 60 US, 393.

when it was formed and adopted.”<sup>3</sup> As much as Daniel Webster and Benjamin Curtis, Taney observed changes in northern sentiment and, more clearly than they, he asserted that those changes had no place in constitutional interpretation. Though created and ratified in time, the Constitution’s significance transcended temporality, preventing subsequent departures. Times had changed, Taney allowed, but the meaning of the nation’s sacred text had not.<sup>4</sup> Because the founders had designated blacks non-citizens at the founding, Taney insisted, he could not now declare them citizens, despite a shift in public opinion. A focus on perceived static original meanings rather than an emphasis on

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<sup>3</sup> Ibid., 393. The published version of the decision, which I use here, includes additions that Taney incorporated after the ruling to buttress his argument.

<sup>4</sup> As Chief Justice, Taney was not wholly against appeals to change. In fact, in *Charles River Bridge* (1837), he famously ruled in favor of commercial progress by arguing that a contract with the Warren Bridge Company did not violate the contract originally issued to the Charles River Bridge Company. Strictly construing the original charter allowed him to rule in favor of the former company without violating the Constitution’s contract clause. If the opposite ruling prevailed, Taney argued, “We shall be thrown back to the improvements of the last century, and be obliged to stand still until the claims of the old turnpike corporations shall be satisfied and they shall consent to permit these States to avail themselves of the lights of modern science and to partake of the benefit of those improvements which are now adding to the wealth and prosperity and the convenience and comfort of every other part of the civilized world.” Justice John McLean made a similar argument in his concurring opinion, noting that “the settlement of our country is comparatively recent, and its rapid growth in population and advance in improvements have prevented, in a great degree, interests from being acquired by immemorial usage. Such evidence of right is found in countries where society has become more fixed and improvements are in a great degree stationary.” McLean also contextualized the contract clause, drawing attention to “the history of our revolution” and “the time the Constitution was adopted,” to contend that the present case does not “come within the scope of that provision.” Justice Joseph Story dissented, in part, because he believed the decision would hinder commerce by discouraging companies from entering into contracts. *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 US 420, 553, 563, 572-73, 573 (1837). In this decision, then, Taney claimed continuity with the founding even as he prescribed progress. Though a good candidate to evidence change and distance since the Revolutionary era, the issue of commerce did not draw as much attention to that period nor introduce as much division and disagreement as the slavery issue. On the historical components of this decision, see Kunal Parker, *Common Law*, 128-58.

original expectations, directed Taney's interpretation. Taney seemed set on recreating the founding era, or at least, on recovering what he perceived to be the legal principles that governed social relations between slave and master in that period. But, as in many of the debates that preceded his decision, the explicit attempt to disregard the interpretive importance of change highlighted its presence and, at least to antislavery respondents, drew further attention to the reality of the historical distance that separated the 1850s from the Revolutionary moment.

The strict adherence to the Constitution's original meaning and, increasingly, the framers' original intent began to dominate constitutionalism in the antebellum period, largely foreclosing the possibility of decisions informed by the notion that historical distance and change demanded an adaptable constitution.<sup>5</sup> Among the framers themselves, originalist appeals often focused on the document's language rather than the subjective views of either its creators or ratifiers.<sup>6</sup> In the debate over the Bank of the United States in the 1790s, James Madison had placed emphasis on the understanding of the people, through ratification, rather than the intent of the framers, through inscription,

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<sup>5</sup> Perhaps Brian Dirck overreaches in asserting that "nearly all of [Lincoln's] fellow Americans in that time period were what modern constitutional scholars call 'originalists'; that is, they believed the language of the Constitution was what its authors said it was, no more and no less," but this description might apply to most Americans who set out to interpret the Constitution in that period. Brian R. Dirck, *Lincoln and the Constitution* (Carbondale: Southern Illinois University Press, 2012), 29.

<sup>6</sup> On this kind of originalism in the early republic, see H. Jefferson Powell, "The Original Understanding of Original Intent," *Harvard Law Review* 98 (March 1985): 885-948. In response to Powell's article on original intent, Charles A. Lofgren pointed out the distinction between framers and ratifiers in contending that some looked to the later for insight into original intent. Charles A. Lofgren, "The Original Understanding of Original Intent?" *Constitutional Commentary* 5 (1988): 77-113. Jack Rakove also attends the issue of originalism in his discussion of the creation of the Constitution and contextualizes Madison's politically informed implication that one should examine the ratification debates in expounding the Constitution. Rakove, *Original Meanings*, 2-22, 339-65.

though he usually appealed to the text itself.<sup>7</sup> Attention to the ratifiers later emerged in the writings of the radical antislavery constitutionalists, but William Goodell's and Lysander Spooner's strict focus on the original meanings of the words alone overrode their interest in the ratifiers' original understandings. Their arguments came in response to the shift in interpretive focus toward determining and using the framers' intent, which followed from the publication of Madison's papers in 1840. Such appeals often attended to the opinions of the ratifiers and the broader Western audience as crucial contextual pieces to the framers' textual puzzle. In either case, whether the emphasis was on the framers or the ratifiers, or even on the words of the document alone, most constitutional thinkers consistently sought to uncover and put to use static and consensus original ideas, which often required ignoring contradictions, differing opinions, and the Anti-Federalist tradition as a whole.<sup>8</sup> Frederick Douglass highlighted discrepancies among the framers' intentions, which allowed him to insert the people as rightful interpreters, but most of the era's constitutionalists had words and people from the Revolutionary past determine the meaning and relevance of the Constitution in the nineteenth-century present.<sup>9</sup> The Constitution was either a static proslavery or antislavery document. Antebellum constitutional construction most often dictated that Americans either accept the original ideas or reject them and, to a large extent, the document containing the words from which they emerged. This dissertation demonstrates that room existed to debate slavery's

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<sup>7</sup> See James Madison, *The Debates and Proceedings in the Congress of the United States* (1825-1837), 4th Congress, 1st Session, v. 5, p. 776. See note 126 of chapter 3.

<sup>8</sup> On the persistence of the Anti-Federalist tradition, see Saul Cornell, *The Other Founders: Anti-Federalism and the Dissenting Tradition in America, 1788-1828* (Chapel Hill: The University of North Carolina Press, 1999).

<sup>9</sup> Rakove rightly explains that "all appeals to original meaning, intention, and understanding of the Constitution are inherently historical in nature." Rakove, *Original Meanings*, 9.

constitutionality, but it also shows that the timeless components of the canon could also trump historical change.

And yet, if the passage of time did not demand a new construction, what if the framers themselves had aimed to bequeath an interpretive approach that demanded openness to historical change? If they intended to convey that the Constitution should adapt over time and in relation to new contingencies, then interpreters might argue that shifts in public opinion demanded a new construction. Perhaps the founders had denied most of their black contemporaries citizenship, but what if those same founders had anticipated that their sons and daughters would grant all black Americans that status in the future? Antislavery reading hinted at these questions. Most came up short, in part due to their focus on slavery itself, but a wide range of antislavery thinkers had argued that the founding generation had expected slavery's eventual abolition. These ideas informed parts of the arguments of those who dissented from Taney's opinion, including John McLean and Benjamin Curtis, each of whom reasoned that the founders had foreseen the institution's eventual demise and had written with that vision in mind. Such thinkers began to sense that the framers had created the Constitution as a legal text meant to answer both present and future concerns—that the framers' original intent was adaptability. In this period, one can detect the buds of a kind of originalist living constitutionalism, arising from seeds laid by some of the framers themselves, who conceived their creation with the expectation that it would adapt to new circumstances.<sup>10</sup>

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<sup>10</sup> A well-known example of the framers' effort to create an adaptable constitution is found in the Committee of Detail's draft of the Constitution. In the preamble, John Randolph's first of two related principles of constitution-making stressed inserting "essential principles only; lest the operations of government should be clogged by rendering those provisions permanent and unalterable, which ought to be accommodated

The Garrisonian reading of the Constitution as a static proslavery document received the Chief Justice's stamp of approval in *Dred Scott*, but the antislavery interpretation of original expectation also achieved a prominent status in McLean's and Curtis's dissenting opinions, opinions which fostered an emerging view of the Constitution as a document which endured because it could adapt to the needs of different people in different times.

The *Dred Scott* decision focused on what Taney viewed as negative change, or, in his words, unfortunate deviations "in public opinion or feeling." He provided the ultimate counter-narrative to the antislavery account of the lamentable rise of the Slave Power.

Antislavery proponents often balanced their narratives with observations of the spread of antislavery sentiment. That combination unveiled historical distance, which they used to

argue that time had come realize the framers' expectations. In contrast, Taney's emphasis on negative change, in the form of the spread of abolitionist ideology, justified his attempt to collapse the historical distance that his reading revealed.<sup>11</sup> If temporal distance resulted from unwanted change, then few could protest restorative appeals to a pure past.

Similar to the arguments that Daniel Webster, Moses Stuart, and even Benjamin Curtis had made in 1850, Taney used the static and synchronic historical components of the

Revolutionary golden age (i.e. late eighteenth-century ideas of black inferiority) to

combat the changing and diachronic historical components of, in his view, corrupted

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to times and events." John Randolph, "Draft Sketch of the Constitution," in *Supplement to Max Farrand's Records of the Federal Convention of 1787*, ed. James H. Hutson (New Haven, CT: Yale University Press, 1987), 183. The first full articulation of a living US Constitution emerged much later among legal realists, including Oliver Wendell Holmes, Jr., and Louis D. Brandeis, in the early twentieth century. See H. L. Pohlman, *Justice Oliver Wendell Holmes: Free Speech and Living Constitutionalism* (New York: New York University Press, 1991); and Philippa Strum, "Brandeis and the Living Constitution," in *Brandeis in America*, ed. Nelson L. Dawson (Lexington: The University of Kentucky Press, 1989), 118-32.

<sup>11</sup> *Scott v. Sandford*, 60 US, 426.

American history (i.e. the rise of abolitionist-informed egalitarian sentiment). In response to unwanted change, he emphatically asserted that the Constitution “must be construed now as it was understood at the time of its adoption.” The founding document, he urged, continued to speak “not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of its framers and was voted on and adopted by the people of the United States.”<sup>12</sup> Taney collapsed time just as Stuart had when he asserted that Paul supported the Fugitive Slave Law, or as Curtis had when he insisted that the anti-constitutionalists were betraying the legacy of those who had died to obtain a constitution “but the other day.” The Chief Justice held that changes in public sentiment did not allow him to ignore what he believed to be the framers’ intentions and extend the rights of citizenship to those of the African race.

There was an irony built into this debate. As with America’s biblical interpreters, Taney made the following hermeneutical assertion: times change, but the meaning and authority of sacred texts do not. In emphasizing the latter point, he brought new attention to the former. The allowance that times change, even when cast as irrelevant to interpretation and construction, highlighted that fact. Taney’s efforts to brush aside the new ideas imposed by change to recover and apply the original ideas that they masked necessarily designated those original ideas as old. Indeed, in some ways the tendency to depict change as corruption, more than as progress, highlighted historical distance. Change cast as continuous with the founding muted the dissonance resulting from distance, while change deemed to be discontinuous with the founding amplified it. Interpretations such as Taney’s, which aimed to expose historical change as distracting

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<sup>12</sup> Ibid.



regression and to reject its constructional value, drew attention to the reality of historical distance. To be sure, in a setting where a consensus position about the negative value of change goes unchallenged, that reality is obscured by anxious attempts to overcome historical distance and reclaim a pure past. But in the 1850s, where antislavery readers called the negative change Taney identified “progress,” and associated that progress with the promises that figures in the past expected their predecessors to fulfill in the future, it raised awareness of historical distance in an unprecedented manner.

In the antebellum period, slavery, more than any other issue, had the potential to deepen Americans’ awareness of historical distance from the founding era and to force them to reinterpret the Constitution in light of such awareness. *Dred Scott* embodied that potentiality. The historical arguments in the deciding and the dissenting opinions exhibited the fact that more than just chronological difference stood between nineteenth-century Americans and their Revolutionary predecessors. That realization threatened to undermine the continued usefulness of the Revolutionary era and its texts. The process of historicizing the sacred biblical past had suggested that no historical period remained safe from historical criticism, but the sacralized founding era might have seemed too close and too useful to be historically distant. Thus, when constitutional argumentation over slavery indicated that historical distance separated Americans from even their most recent favored past, it sent the signal to some that no historical era could be relied on to transcend time. In a time and place that measured historical progress in terms of a nation’s promised destiny toward a millennial existence, historical awareness of the Revolutionary era and slavery’s vicissitudes in the mid-nineteenth century could lead some to conceive of even the present as bound by temporal constraints.

*A “Dark and Fell Spirit”: Slavery’s Unwelcome Introduction of Historical Distance*

As with the fugitive slave cases that followed the Fugitive Slave Law, *Dred Scott* brought a great deal of attention to an African American. Dred Scott’s case induced debate about the exploits and status of his Revolutionary forebears, which, in turn, incited contemporaries, black and white, to further action on behalf of enslaved African Americans. As the federal government’s efforts to return fugitives to enslavement brought increased clamoring for their freedom, the Supreme Court’s attempt to withhold citizenship from Dred Scott and his contemporaries encouraged the fervent articulation of historical arguments aimed at demonstrating their fitness for citizenship. Rather than settle the debate with a historically grounded decision, Taney gave it new life on an ever-expanding public stage. And it became clear that on that stage, even in terms of constitutional interpretation, the Supreme Court was only one of a number of actors.

Dred Scott was born into slavery in Southampton County, Virginia, near the turn of the century. He grew and toiled under the ownership of Peter Blow. In 1830, Blow relocated to St. Louis and, after his death in 1832, his heirs sold Scott to John Emerson, a doctor in the US Army. In 1834, Emerson was assigned to Fort Armstrong at Rock Island in the free state of Illinois, where he remained with Scott until May of 1836, when he was transferred to Fort Snelling, Wisconsin Territory, where the Northwest Ordinance and the Missouri Compromise were understood to prohibit slavery. While at Fort Snelling, Scott married Harriet Robinson, who became Emerson’s slave. In 1837, Emerson rented out Dred and Harriet at Fort Snelling, while he responded to the Army’s call to Missouri, and later Louisiana. In early 1838, Emerson married Eliza Irene Sanford, and soon called on the Scotts to join him in Louisiana. Before the year’s end, Emerson traveled back to Fort

Snelling with his wife and the Scotts. En route, Harriet gave birth to a baby girl, named Eliza. In 1840, while John Emerson served in the Seminole War, Eliza Emerson and the Scotts returned to St. Louis, where she hired them out. John was discharged from the Army in 1842 and died the following year, leaving his estate to Eliza. Perhaps the realization that his slave status transcended the mortality of his owner stirred in Scott a desire to break from servitude before his own demise.<sup>13</sup>

In 1846, Scott attempted to purchase his family's freedom, but Eliza refused. Scott then took legal action, suing for his release from enslavement in the St. Louis County Circuit Court, where his lawyers argued that his residence in free regions granted him emancipation. The court ruled against Scott and his family, which now included another girl, Lizzie, before the judge ordered a retrial due to hearsay. After numerous delays, *Scott v. Emerson* began in January of 1850. The Missouri jury found that Emerson had illegally held Dred and Harriet in Illinois and Wisconsin and awarded the Scotts their freedom. Eliza, though, won an appeal before the Supreme Court of Missouri, which, in November of 1852, reversed the decision. Judge William Scott echoed Webster and anticipated Taney in his reference to the unfortunate evolution of northerners' views on slavery, but rather than dismissing it as blinding and irrelevant, he based his argument on this development.<sup>14</sup>

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<sup>13</sup> This chapter provides only a partial discussion of the biographical and legal aspects of Dred Scott's pursuit of freedom. Along with Fehrenbacher's *The Dred Scott Case*, see, for example, Ethan Greenberg's narrative in *Dred Scott and the Dangers of a Political Court* (Lanham, MD: Lexington Books, 2009), for an outline and analysis of the legal story. For biographical information on the Scott family, see Lea VanderVelde, *Mrs. Dred Scott: A Life on Slavery's Frontier* (New York: Oxford University Press, 2009).

<sup>14</sup> *Scott v. Emerson*, 15 Mo. 576, 582-87 (1852).

Far from dismissing them as unfortunate deviations, as had Webster and Stuart, or mere distractions, as would Taney, Judge Scott cited changes in public opinion as the basis for his departure from precedent. Recognizing relevant state rulings, he noted that “cases of this kind are not strangers in our courts,” and acknowledged that “persons have been frequently here adjudged to be entitled to their freedom, on the ground that their master held them in slavery in territories or States in which that institution was prohibited.”<sup>15</sup> Scott then turned to Taney’s recent ruling in *Strader v. Graham* (1851), a Supreme Court case dealing with the status of slaves who had been taken from Kentucky to Ohio and had then fled to Canada. Taney had dismissed the case for lack of jurisdiction, placing the fate of the escaped slaves in the hands of Kentucky judges. Scott cited Taney’s ruling “to show, that the comity extended to the laws of other States, is a matter of discretion, to be determined by the courts of that State in which the laws are proposed to be enforced. If it is a matter of discretion,” he continued, “that discretion must be controlled by circumstances.”<sup>16</sup> Circumstance, rather than precedent, Scott contended, must dictate. He designated the spread of unsavory antislavery sentiment as the case’s controlling circumstance: “Times now are not as they were when the former decisions on this subject were made. Since then not only individuals but States have been possessed with a dark and fell spirit in relation to slavery, whose gratification is sought in the pursuit of measures, whose inevitable consequence must be the overthrow and destruction of our government.”<sup>17</sup> Scott concluded that “under such circumstances it does not behoove the State of Missouri to show the least countenance to any measure which

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<sup>15</sup> Ibid., 583.

<sup>16</sup> Ibid., 586.

<sup>17</sup> Ibid.

might gratify this spirit.”<sup>18</sup> Scott thus argued that in excited situations, construction should answer present needs, rather than blindly follow precedential decision.

In his dissenting opinion, Judge Hamilton Rowan Gamble dismissed the importance of change and instead appealed to static principles tied to precedent.<sup>19</sup> He protested that “there is with me, nothing in the law relating to slavery, which distinguishes it from the law on any other subject, or allows any more accommodation to the temporary public excitements which are gathered around it.”<sup>20</sup> The established law should not accommodate itself to contemporary developments. Indeed, Gamble proceeded to argue that “the judicial mind, calm and self balanced, should adhere to principles established when there was no feeling to disturb the view of the legal questions upon which the rights of parties depend.”<sup>21</sup> Cases that should serve as precedent were “decided when the public mind was tranquil, and when the tribunals maintained in their decisions, the principles which had always received the approbation of an enlightened public opinion.”<sup>22</sup> Gamble indicted the Court for wavering in the midst of a public maelstrom, arguing that “times may have changed, public feeling may have changed, but principles have not and do not change; and, in my judgment, there can be no safe basis for judicial decisions, but in those principles, which are immutable.”<sup>23</sup> Both sides acknowledged change, but while one delivered an opinion in response to it, the other contended that law must function outside of and above change.

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid., 587-92.

<sup>20</sup> Ibid., 589.

<sup>21</sup> Ibid., 590.

<sup>22</sup> Ibid., 591.

<sup>23</sup> Ibid., 591-92.

In *Scott v. Emerson* the judge ruling against Dred Scott crafted his opinion as a response to change while the judge opining in his favor formulated a position independent of change and centered in static legal principles. In *Scott v. Sandford* the side ruling against Scott dismissed changes since the founding era as irrelevant and rested its opinion on static legal principles while the side opining in favor of Scott appealed, at least in part, to an original expectation of change. The cases' different central sources of legal instruction—precedent in *Scott v. Emerson* and the Constitution in *Scott v. Sandford*—largely account for this apparent irony. Politics and public sentiment informed both decisions. Indeed, Chief Justice Taney's historically based constitutional decision suggests that antislavery historical readings of the Constitution shaped his ruling. But rather than point those readings as informative in construction, as Judge Scott had identified "a dark and fell spirit in relation to slavery" as the circumstance controlling construction in his decision, Taney joined the conversation. In doing so, his appeal to the highest law of the land and its static original ideas led him to dismiss as irrelevant evolving public opinion even as it incited his response. Judge Scott, in contrast, had turned to precedent, which he dismissed in favor of circumstance, thanks to Taney's recent ruling in *Strader v. Graham*. Without a fixed point in the past to compare with the present, and to thus recognize substantial changes from one period to another, *Scott v. Emerson* did not hold the same potential to draw attention to historical distance as *Scott v. Sandford*. Soon, that potential began to surface.

During the time of this ruling Eliza moved to Massachusetts and Emerson's estate seems to have been transferred to her brother, John F. A. Sanford (misspelled as Sandford in the court records), who returned from Missouri to New York, where he was a resident,

in 1853. On the basis of diverse citizenship, wherein a case involving citizens from different states placed it under federal jurisdiction, Scott's lawyers obtained a hearing before the federal district court in Missouri. This brought the question of Scott's citizenship to the forefront. The judge directed the jury to rely on Missouri law and to decide in favor of Sanford, who rejected Scott's citizenship claims because "his ancestors were of pure African blood, and were brought into this country and sold as negro slaves."<sup>24</sup> This decision centered the case on historical readings of the founding era. On a writ of error, Scott's attorneys appealed to the US Supreme Court. The stage was nearly set for Taney's decision, though a few more crucial pieces had to be put in place.

The ramping up of conflict between political parties in the 1840s and 50s contributed to politically motivated legal rulings. The political nature of *Dred Scott* hinged on the Court's decision to deliver a broad ruling addressing the issue of slavery in the territories. James Buchanan, whose election as President in 1856 came in the midst of rising sectional tensions, believed that resolving the territorial problem would help avert the ominous collision. He and other politicians looked to the Supreme Court for an answer. An opportunity presented itself in *Scott v. Sandford*. The President-elect hoped that before taking up residence in the White House in the spring of 1857, the Court would settle the debate for all time, or at least for his term, and he took steps to ensure bipartisan support for a broad decision. In February, he wrote to Justice John Catron, a Jackson appointee, inquiring about the forthcoming ruling and pointing out the timely and lasting benefits of a broad decision. Catron's first few responses promised little. Initially, the

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<sup>24</sup> *Dred Scott, Pl[aintiff] in Er[ror] v. John F.A. Sandford. In Error to the Circuit Court U.S. for the District of Missouri, in Southern Slaves in Free State Courts: The Pamphlet Literature*, ed. Paul Finkelman, 3 vols. (New York: Garland: 1988), 3:5-6.

Court decided to have Justice Samuel Nelson of New York write a narrow opinion based on the reasoning behind *Strader v. Graham*, which would return jurisdiction to Missouri courts. However, the threat of extensive dissenting opinions from McLean and Curtis, along with interest, inside and outside the Court, in a broad proslavery decision, seems to have led the Court to take the pen from Nelson and place it in the hand of Taney, who set out to build on the federal district court's assertion that Scott's ancestors "were brought into this country and sold as negro slaves." Catron apprised Buchanan of this pleasing development, but noted that the decision needed northern support. He suggested that Buchanan implore his fellow Pennsylvanian, Justice Robert Cooper Grier, to join the majority. Buchanan did so and succeeded, allowing Taney to address the question of congressional power in the territories. In short order, Republicans attacked Buchanan and Taney as co-conspirators with the Slave Power and a decision meant to unite the nation left it further divided. Far from providing a lasting resolution, Taney's pronouncements thrust the nation toward conflict.<sup>25</sup>

The immediate background to the *Dred Scott* decision along with the history of Dred Scott's case demonstrates a convergence of certain events and ideas that culminated in Taney's deciding opinion. The initial cases focused on the question of Scott's freedom, based on the fact that his owner, John Emerson, had taken him into free regions. The Missouri rulings focused on either using or dismissing precedential decisions to decide the fate of Scott and his family. The nature of the case changed when Scott's lawyers obtained a hearing before the federal district court of Missouri on the basis of diverse citizenship. This placed the case under federal jurisdiction and highlighted the question of

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<sup>25</sup> On the Court's reversal and Buchanan's involvement, see Fehrenbacher, *The Dred Scott Case*, 305-14; and Potter, *The Impending Crisis*, 272-74, 287-89.



Scott's citizenship. Further, the district court based its ruling on a historical assertion about Scott's ancestors, which focused attention on the founding era and the Constitution. When these developments combined with Buchanan's push for a broad decision and the threat of expansive dissenting opinions from Curtis and McLean, Chief Justice Taney responded with a landmark constitutional decision based on historical assertions about the Revolutionary past. In doing so, he responded to immediate concerns and the case's deeper backdrop, but he also delivered his decision in a culture where, as a result of decades of argumentation, interpreters had come to view contextual readings of the nation's sacred legal text as definitive in deciding slavery's fate. Taney accepted that conclusion and hoped to end the debates with a decisive ruling.

*"The Fixed Opinions Concerning That Race": The Taney Court and the Constitution's Static Proslavery Meanings*

Taney's reached the proslavery position he promoted in *Dred Scott* gradually. His evolving stance on slavery was somewhat representative of southerners more generally. In 1818, while defending abolitionist minister Jacob Gruber, who had been indicted for a sermon that presumably promoted rebellion, Taney condemned slavery as an institution in need of gradual abolishment. He did so as a slaveholding attorney from Maryland and that same year he began manumitting his own slaves. During this period, he also supported the colonization movement and voted to limit the growth of slavery while serving in the Maryland Senate. But these antislavery words and deeds seem to have been his last. In the 1820s he argued against slaves and in favor of slaveholders and in 1832, as US attorney general, Taney officially defended the constitutionality of South Carolina's

statute that allowed for the arrest of black seamen arriving in Charleston. In response, at least in part, to abolitionism's rise and events such as Nat Turner's rebellion, he gradually became an emphatic proslavery supporter, as exhibited in his positions in *Groves v. Slaughter* (1841), *Prigg v. Pennsylvania* (1842), and *Strader v. Graham* (1851). The eagerness with which he delivered and defended his broad decision in *Scott v. Sandford* attested to the completion of a shift from a view of slavery as a domestic blot in need of eventual removal to a clear conviction that the institution was a civilizing blessing in need of vigilant protection. While change in public sentiment contributed to this personal change of heart, Taney was resolved to not allow the former development to cloud his constitutional construction, preferring rather to uncover and apply what he understood to be the founders' static original ideas.<sup>26</sup>

After deciding questions of jurisdiction, he turned to the issue of US citizenship, opening with a methodological appeal to "the sense in which that word [citizen] is used in the Constitution," and proceeded to pose the question of whether "a negro whose ancestors were imported to this country and sold as slaves" could obtain citizenship.<sup>27</sup> The Chief Justice used a historical argument to conclude that such a descendent could not claim citizenship, because his ancestors "were at that time considered as a subordinate and inferior class of beings ... whether emancipated or not."<sup>28</sup> To uncover the intent of the framers and the meaning of the Constitution, he invoked what he perceived to be the

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<sup>26</sup> On the evolution of Taney's views on slavery, see Timothy S. Huebner, *Roger B. Taney and the Slavery Issue: Looking beyond—and before—Dred Scott*, *Journal of American History* 97 (June 2010): 17-38. On the claim that Taney retained his antislavery sensibilities and for a discussion of his hatred of abolitionism, see Fehrenbacher, *The Dred Scott Case*, 560n, 560-61.

<sup>27</sup> *Scott v. Sandford*, 60 US, 399-454, quotations on 400, 403.

<sup>28</sup> *Ibid.*, 404-5.

understanding of the audience for whom they wrote and the popular sentiment of the times. The approach allowed Taney to use legal formalism to absolve the Court of any moral failing in sanctioning slavery: “it is not the province of the court to decide upon the justice or injustice ... of these laws.”<sup>29</sup> He left that responsibility to the framers and ratifiers. “The duty of the court,” he maintained, “is to interpret the instrument they have framed with the best lights we can obtain ... and to administer it ... according to its true intent and meaning when it was adopted.”<sup>30</sup> In his reading, those of African descent were not citizens of states at the writing and ratification of the Constitution and, though states in the new nation retained the power to grant citizenship, this state-level status was distinct from federal citizenship. Taney later referenced the slave-trade and fugitive-slave clauses to demonstrate that the prevailing “opinion of the time” was that blacks were property.<sup>31</sup> The privileged place that biblical scholars like Joseph Buckminster and Moses Stuart gave to historical explication found correspondence among antebellum legal theorists like Taney, who also emphasized the interpretational value of “the best lights” and who also found justification for slavery, or for proslavery legislation, in their favored past. These historical lights illuminated a founding generation’s position on slavery, which interpreters such as Stuart and Taney called forth to uphold the division between “the unhappy black race ... from the white by indelible marks.”<sup>32</sup> Such appeals claimed

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<sup>29</sup> Ibid., 405.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid., 408.

<sup>32</sup> Ibid., 410.

to value historical context in discerning the Constitution's original meaning and intent, but this kind of construction disregarded the interpretive value of change over time.<sup>33</sup>

Rather than confine his discussion to the nation's sacred legal document, Taney used extra-constitutional sources from the Revolutionary era—as Buckminster had used extra-biblical sources from the New Testament era—including the Articles of Confederation, “the legislation and histories of the times, and the language used in the Declaration of Independence” to “show that neither the class of persons who had been imported as slaves nor their descendants, whether they had become free or not, were then acknowledged as part of the people, nor intended to be included in the general words used in that memorable instrument.”<sup>34</sup> The appeal to an authoritative historical text was also an appeal to continuity. Just as European Americans were linked to their founding predecessors, and thus could claim promised constitutional privileges, so African Americans, free and slave, were linked to their enslaved ancestors, and thus remained ineligible for such privileges. Forming a new nation signaled a sharp break from the past, but in Taney's reading it also froze the inequities of a particular moment and ensured their persistence for all succeeding time. Blacks could not be citizens at the founding, but could be property, and so, seventy years later, Dred Scott could be held as property, in both free and slave regions, but could not sue in court. Taney's historical narration held Scott hostage in the present by denying his ancestors citizenship in the past.

Perhaps in response to antislavery anti-constitutionalists, who held onto the ostensibly universal ideas of the Declaration as timeless truths, Taney aimed to bind it to

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<sup>33</sup> On Taney's mode of constitutional construction in *Dred Scott*, see Streichler, *Justice Curtis*, 122-25.

<sup>34</sup> *Scott v. Sandford*, 60 US, 407.

a particular moment and thus restrain its original meaning even while retaining its relevance. He was more likely contending with antislavery constitutionalists, who bound the Constitution to the Declaration and the perceived antislavery spirit of the Revolutionary age. In contrast, Taney subjected the Declaration to the Constitution and to the perceived proslavery spirit of that era. He cited the paragraph containing the phrase “all men are created equal,” and, in a striking acknowledgment, granted that “the general words ... would seem to embrace the whole human family, and if they were used in a similar instrument at this day would be so understood.”<sup>35</sup> Taney drew attention to memorable words with seemingly universal applicability and admitted that developments since their utterance would give them a more egalitarian meaning. However, he held that precisely because the inclusive signification of the phrase rested on changes subsequent to ratification, this signification must be dismissed for an original and more exclusive meaning. “It is too clear for dispute,” he asserted,

that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration, for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence, would have been utterly and flagrantly inconsistent with the principles they asserted, and instead of sympathy of mankind to which they so confidently appealed, they would have deserved and received universal rebuke and reprobation.<sup>36</sup>

Aware of changing perceptions and sympathies, which gave old words new significations, Taney explicitly rendered them irrelevant to constitutional interpretation and construction. He appealed to the period’s domestic and international audience, using late eighteenth-century Western public sentiment to establish that the framers “spoke and acted according to the then established doctrines and principles, and in the ordinary

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<sup>35</sup> Ibid., 410.

<sup>36</sup> Ibid.

language of the day, and no one misunderstood.”<sup>37</sup> Many antislavery biblical and constitutional readers had posited that the Christian and national founders, respectively, had used discretion in undermining slavery, and thus some of their words and actions might be misconstrued as revealing that they had intended to sanction and preserve the institution when, in fact, they hoped for and expected its deterioration. William Garrison and Wendell Phillips rejected such explanations as naïve and so did Taney.

Taney needed the founders to speak for slavery. “We refer to these historical facts” he explained, “for the purpose of showing the fixed opinions concerning that race upon which the statesmen of that day spoke and acted.”<sup>38</sup> The thrust of Taney’s opinion relied on fixed ideas, but he also drew on historical continuity for support. He cited legislation forbidding interracial marriage in the northern states of Massachusetts, Connecticut, New Hampshire, and Rhode Island, from before ratification up to 1844.<sup>39</sup> He identified and dismissed historical change in applying the Constitution, but used historical continuity to assert the utter improbability that the framers intended to bless blacks or their descendants with the rights and privileges of citizenship.

Taney outlined the “historical facts” of popular perceptions of blacks from the Revolutionary and post-Revolutionary pasts, which he then used as binding truths in the present. Far from neglecting historical change, he highlighted it, but only to warn that deviating developments might obscure one’s vision of the founding moment. Precisely because he believed “it is difficult at this day to realize the state of public opinion ... at the time of the Declaration of Independence and when the Constitution of the United

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<sup>37</sup> Ibid.

<sup>38</sup> Ibid., 409.

<sup>39</sup> Ibid., 412-16.

States was framed and adopted,” Taney stressed the clarifying value of his historical lesson.<sup>40</sup> Like Frederick Douglass, he referenced the challenge of unearthing past thought, but he was much more confident in his ability to bring that thought to light and much more emphatic in stressing its determinative value. He presumed that “no one ... supposes that any change in public opinion or feeling, in relation to this unfortunate race, in the civilized nations of Europe or in this country, should induce the court to give the words of the Constitution a more liberal construction in their favor than they were intended to bear when the instrument was framed and adopted.”<sup>41</sup> Taney’s mention of “no one” was more wishful mandate than accurate accounting, as the dissenters soon demonstrated, but in a clash of historical modes, Taney’s constitutional construction determined that the synchronic trumped the diachronic, unless the diachronic revealed continuity. The opinions of the founding era trumped those of the present, unless those of the present matched them, in which case the historical eras complemented rather than contradicted each other. If the Constitution itself proved unjust, a problem when justice was placed in the hands of the framers, then “there is a mode prescribed in the instrument itself by which it may be amended.”<sup>42</sup> But readers should not force current ideas about blacks into the text, for “it is obvious,” in the light of Taney’s historical rendering, “that they were not even in the minds of the framers of the Constitution when they were conferring special rights and privileges on citizens.”<sup>43</sup> Like an archaeologist in search of a relic, Taney brushed aside the accruing dirt and dross that threatened to hide original

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<sup>40</sup> Ibid., 407.

<sup>41</sup> Ibid., 426.

<sup>42</sup> Ibid. On the problem of constitutional injustices, see Graber, *Dred Scott*.

<sup>43</sup> *Scott v. Sandford*, 60 US, 411-12.

truths. Scott, historical excavation showed, would have been a non-citizen when the document was written, and as such, could not now sue in federal court.

Having provided his lengthy historical lesson, Taney concluded that the case rested outside federal jurisdiction. He thus relied on the precedent set by the Supreme Court of Missouri, which wielded state law to cast Scott as a slave. For all intents and purposes, Taney had ruled on the matter at hand and might have closed his decision. Instead, he took the opportunity to deliver an executive-backed pronouncement, dismissed by the dissenters as lacking authority and attacked in the press as *obiter dictum*, on the question of Congress's power over slavery in the territories.<sup>44</sup>

On this matter, too, Taney stressed the value of uncovering particular circumstances in revealing the framers' intent. He again rested his argument on an examination of the "history of the times," which led him to narrowly argue that the constitutional clause granting Congress governmental power in the territories referred strictly to the land held in common at the time of ratification and did not apply to territories that the nation might subsequently acquire.<sup>45</sup> In contrast to his ruling on African American citizenship, he argued that the Constitution restricted application to a set time in the past rather than stretching into the present. In an extended discussion, Taney aimed to establish that the power granted in said clause "has no bearing on the present controversy" but "is confined, and was intended to be confined, to the territory

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<sup>44</sup> Fehrenbacher points out that Taney's broad decision was consistent with the Supreme Court's actions in prior cases involving judicial review, thus discounting the view that the decision was an anomaly in this respect. He also notes that most modern scholars disagree with the Republican cry of *obiter dictum*. Fehrenbacher, *The Dred Scott Case*, 209-35 and 330-32.

<sup>45</sup> *Scott v. Sandford*, 60 US, 432.



which at that time belonged to, or was claimed by, the United States.”<sup>46</sup> He emphasized the importance of bringing “this part of the history of these cessions” to bear on constitutional phraseology.<sup>47</sup> Throughout this portion of his historical lesson, Taney emphasized the “specific,” “particular,” and “local” nature of the powers in question.<sup>48</sup> This construction let him “put aside . . . any argument, drawn from precedents, showing the extent of the power which the General Government exercised over slavery in this Territory.”<sup>49</sup> Change was a double-edged sword, but in Taney’s hands the side that seemed to contradict the Constitution’s original meaning and intent was left blunt.

Taney’s history dictated that blacks were not citizens at the founding, and thus were not citizens now, despite changes in public opinion; it also dictated that although Congress possessed power over the territories held at the founding, it held no power over property held in the territories obtained through the Louisiana Purchase and the Treaty of Guadalupe Hidalgo, despite divergent legal decisions. In Taney’s reading, any deviation from the Constitution’s narrowly construed original meanings, even a tradition of legal precedent granting Congress power over subsequently acquired territories, must be dismissed. Any continuity, then, that did not stretch back to the very moment of the framing, must be invalidated as change. The consistency of Taney’s position rested on discerning intention. If the founders intended that a principle endure as a general and universal rule then any departure from that principle must be deemed unconstitutional. If they intended that a principle answer specific and particular questions, then continued application of that principle must be dismissed as unconstitutional.

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<sup>46</sup> Ibid.

<sup>47</sup> Ibid., 434.

<sup>48</sup> Ibid., 436, 438.

<sup>49</sup> Ibid., 442.

As in the biblical debates, only historical research and reasoning, or at least the appearance of such, could allow the interpreter to claim authority to distinguish the particular from the universal. In helping uncover specific and local meanings, such as the territorial clause, the historical reading drew attention to historical distance. In a more critical light, one might suggest that Taney used that distance to dismiss as specific and local those meanings that contradicted his position. Such usage, however, highlighted the difficulty of distinguishing transient from permanent and of determining what historical distance made or did not make irrelevant. Taney managed to avoid this messiness with blunt assertions about what was timeless and what was timely, as in his discussion of fugitive slaves. He argued that the government set up by the framers “is pledged to protect [a slaveholder’s right to traffic his property] in all future time if the slave escapes.”<sup>50</sup> Almost in passing Taney declared the Missouri Compromise unconstitutional, and he did so through a historical explication.

While some of the justices providing concurring or separate opinions offered little more than their general assent—Pennsylvania native Justice Grier’s brief statement, which amounted to less than a page, attested to his role as the token northern supporter Buchanan wanted him to be—others, including proslavery Justices Peter Vivian Daniel, John A. Campbell, and John Catron, followed Taney in offering historical arguments.<sup>51</sup> In

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<sup>50</sup> Ibid., 451-52.

<sup>51</sup> For Grier’s opinion, see *Scott v. Sandford*, 60 US, 469. Not all of the justices who provided concurring and separate opinions decided on each of the issues Taney addressed and some distinctions exist between their opinions and Taney’s decision, but, as Fehrenbacher makes clear, “none of the major rulings in Taney’s opinion can be pushed aside as unauthoritative.” Fehrenbacher, *The Dred Scott Case*, 333. Still, Catron, Campbell, and Nelson did not discuss the status of free African Americans in their decisions. Earl Maltz contends that this refusal to engage the issue demonstrates the persistence of doctrinal imperatives even at the height of the sectional debate. Earl M.

his opinion, Daniel asserted that “the following are truths which a knowledge of the history of the world, and particularly of that of our own country, compels us to know—that the African negro race never have been acknowledged as belonging to the family of nations.”<sup>52</sup> Clearly, the Court’s focus on African Americans could just as easily serve to spread racist proslavery positions than raise awareness of suffering slaves. To give his assent further credence the Virginian compared American with Roman slavery, citing classical precedent for not granting citizenship upon emancipation.<sup>53</sup> In his opinion, Campbell also aimed to interpret the Constitution “by the light of the circumstances in which the Convention was placed.”<sup>54</sup> Just as Joseph Buckminster and Moses Stuart had argued that Christian conversion did not alter a slave’s status, Campbell argued that “the American Revolution was not a social revolution. . . . It was a political revolution, by which thirteen dependent colonies became thirteen independent states.”<sup>55</sup> As with Taney, Campbell of Alabama, who later served as Assistant Secretary of War for the Confederacy, determined that the claim granting Congress present power in the territories “is not supported by historical evidence drawn from the Revolution, the Confederation, or the deliberations which preceded the ratification of the Federal Constitution.”<sup>56</sup> Catron, a Tennessee native who had fathered a slave—James P. Thomas—who had obtained freedom in 1851, also emphasized that “every provision in that instrument has a history that must be understood before the brief and sententious language employed can be

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Maltz, *Slavery and the Supreme Court, 1825-1861* (Lawrence: University of Kansas Press, 2009), 266.

<sup>52</sup> *Scott v. Sandford*, 60 US, 469-93, quotation on 475.

<sup>53</sup> *Ibid.*, 477-80.

<sup>54</sup> *Ibid.*, 493-518, quotation on 504.

<sup>55</sup> *Ibid.*, 502.

<sup>56</sup> *Ibid.*, 512.

comprehended in the relations its authors intended.”<sup>57</sup> “Historical facts,” he determined, demonstrated the specific and limited nature of congressional powers.<sup>58</sup> The Taney Court gave official sanction to the priority of using the framers’ intent as paramount in constitutional construction and to the importance of historical explication in uncovering that intent.

Historical investigation, the Taney Court argued, demonstrated that the founders had intended to deny those of African heritage and their descendants federal citizenship, to grant Congress power only over those territories held in common at the time of ratification, and to protect private property, including slaves, in all acquired territories throughout all future time. When deemed continuous from the period of the framing, public sentiment and legal decisions—including, for example, racist ideas about blacks and marriage laws against miscegenation—illuminated original intent. When determined to be deviations from that period, public sentiment and legal decisions, including, for example, more egalitarian ideas about blacks, legislation giving Congress power over slavery in the territories, or precedent granting former slaves freedom, obscured original intent. In a way, the Taney Court allowed for change or deviation in construction, but only if one could determine that the framers had created a clause only for specific, local, and temporary application. Limiting application of the clause on congressional power, then, was not an appeal to change or deviation, but rather continuity, because such a limitation was part of the original intent. In another way, the Taney Court dismissed continuity as inadmissible in construction, but only if one could determine that views on the issue in question did not stretch back to the framers. An appeal to precedent granting

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<sup>57</sup> Ibid., 518-29, quotation on 520.

<sup>58</sup> Ibid., 520.

slaves freedom, then, was not a claim to continuity, but rather a symptom of the kind of change that Taney found distracting in construction. In short, the Court recognized that temporal differences separated the Revolutionary past from their mid-nineteenth-century present, but characterized those differences as an interpretational problem to be overcome through historical excavation rather than a reality requiring a more liberal construction. But deeper and more precise historical excavation might produce very different results.

*“Its Tendencies Would Greatly Ameliorate Their Condition” : John McLean and an Original Expectation of Change*

Dissent from the Court’s proslavery decision by northern justices was not a foregone conclusion and was, in some ways, a surprise. Grier of Pennsylvania, a cousin of Alexander H. Stephens, had his marching orders from the President. Samuel Nelson of New York was a political wanderer and, at present, a northern “doughface” Democrat. John McLean of Ohio was a Republican in 1857, but he had been associated with nearly every party across the antebellum political spectrum, making it difficult to discern where his allegiance lay. While fairly stable in their political ties, Benjamin Curtis and his brother George Curtis had conflicting positions on slavery-related issues. Benjamin had served as counsel for the defense in *Commonwealth v. Aves* (1836), which addressed whether the defendant in the North could hold a child slave for his daughter from the South. As counsel for Aves, Benjamin had worked to ensure continued enslavement. Further, as outlined above, in the early 1850s he had staunchly defended the Constitution and the constitutionality of the Fugitive Slave Law against abolitionists’ arguments and had issued indictments against those attempting to support fugitive slaves. Even when he

opined in favor of Dred Scott's freedom in 1857, Benjamin still disapproved of abolitionism. As US commissioner in Boston, Benjamin's brother George had complied with the Fugitive Slave Law in issuing arrest warrants and certificates of removal for the capture and return of various fugitive slaves. Now, as Scott's co-counsel, he argued on behalf of another former slave. Although McLean was against slavery's extension, neither he nor Benjamin Curtis had aligned themselves with antislavery forces. But, whatever their political motivations, their research convinced them that history conflicted with Taney's reading of the Constitution.<sup>59</sup>

Like the Court, McLean and Curtis based their opinions on an appeal to original intent, illuminated through historical research. In many ways, the justices simply differed on what historical investigation revealed about that intent, but the intentions they ascribed to the founders corresponded with crucial distinctions in historical thinking. Where the Court appealed to the popular opinion of the times to argue that the framers never intended to bless those of African descent with citizenship, McLean and Curtis argued that in a number of states, including North Carolina, blacks had, in fact, voted at the time of ratification, which they described as an outward sign of citizenship. On this point, the dissenting justices also cited an original expectation of change. Their reasoning echoed and in some ways extended the arguments of antislavery constitutionalists in opining that the framers had expected that future developments would expand constitutional rights and protections to free blacks. Where the Court highlighted particular historical circumstances to constrain the clause granting Congress territorial power to temporary and local application, the dissenters contended that the framers constructed the passage

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<sup>59</sup> On Curtis's constitutionalism, his position on slavery, and his role in *Dred Scott*, see Streichler, *Justice Curtis*.

with an eye toward present *and* future concerns. These opinions implied that because the framers had expected certain changes, change should be used rather than dismissed in constitutional interpretation. To be sure, an appeal to an original expectation of change might mute an awareness of its contingent nature and mitigate the realization of historical distance: the expectation of change removes its surprise and, if realized, suggests inevitability, while also drawing together the time in which those changes occur and the predictive moment in the past. Nevertheless, in following antislavery writers in also pointing out developments that militated against the realization of the framers' expectations, McLean and Curtis highlighted the contingent nature of change and the reality of temporal difference.

McLean offered the shorter of the two dissenting opinions, but, covering thirty-five pages, it was more extensive than any single concurring or separate opinion.<sup>60</sup> He opened by declaring defective the plaintiff's plea that "a free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a 'citizen' within the meaning of the Constitution of the United States." McLean argued that Scott, as a freeman born under the Constitution and a resident of a state different from Sanford, could claim access to the privileges and immunities clause and sue in federal court. Defending this position required that he take apart the central components of Taney's decision. McLean started, though, by questioning the relevance of the Court's extra-legal assertion "that a colored citizen would not be an agreeable member of society." By ascribing this view to the framers and their audience, Taney had attempted to make this a constitutional and thus a legal position. But McLean considered this "more a matter of

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<sup>60</sup> *Scott v. Sandford*, 60 US, 529-64.

taste than of law,” and regardless of the merits of this assertion, evidence showed that African Americans had, in fact, voted as members of American states.<sup>61</sup>

Upon labeling the plea defective and dismissing one of the Court’s central claims as superfluous, McLean proceeded to discuss the principles of the decision. He stressed that “slavery is emphatically a State institution.”<sup>62</sup> Each justice agreed with this federal consensus position. However, while the majority argued that the Constitution protected slaveholders’ property rights in free regions, McLean argued that slaveholders lost those municipal rights when they entered free regions with their slaves. He explained that although the laws of England did not prohibit but only did not authorize slavery, the *Somerset* decision made it illegal to hold slaves taken there. And, he continued, “the jurisdiction which prohibits slavery is much stronger in behalf of the slave within it than where it only does not authorize it.”<sup>63</sup> McLean implied that if the laws of England freed slaves upon arrival, then so should the laws of the US territories, which prohibited slavery. On the power of Congress to prohibit slavery in the territories, he contextualized the passage in question and argued that the Missouri Compromise was consistent with the Northwest Ordinance of 1787, the enactment of which rested on an act of Congress under the Constitution, even though it was drafted under the Articles of Confederation. McLean also outlined state Supreme Court decisions, mostly from Missouri, which showed that the common law that made Scott free in free regions protected his free status in slave regions. *Dred Scott v. Emerson*, McLean concluded, had “overruled the settled law for

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<sup>61</sup> Ibid., 533.

<sup>62</sup> Ibid., 536.

<sup>63</sup> Ibid., 548.



near thirty years,” which, along with its failure to take into account the Missouri Compromise and the Illinois Constitution, led him to dismiss that ruling.<sup>64</sup>

Throughout this portion of his opinion, McLean grounded his reasoning in historical evidence. He noted that “it is refreshing to turn to the early incidents of our history and learn wisdom from the acts of the great men who have gone to their account.”<sup>65</sup> Like Taney, McLean valued legislative actions deemed continuous with the founding, but he also valued the consistency of post-founding judicial decisions. He upheld case law as constitutional, but placed emphasis on the sequential nature of these rulings rather than on the continuity between them and the founding, and in this instance, then, he privileged the interpretive value of history’s diachronic mode. Without the primacy of the Constitution, appeals to common law’s consistency valued continuity. In light of the founding moment, however, McLean’s appeal valued change as well.

As both sides appealed to original intent, both sides also held exalted views of the framers and aimed to extract and apply the venerable ideas found in the sacralized Constitution. Filiopietism, though, permitted multiple readings. The Constitution gave power to reclaim fugitive slaves, but, McLean argued, the right to a slave as property was municipal. He insisted, as a number of moderate and radical antislavery constitutionalists had, including Lincoln, that “we know as a historical fact that James Madison, that great and good man ... was solicitous to guard the language of that instrument so as not to convey the idea that there could be property in man.”<sup>66</sup> McLean viewed the slave trade

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<sup>64</sup> Ibid., 555.

<sup>65</sup> Ibid., 545.

<sup>66</sup> Ibid., 537. On Madison’s position, see Rakove, *Original Meanings*, 91. Although the framers never used the word slavery in the Constitution, David Waldstreicher suggests that 11 of the 84 clauses either directly or indirectly address

and slave trafficking as relics from a bygone era and condemned interpretations which appealed to an outdated past. “I prefer the lights of Madison, Hamilton, and Jay as a means of construing the Constitution in all its bearings, rather than to look behind that period into a traffic which is now declared to be piracy, and punished with death by Christian nations.”<sup>67</sup> McLean’s teleological sense of historical development, which was reminiscent of Joseph C. Warren’s depiction of a dark pre-framing era, contained more than a hint of exceptionalism, but it also corresponded with a view of the framers as creating a Constitution amenable to change. In contrast to Peter Daniel’s denial that the Revolution had implications for social relations, McLean, again echoing antislavery arguments, wrote that “our independence was a great epoch in the history of freedom, and while I admit the Government was not made especially for the colored race, yet many of them were citizens of the New England States, and exercised, the rights of suffrage when the Constitution was adopted, and it was not doubted by any intelligent person that its tendencies would greatly ameliorate their condition.”<sup>68</sup> McLean had his eye on the founding era, but also on the founders’ and even the ratifying citizens’ view of the future. He explained how several of the new states abolished slavery in their jurisdictions, which confirmed the “well known fact that a belief was cherished by the leading men, South as well as North, that the institution of slavery would gradually decline until it would become extinct.”<sup>69</sup> Such original expectations demanded that subsequent interpreters give the Constitution a new construction.

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slavery, all of which, save one, protects the practice. The exceptional clause points to a potential future power that might end slavery. Waldstreicher, *Slavery’s Constitution*, 3.

<sup>67</sup> *Scott v. Sandford*, 60 US, 537.

<sup>68</sup> *Ibid.*, 537.

<sup>69</sup> *Ibid.*, 538.

However, new contingencies arose, including the “increased value of slave labor, in the culture of cotton and sugar,” which “prevented the realization of this expectation.”<sup>70</sup> In stark contrast to William Scott’s description of the rise of abolitionism as unfortunate change, McLean ascribed unfortunate change to the same sources as Parker and Lincoln, citing corrupt interests and the “degradation of negro slavery in our country.”<sup>71</sup> Instead of emphasizing the supposed degraded state of blacks as a number of the justices had, the dissenters stressed the degraded nature of “negro slavery,” which had hindered expected increases in egalitarian sentiment and commensurate legislation. Similar to Taney, McLean argued that historical change might obscure original intent, or, in this case, original expectation, though he described such corruption as a decline of rather than a rise in egalitarian sentiment. However, McLean also held that the inevitability of historical change, as an interpretive lens gifted by the founders themselves, might reveal as much as it might obscure. Brushing aside unexpected change in the form of proslavery consolidation, then, illuminated original expectation in the form of the framers’ expectations of slavery’s demise. McLean’s juxtaposition of expected and actual developments drew attention to historical contingency and distance.

*“The Great Truths They Asserted on That Solemn Occasion, They Were Ready and Anxious to Make Effectual”*: Benjamin Curtis and an Original Expectation of Change

Reaching sixty-nine pages, Curtis’s dissenting opinion, comparable in length only to Taney’s fifty-four-page decision, covered much of the same material as McLean’s. It began with an examination of the plea, an inference of which he found problematic:

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<sup>70</sup> Ibid.

<sup>71</sup> Ibid., 537.

“That the plaintiff himself was a slave at the time of action brought is a substantive fact having no necessary connection with the fact that his parents were sold as slaves.”<sup>72</sup> Curtis summarily undermined the conflation between black slaves of the Revolutionary past and their living and possibly free descendants. He proceeded to address the actual question raised by the plea of whether one’s ancestral tie to slaves invalidated claims to citizenship. Curtis argued that states retained the right to determine citizenship under the Constitution and because the Confederation could not grant citizenship, state citizenship constituted federal citizenship, and thus citizens of states became federal citizens at the founding. So, in a number of states, free blacks gained US citizenship at birth. While dismissing as unfounded the fear that citizenship would lead to full civic equality, as made clear in the case of minors and women, Curtis concluded that “in some of the original thirteen states, free colored persons,” who descended from slaves, “were citizens of those States,” voted at the time of ratification, and had the right to sue.<sup>73</sup> Thus he proved incorrect the plea that no person descending from African slaves can be a citizen. Rather than conflate Scott with his enslaved ancestors, Curtis linked him to the contingent potential that blacks at the founding could be either slave or free.

In focusing on the relationship between blacks and their ancestors, Taney had broadened the terms of debate. In turn, he and a number of the other justices provided official sanction, not only to proslavery interpretations of the Constitution, but also to racist ideas about blacks from the past and the present. However, the new focus also allowed the dissenters to give weight to antislavery readings of the Constitution focused on original expectations, to demonstrate that free blacks had voted as citizens during

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<sup>72</sup> Ibid., 564-633, quotation on 569.

<sup>73</sup> Ibid., 575.

ratification, and to attack as immaterial racist assumptions about whether blacks made good citizens. As Stuart Streichler notes, “when Justice Curtis placed blacks at this extraordinary moment in American constitutional history—this novel exercise in republican government, with sovereignty exercised by the people in an unprecedented manner—he effectively repudiated the racist rationale for excluding blacks from political participation in the ordinary acts of government.”<sup>74</sup> The nature of the debate further allowed McLean and Curtis to consider the framers’ original expectations about the place of African Americans in America’s future and both believed that historical research showed that the framers had anticipated beneficial changes for blacks.

In an interesting aside, Curtis distinguished between what he viewed as facts—that “free colored persons, before and after the time of the formation of the Constitution, were citizens”—and what he understood as opinions irrelevant to deciding the case at hand.<sup>75</sup> He would not “enter into an examination of the existing opinions of that period respecting the African race, nor into any discussion concerning the meaning of those who asserted, in the Declaration of Independence, that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.”<sup>76</sup> While casting this particular historical discussion as superfluous, Curtis still felt obliged to offer his

own opinion ... that a calm comparison of these assertions of universal abstract truths and of their own individual opinions and acts would not leave these men under any reproach of inconsistency; that the great truths they asserted on that solemn occasion, they were ready and anxious to make effectual, wherever a necessary regard to circumstances, which no statesman can disregard without producing more evil than good, would allow; and that it would not be just to them

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<sup>74</sup> Streichler, *Justice Curtis*, 130.

<sup>75</sup> *Scott v. Sandford*, 60 US, 575.

<sup>76</sup> *Ibid.*, 574.

nor true in itself to allege that they intended to say that the Creator of all men had endowed the white race, exclusively, with the great natural rights which the Declaration of Independence asserts. But this is not the place of [*sic*] vindicate their memory. As I conceive, we should deal here not with such disputes, if there can be a dispute concerning this subject, but with those substantial facts evinced by the written Constitutions of States and by the notorious practice under them.<sup>77</sup>

Curtis agreed with McLean about the Revolutionary period's egalitarian "tendencies" but, in essence, conceded that had Jefferson meant to include those of African descent in the designation "all men," the founders well might have, in Taney's words, "received universal rebuke and reprobation," thus "producing more evil than good." And yet, Curtis thought that the founders' conscious "regard to circumstances" signaled their desire to "make effectual" the egalitarian principles for all Americans, including blacks, when circumstances allowed. In essence, Curtis's reading of the Constitution, which he seemed content to read in light of the Declaration, matched antislavery readings of the New Testament, including those of William Channing and Francis Wayland, and Lincoln's reading of the Declaration, each of which stressed the expediency of their authors. He contradicted Taney's interpretive directive to dismiss changes in popular sentiment when it could be shown that the framers expected those changes. In other words, precisely because they anticipated alterations to their historical setting, changes in that context should allow their descendants to adapt the meaning of the Constitution's language to the circumstances of the times. Indeed, although Curtis did not believe that all change, including proslavery advances, should inform construction, he applied his understanding

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<sup>77</sup> Ibid., 574-75.

of common law to the Constitution, holding that in general terms constitutional application should evolve in relation to historical development.<sup>78</sup>

Following his discussion of the plea, Curtis shifted attention to the questions of Scott's status and Congress's powers. As with McLean, he cited decisions showing that "in the absence of positive law to the contrary," Missouri common law should comply with "foreign [state] laws" prohibiting slavery, regardless of "any impressions it may have that a change in foreign opinion and action on the subject of slavery may afford a reason why the State should change its own action."<sup>79</sup> In direct opposition the prior ruling of Missouri's Judge William Scott and in agreement with Missouri's dissenting Judge Hamilton Gamble, Curtis argued that comity was not a matter of "discretion" to be "controlled by circumstances."<sup>80</sup> Although he believed that the Constitution should adapt in relation to expected, natural and sustained developments, Curtis believed that temporary excitements and political motivations should not lead to changes in constitutional application. And he, as with Lincoln, believed that sudden departures in terms of legislative and judicial decisions about slavery's extension had resulted from temporary excitements.

In dealing with Scott's status, Curtis further argued that, coupled with his residence in a free region, Scott's marriage to Harriet equated to irrevocable emancipation on the part of John Emerson. Regarding the powers of Congress, Curtis stressed the importance of attending "to some facts respecting this subject which existed

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<sup>78</sup> On Curtis's historical and constitutional argument regarding black citizenship and his sense that "law was not necessarily an obstacle but rather a framework for change," see Streichler, *Justice Curtis*, 125-34, quotation on 134.

<sup>79</sup> *Scott v. Sandford*, 60 US, 594.

<sup>80</sup> *Scott v. Emerson*, 15 Mo., 586.

when the Constitution was framed and adopted,” an approach which would “shed much light” on the issue.<sup>81</sup> Like McLean, he aimed to evidence the Convention’s familiarity with the Northwest Ordinance and while allowing that the clause referred to immediate concerns, he argued that it was also meant to apply to later land acquisitions. In Curtis’s reading, the drafters of the Constitution attended to present circumstances while also making provisions for future developments. Similar to biblical interpreter Moses Stuart, he coupled historical with grammatical interpretation, noting that “there is not, in my judgment, anything in the language, the history, or the subject matter of this article which restricts its operation to territory owned by the United States when the Constitution was adopted.”<sup>82</sup> In response to the claim that the territorial powers granted Congress excluded legislation on slavery, Curtis argued that “when the Constitution of the United States was framed and adopted, the allowance and the prohibition of negro slavery were recognised subjects of municipal legislation” before adding, in reference to the intent of the congressional clause, that “the allowance or the prohibition of slavery comes within the known and recognised scope of that purpose and object.”<sup>83</sup> As proof, he traced eight instances in which Congress had prohibited slavery and six in which it had allowed slavery, citing examples stretching from the presidency of George Washington to that of John Quincy Adams, “including all who were in public life when the Constitution was adopted.”<sup>84</sup> Again, like Taney, Curtis valued historical continuity: “If the practical construction of the Constitution contemporaneously with its going into effect, by men intimately acquainted with its history from their personal participation in framing and

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<sup>81</sup> *Scott v. Sandford*, 60 US, 605.

<sup>82</sup> *Ibid.*, 612.

<sup>83</sup> *Ibid.*, 616.

<sup>84</sup> *Ibid.*, 619.



adopting it, and continued by them through a long series of acts of the gravest importance, be entitled to weight in the judicial mind on a question of construction, it would seem to be difficult to resist the force of the acts above adverted to.”<sup>85</sup> Curtis used historical argumentation to contend that legislation since ratification corresponded with the framers’ original intention that the clause referring to congressional power include decisions relative to slavery and extend to territories acquired in the future.

Pausing on this point, Curtis censured what he viewed as a new reading resulting from political passion. He outlined three political responses to the question, including an antislavery argument positing that Congress can prohibit but not establish slavery in the territories, the popular sovereignty position, which would leave the decision up to the people who inhabit a territory, and the proslavery argument that slaveholders can take slaves into any territory without fear of being deprived of their property. Each of these arguments denied Congress power either to allow or to prohibit slavery in the territories. “The question” was whether such arguments “are sufficient to authorize this court to insert into this clause ... an exception of the exclusion or allowance of slavery not found therein.” Because he believed that the framers had been clear on the clause’s present and future purpose, Curtis demanded a strict reading and application. To introduce an exception into the Constitution, “upon reasons purely political, renders its judicial interpretation impossible.”<sup>86</sup> Curtis explained, “Political reasons have not the requisite certainty to afford rules of judicial interpretation. They are different in different men. They are different in the same men at different times. And when a strict interpretation of the Constitution, according to the fixed rules which govern the interpretation of laws, is

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<sup>85</sup> Ibid.

<sup>86</sup> Ibid., 620.

abandoned, and the theoretical opinions of individuals are allowed to control its meaning, we have no longer a Constitution.”<sup>87</sup> In such cases, government becomes “an exponent of the will of Congress,” or “of the individual political opinions of the members of this court.”<sup>88</sup> If “the Constitution itself” or “the history of this provision” showed intent on the part of the framers and ratifiers to introduce an exception, Curtis must carefully weigh “such considerations. . . . But where the Constitution has said *all* needful rules and regulations,” he required something other than volatile “abstract political reasoning” to alter his construction.<sup>89</sup> Curtis implied that he would have also dissented if the Court had sanctioned the antislavery contention that Congress could prohibit but not allow slavery in the territories, but his historical narration tracing restrictions on slavery’s extension from the founding era suggested that he might have accepted that reading as consistent with the framers’ and ratifiers’ intent and with the continuous practice of government. Political interests and, it seems, the prospect of a broad dissent motivated Taney’s historically based decision. Perhaps he had perceived that Curtis planned on making a historical argument. Perhaps Curtis’s historical argument only came in response to Taney’s decision. Regardless, that decision led Curtis to fault the Court not only for what he described as a politically motivated ruling, but also because he understood those motivations and that ruling to be deviations from original meanings and subsequent practices consistent with those meanings.

Restating his position, Curtis found it “rational to conclude” that because “they who framed and adopted the constitution” were aware of the municipal legality of slavery

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<sup>87</sup> Ibid., 620-21.

<sup>88</sup> Ibid., 621.

<sup>89</sup> Ibid., 621, 623.

“it was their intention to leave to the discretion of Congress what regulations, if any, should be made concerning slavery therein.”<sup>90</sup> Clearly, Curtis, as well as McLean, aimed to recover the Constitution’s treasured timeless meanings, and to draw on legislative acts and judicial decisions continuous with the period in which the framers had crafted it. But, in the view of these dissenters, some of those timeless meanings allowed for and even required that the Constitution to evolve with historical development.

In both the decision and the dissent the justices recognized the reality of temporal change and historical distance, but the two sides valued these realities differently. Taney argued that some constitutional passages referred strictly to temporary and local concerns—such as that conferring upon Congress power in the territories—thus rendering unconstitutional subsequent legislative uses of those clauses. On the surface this reading seems to prescribe interpretational changes in relation to historical developments, but in fact it proscribes these changes by implying that the framers had not made provisions for such developments, including, in this instance, new land acquisitions. In essence, the clause still applied, but in the negative: because the passage did not positively grant Congress power over slavery in territories subsequently acquired, succeeding use of that power was unconstitutional. In such cases, provisions that the framers did make for the future, including the protection of individual property rights, came into play. Historical change, in short, must not lead to changes in constitutional interpretation or application, but must yield to static meanings.

In contrast, McLean and Curtis opined that the framers crafted the Constitution with an awareness that the future might, owing to historical changes—such as expected

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<sup>90</sup> Ibid., 625.

land acquisitions or shifts in public opinion—require new interpretations, or, more specifically, new constructions. There was not the full-blown living constitutionalism that emerged much later, but rather an appeal to original intent wherein the framers’ conceived of the potential need for a constitution adaptable to temporal changes and amenable to new circumstances. The amendment mechanism, which Taney referenced, spoke to the future-oriented nature of the framers’ project and of law-making in general. And yet, the prospect of emendation called for interpretive restraint. Precisely because a mechanism existed for official changes in the form of amendments, informal changes in the form of new interpretations and constructions seemed illegitimate.<sup>91</sup> But there had not been an amendment since 1804, and the two that followed the 1789 Bill of Rights seemed more like administrative alterations than drastic constitutional changes, which suggested that weighty formal emendations were a thing of the past. Perhaps the growing gap since such changes, like the historical distance from the founding era, opened up space for interpretive freedom. The dissenters’ opinions implied that if one found that the framers created a document with an expectation of change then the main text of the Constitution could and should, of necessity, be molded to the exigencies of the times in which it persisted. Indeed, in this formulation, endurance depended on adaptability. This kind of an appeal to original intent countenanced and even required a Constitution amenable to change, or, at least, to expected changes.

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<sup>91</sup> On this idea, see Donald Lutz, “Toward a Theory of Constitutional Amendment,” in *Responding to Imperfection: The Theory and Practice of Constitutional Amendment*, ed. Sanford Levinson (Princeton, NJ: Princeton University Press, 1995), 237-74. For an insightful application of this theory to antebellum Biblicism and the appeal to a speaking God, see David F. Holland, “Sovereign Silences and the Voice of War in the American Conflict over Slavery,” *Law and History Review* 26 (September 2008): 571-94.

As noted above, searching out an original expectation of change tends to qualify or dismiss its interpretive value. The justices revered and upheld the Constitution; and their historical arguments, far from undermining its present applicability, aimed to illuminate its original meaning for contemporary use. While one side dismissed change as irrelevant because it was inconsistent with original meaning, intent, and understanding, the other posited the importance of change because it was grounded in the framers' original expectations. Both sides, though, highlighted historical change in tracing deviations from original intent and original expectation, respectively. Taney's earnest attempts to set aside perceived deviations from original ideas (e.g. shifts in public opinion to more egalitarian views about blacks) and to collapse the time between the present and the founding era to reclaim those ideas attested to the realities of historical change and distance. Similarly, when present circumstances seemed to contradict the original expectations of change identified by Curtis and McLean (i.e. when the period saw the rise of the Slave Power instead of witnessing slavery's demise and when the Court relied on emerging proslavery political stances to craft innovative readings of the congressional clause) it also drew attention to temporal vicissitude and dislocation. These contestations highlighted historical contingency and, regardless of their view of change, when both sides discussed and dealt with it in opposing ways it exposed the reality of the historical distance separating the founding era from their present. The relatively short time between the two periods protected the revered Constitution from widespread cries of obsolescence, but such discussions raised questions about its relationship to temporal evolution, which, in turn, cultivated a realization that changes since the founding era had created a vast temporal gap between present and favored past.

While McLean and Curtis grounded their positions in historical arguments, both also appealed, if only once or twice, to the kind of legal and extra-legal reasoning that some antislavery thinkers embraced in their attacks on the Slave Power. The dissenters seemed to follow Lord Mansfield's condemnation of slavery as "so odious, that nothing can be suffered to support it, but positive law."<sup>92</sup> Curtis echoed Mansfield in stating that "slavery, being contrary to natural right, is created only by municipal law."<sup>93</sup> McLean agreed that "all slavery has its origin in power, and is against right."<sup>94</sup> Slavery, in their view, as with Lysander Spooner's, contradicted natural law, and thus was only protected by local law.<sup>95</sup> The appeal to abstract truths, used by slavery's opponents to supplement or cast aside traditional sources of religious, moral, political, and legal reasoning, also found its way into more orthodox settings. McLean contended that "a slave is not a mere chattel. He bears the impress of his Maker, and is amenable to the laws of God and man, and he is destined to an endless existence."<sup>96</sup> McLean's statement seemed to suggest that while prior circumstances had placed blacks in an unfavorable position in relation to divine and human laws, their static and universal connection to the divine meant that changes in historical circumstances could alter blacks' relationship to the laws of God and man. Even though the thrust of the dissenters' opinions was moderate, McLean seemed to suggest that not only did Scott and his fellow African Americans, free and

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<sup>92</sup> *Somerset v. Stewart*, Lofft 1, 540 (1772).

<sup>93</sup> *Scott v. Sandford*, 60 US, 624.

<sup>94</sup> *Ibid.*, 538.

<sup>95</sup> On appeals to natural law in antislavery constitutionalism and, more specifically, for a discussion of McLean's frequent use of natural law in his dissenting opinion, see Justin Buckley Dyer, *Natural Law and the Antislavery Constitutional Tradition* (New York: Cambridge University Press, 2012). See also, Kunal Parker, *Common Law*, 168-218.

<sup>96</sup> *Scott v. Sandford*, 60 US, 550.

enslaved, possess the potential for citizenship, which both historical and extra-historical sources revealed, but developments indicated that the requisite circumstances were now, or soon would be, in place for the realization of that potential.

*“It Was an Inconsistency ... Which It Was Supposed the Progress of Events Would Remove:” The Antislavery Response and the Revolutionary Past as an “Epoch for All Coming Time”*

Such circumstances depended, in part, on the public response. The Republican press did not wait for the decision to denounce the Court. In the spring of 1856, a few northern newspapers learned that the ruling would, in all likelihood, not favor Scott and began their attack in advance. Before and after the decision, detractors leveled their assaults on the Court, depicted as overreaching and conspiratorial, rather than the specifics of the decision. The historical debate between Taney and Curtis continued with the publication of the dissenting opinions and the revision and publication of the Chief Justice’s decision, which he bolstered with historical evidence. However, newspapers like Horace Greeley’s *New York Tribune* focused on the decision’s breadth instead of its content.<sup>97</sup> Rather than attend to the question of citizenship or the authority of precedent, the Court’s critics determined that Taney’s ruling on the territorial question was unwarranted. One historian suggests that this allowed Republicans who were eager to disassociate themselves from radical abolitionists to damn much of the opinion as dicta

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<sup>97</sup> See, for example “The Dred Scott Case,” *New York Daily Tribune*, 9 March 1857, 5 (APSO). On the post-decision back and forth and the historical aspects of Taney’s revisions, see Fehrenbacher, *The Dred Scott Case*, 315-321; and Allen, *Origins of the Dred Scott Case*, 203-8.

without appearing to dismiss the law *in toto*.<sup>98</sup> A number of southern and northern Democratic newspapers heralded the opinion and, to the chagrin of the Republicans, tied criticism of the Court with that of the Constitution. The *Iowa State Democrat* concluded that the Republicans “hate the Constitution, the Bible, and God.”<sup>99</sup> The polemical and political nature of the response worked against a close examination of the decision, but some critical observers took notice of its historical components.

Most legal respondents focused on the jurisdictional and territorial questions, the latter of which raised historical issues that Thomas Hart Benton, a rare antislavery Democrat, addressed in his lengthy *Historical and Legal Examination* (1857). Benton agreed with Taney that the clause on congressional power referred specifically to the disposal of public lands held at the time of ratification, but he directly countered the Chief Justice in dismissing the importance of the constitutional debate and positing that historical evidence demonstrated Congress’s repeated use of power in the territories. That fact sanctioned Congress’s continued use. Benton highlighted the importance of historical continuity, not from the period of the Constitution’s creation and ratification, but from the first instances in which Congress asserted its territorial powers. The issue rested in federal government’s sovereignty rather than the Constitution’s meaning. In appealing to congressional action rather than original meaning, intent, understanding, or expectation, the aged Benton—he died at the age of 76 in April of 1858—showed that he was out of step with his contemporaries’ emphasis on contextual readings of the Constitution. He largely left unattended the question of whether or not the Constitution forbade or warranted a new construction resulting from change. In making the issue non-

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<sup>98</sup> Potter, *The Impending Crisis*, 281-85.

<sup>99</sup> *Iowa State Democrat*, 17 March 1857.



constitutional, however, his examination suggested that on this question, and perhaps on others as well, legal scholars needed to look to post-founding extra-constitutional developments for direction. Benton's argument called into question the Constitution's reach and scope, though he had no intention of casting it on the scrap heap of history.<sup>100</sup>

After *Dred Scott*, however, more abolitionists were ready to follow Garrison and Phillips in challenging aloud the relevance of a tired old document in the vibrant new nineteenth century. Such responses arose most comfortably among those whose reliance on abstract sources of truth extended far beyond McLean's brief appeal to divine law. For example, the *Oneida Circular*, a product of John Humphrey Noyes's perfectionist community, was among the first papers to respond to *Dred Scott* by tossing aside the Constitution in favor of a higher guide. Back in 1854, the paper had joined with figures such as Parker and Douglass in critiquing the "undue veneration for the codes and formulas of our forefathers" and, with Garrisonians, assented to the position that the Constitution should bend to the dictates of man rather than the reverse.<sup>101</sup> In its March 1857 issue, it perceived that "there is an instinct for broader freedom growing in the country, than that which became embodied in the Constitution of the United States. Musty precedent and time-honored institutions," it contended, "have not stood, and in the long run cannot stand, against the instinct of freedom."<sup>102</sup> The outdated Constitution and the antiquated slave institution would give way to the voice of the people and the progress of freedom. In the same issue, another writer observed that "all profess to venerate that instrument, and worship the same long list of saints of the American

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<sup>100</sup> For an analysis of the public response to the decision see Potter, *The Impending Crisis*, 280-87; and Fehrenbacher *The Dred Scott Case*, 417-31.

<sup>101</sup> "The Constitution," *Oneida Circular*, 1 April 1854, 51 (APSO).

<sup>102</sup> A. B., "Slavery Nationalized," *Oneida Circular*, 19 March 1857, 34 (APSO).

calendar who made it. And yet,” the perfectionist continued, “that same instrument, in plain words ... binds each State, through all time, to respect all the laws that every other State may make to hold men to service.” Rather than attempting to salvage the Constitution and its creators by proposing formal or informal emendation, the author contended that “if the ‘Expounders’ of the Constitution would cease their quarrel about its meaning, and begin to criticize the instrument itself, and the virtues and talents of the men who made it, there would be more hope of progress, if not of peace.”<sup>103</sup> A growing number of higher-law idealists were ready to accept as historically sound the proslavery interpretation and then dismiss the Constitution, its creators, and their views as outdated.

As expected, Garrison’s *Liberator* also gave voice to critics of the nation’s founding document, some of whose patience with the appeal to legal means had worn out. In May, it published the proceedings of the AASS’s recent annual meeting in New York City, which featured speakers such as Garrison, Wendell Phillips, Thomas Wentworth Higginson, and Robert Purvis. Even though he decried Taney’s decision as marked by “a daring disregard of all historical verity” and “a wanton perversion of the Constitution of the United States,” Garrison outlined the proslavery nature of the document and traced the history of its proslavery use before reaffirming that it “is nothing better than ‘a covenant with death and an agreement with hell.’”<sup>104</sup> Higginson was less ready to damn the Constitution, but only because he believed it could be used as a means to an end. “Give us a Supreme Court that is favorable to liberty,” he declared, “and the Constitution is an anti-slavery document to-morrow.” His approval of interpretive

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<sup>103</sup> H. N. L., “Is Slavery National?” *Oneida Circular*, 19 March 1857, 35 (APSO).

<sup>104</sup> “Twenty-Fourth Annual Meeting of the American Anti-Slavery Society,” *Liberator*, 22 May 1857, 81 (APSO).

relativism stood in stark opposition to Curtis's critique of the Court's politically motivated decision. Unsurprisingly, Higginson approved of whatever methods needed to achieve emancipation, "Constitution or no Constitution."<sup>105</sup> Purvis, an African American abolitionist who helped Garrison found the AASS in 1833, viewed "the doctrine of the anti-slavery character of the American Constitution" as "one of the most absurd and preposterous that ever was broached. It is so contrary to history and common sense."<sup>106</sup> Phillips, directing his comments to antislavery constitutionalists, expressed a desire to "exercise" the "timidity" of "a set of men who are exceedingly tender of the flower-pot—the Constitution."<sup>107</sup> Two evening speakers, namely William H. Furness and J. R. W. Sloane, recognized the problem Phillips had highlighted. Furness noted that "the reverence existing in our day for the Constitution and the Union is like that of the ancient Jews for the Temple."<sup>108</sup> Sloane lamented that a "man who had sworn to support that instrument could recognize no higher law" but must "either to obey the Constitution and disregard his conscience, or obey his conscience and forsake the Constitution."<sup>109</sup> This group left no doubt about which source held their allegiance.

On June 16, 1858, a group of African Americans in New Bedford dismissed Taney's decision as "a palpably vain, arrogant assumption, unsustained by history, justice, reason or common sense." This collection of "Colored *Citizens*" resolved to "neither recognize nor respect any laws for slavery, whether from Moses, Paul, or Taney. We spurn and trample them all under our feet as in violation of the laws of God and the

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<sup>105</sup> "Twenty-Fourth Annual Meeting," 81.

<sup>106</sup> *Ibid.*, 82.

<sup>107</sup> *Ibid.*, 83.

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

rights of men.” On this issue, at least, certain pasts, including the revered Mosaic and Apostolic pasts, no longer spoke to the needs of present. Still, with Frederick Douglass, the group held out hope for a constitutional resolution, resolving to “begin and continue to petition and memorialize Congress until our grievances are heard and redressed.”<sup>110</sup>

Although the Garrisonian reading of the Constitution rang out more loudly and more frequently than ever, it issued from ever more isolated venues. Rather than reject the Constitution as a proslavery instrument, most antislavery respondents to *Dred Scott* upheld it and its creators by reiterating the alternative antislavery historical accounts and again contending that the framers had expected change. This obviated the choice between conscience and Constitution. A number of Taney’s critics focused on the stark distinctions in historical understanding and argumentation between the Chief Justice and Curtis. While southerners upheld the decision as historically sound, their opponents dismissed Taney’s opinion and those of his concurring colleagues as historically faulty. One commenter, at least, even challenged Justice Peter Daniel’s appeal to the classical past.<sup>111</sup> Most centered their historical discussions on the founding era, its documents, and relevant developments since that period. They did so, in part, due to the belief that while few could follow legal reasoning, almost all could understand American history, and, as one newspaper writer put it, Taney’s decision “does not rest so much upon any

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<sup>110</sup> William C. Nell, “Meeting of Colored Citizens,” *Liberator*, 9 July 1858, 112 (APSO), emphasis mine.

<sup>111</sup> See, “Opinion of Judge Daniel, in the Case of Dred Scott,” *New Englander* 15 (August 1857): 345-65 (APSO). The author wrote of Daniel, “He has appealed to Roman institutions an analogy in support of what we believe to be bad law. We have shown that the analogy fails entirely,—in fact, that it is against him. We wish that he and all judges as well as statesmen, would study both ancient and mediaeval slavery, and the transition from it into freedom, with thoroughness and candor: we should have no fear what would be the result” (365).

interpretation of the law as it does upon a construction of the facts of history.”<sup>112</sup> Taney had made constitutional interpretation as much a matter of history as of law, and most respondents, including dissenters, met him on those grounds, grounds that a growing number of commentators felt comfortable surveying. The nature of Taney’s reasoning allowed abolitionist papers like *The Independent*, a New York weekly, to argue that the decision contradicted “the notorious facts of history.”<sup>113</sup> In rebutting Taney, critics followed Curtis’s contention that free blacks were citizens at the founding and further proposed that the period saw an evolution in public sentiment with respect to African Americans.

In May of 1857, *Putnam’s*, a New York monthly literary magazine, carried an article that put forth the central critiques of those aiming to uphold a static antislavery view of the founding era. Following the contention that the case rested more in historical facts than in legal reasoning, the author countered Taney’s portrayal of the founding era in asserting that “no period in the world’s development has won for itself a more distinct and signal character than the latter half of the eighteenth century.”<sup>114</sup> As William Goodell had, the writer saw the Revolutionary period as an egalitarian age. In particular, the piece referred to the growing application of “the ideas of human rights” and designated 1776 as “an epoch for all coming time.”<sup>115</sup> A writer for the *National Era*, a Washington based abolition paper, agreed, labeling “the Revolutionary era” as “an Antislavery era: an era in

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<sup>112</sup> “History, as Expounded by the Supreme Court,” 541. In a published letter to Taney, Joshua R. Giddings made a similar statement in writing that “the inquiry into the views of those who framed the Declaration of Independence is more properly a matter of history than of law.” “Letter from Hon. Joshua R. Giddings to Judge Taney,” *Liberator*, 3 April 1857, 54 (APSO).

<sup>113</sup> “Can Judges Make Law!” *Boston Independent*, 19 March 1857, 4 (APSO).

<sup>114</sup> “History, as Expounded by the Supreme Court,” 538-48, quotation on 542.

<sup>115</sup> *Ibid.*, 543.

which the Public Opinion in all the Colonies, except Georgia and South Carolina, was as repugnant to the idea of property in human beings, black or white, as it is now in the Free States of this Union.”<sup>116</sup> While recovering static Revolutionary ideals, these articles echoed histories like those of George Bancroft in positing pre-Revolutionary progress toward an epochal break. The author of the Putnam article further complained that Taney “post-dates the period of the black-plague which ravaged human conscience by a half century at least; just as the spirit of his decision is a whole century behind his own times.”<sup>117</sup> It seemed that, not only did Taney’s historical account contain anachronisms, but his decision itself was anachronistic. This author went beyond figures such as Parker and Douglass in conflating the Revolutionary era with the nineteenth century, but he joined them in positing that the Chief Justice’s opinion stood in direct opposition to the antislavery spirit of the age.

Incorporating and expanding a major component of the antislavery constitutional readings that had emerged during the previous two decades, the writer proceeded to trace “changes in opinion in regard to slavery” from the sixteenth century forward, citing European and English developments before echoing previous writers in turning to revered statesmen such as Jefferson and Madison whose language in the Declaration and the Constitution suggested that they “looked towards a speedy and universal freedom.”<sup>118</sup> Going much further than Curtis had, the author proposed that Taney had misrepresented “the prevailing sentiment of the Fathers of the Republic and of the civilized world” and had also erred in “his special application of that sentiment to the exclusion of Africans

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<sup>116</sup> “Judge Taney Confronted by History,” *Washington (DC) National Era*, 19 March 1857, 46 (APSO).

<sup>117</sup> “History, as Expounded by the Supreme Court,” 543.

<sup>118</sup> *Ibid.*, 543, 546.

from the rank of citizens.”<sup>119</sup> As the dissenters had explained, historical evidence showed that voting restrictions were based on property ownership rather than color and that free blacks had voted as citizens to ratify the Constitution.<sup>120</sup> This historical review and revision aimed “to vindicate the truth of history, and, above all, to rescue the good names of our fathers and from abuse that immortal document—the Declaration of Independence.”<sup>121</sup> The desire to defend the founders differed from the arguments of abolitionist such as Parker and Douglass, though this stress on the Declaration, aimed to counter Taney’s usage, was symptomatic of the popular antislavery reading that placed the Constitution in the light of the Declaration’s universal promises. While holding onto the Constitution, this move harnessed the power that anti-constitutionalists like Garrison and Phillips found in the Declaration. As with some antislavery biblical readers, when historical research raised questions about canonical choices, some antislavery readers of the nation’s founding texts managed to retain a belief in the more troublesome document by reading it through the lens of the more helpful document. That process, however, could also lend credence to the decision among some to discard most teachings from the founding era as transient while locating fewer and fewer permanent truths in that presumably timeless favored past.

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<sup>119</sup> Ibid., 547.

<sup>120</sup> Even Orestes Brownson’s conservative New York paper held that free blacks were citizens of most states at the time of the founding and that “a strong opinion against the justice of negro slavery” emerged in this period. The Catholic paper lamented the ruling of Taney, a fellow believer. “The Slavery Question Once More,” *Brownson’s Quarterly Review* 2 (April 1857): 248-77, quotation on 275 (APSO). While advancing more radical views, Garrison’s *Liberator* published similar responses to the decision. See, for instance, “Colored Citizenship,” *Liberator*, 24 April 1857, 66 (APSO); “The Germans on the Decision,” *Liberator*, 24 April 1857, 67 (APSO); and “Speech of John A. Andrew,” *Liberator*, 26 March 1858, 49-50 (APSO).

<sup>121</sup> “History, as Expounded by the Supreme Court,” 548.

An article in a later edition of *Putnam's* also exhibited the common desire to assert the continued relevance of the founders and their most timeless statements. The author aimed not only to vindicate the names of the founding fathers but also to make some of them, specifically Jefferson and Adams, stand alongside Taney's antislavery critics. It asked: "Were they with us to-day, is there a doubt that they would unite in the most determined resistance to the effort ... to establish ... a custom which they considered to be wholly an evil, and for a speedy extirpation of which their hope was coordinate with their faith in the progressive civilization of mankind?"<sup>122</sup> A careful redaction of the framers' writings allowed the writer to conflate time and claim the continuity of antislavery sentiment. Just as Moses Stuart had called on the Christian and national founders to support the Fugitive Slave Law, this author called on the founding fathers to support abolitionism. Again, the traditional tendency to conflate historical distance from the favored past persisted. And yet, though less nuanced than the arguments of McLean and Curtis, the article also posited an original expectation that the extinction of slavery would parallel the predicted advance of American civilization. This insistence suggested that the author did not hope for a return to an era in which slavery was countenanced. Further, that the expectation of slavery's demise remained a potentiality rather than a realization called into question the nation's direction since the founding era and signaled dissonance and distance from that period.

Whereas some detractors depicted the Revolutionary period as "an Anti-Slavery era," others harnessed the other component of antislavery historical argumentation,

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<sup>122</sup> "A Short Exercise for the Fourth of July," *Putnam's Monthly Magazine of American Literature, Science, and Art* 10 (July 1857): 100-108, quotation on 108 (APSO).



narrating a tale of declension since that promising period, engaging not only the justices' debate of historical facts but also their sense of historical development. An article from the August edition of the New Haven antislavery *New Englander* critiqued Taney's decision in a review of the published report. Following Curtis, the author mustered historical evidence to establish both state and federal citizenship of free blacks under the Confederation and the Constitution. The writer, who later critiqued Taney for failing to distinguish between free and enslaved blacks, contended that the "*present* body of citizens of the United States is made up in part of the descendants of these original citizens, both white and black. The children of the original citizens were born citizens, and the same is true of their descendants down to the present time."<sup>123</sup> While Taney had conflated Dred Scott with enslaved blacks at the founding to posit his unfitness for citizenship, this writer brought together free blacks from that era with their free descendants in the present to assert their right to citizenship. And those citizens warranted protection, including the right to sue, under the immunities and privileges clause. "Historical facts," the author argued, formed the bedrock of this historical account and this interpretation of the Constitution.<sup>124</sup>

Turning to Taney's argument, the writer examined the various historical sources, beginning with the laws of the colonies, used by the Chief Justice to demonstrate black degradation. Like McLean, the reviewer dismissed this portion of the decision as irrelevant, noting that blacks were citizens despite such views, and proceeded to analyze the language of the Declaration and the Constitution. Rather than argue that the

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<sup>123</sup> "Negro Citizenship," *New Englander* 15 (August 1857): 478-526, quotation on 489 (APSO), emphasis in the original.

<sup>124</sup> *Ibid.*, 495, 503.

phraseology matched a growing antislavery sentiment, he proposed that “these great men were inconsistent. Their inconsistency, however, was precisely the inconsistency of all great, philosophical statesmen, whose views are in advance of the age in which they live, and the circumstances which surround them. Moreover, it was an inconsistency which was acknowledged at the time, but which it was supposed the progress of events would remove.”<sup>125</sup> Similar to antislavery biblical and constitutional interpreters who put forth arguments from expediency, the reviewer depicted the founders as ahead of their time in terms of their egalitarian sentiments. In essence, such readings suggested that the framers themselves ratified a sense of historical awareness and that a recognition of the limitations of the framers’ context required allegiance to a construction open to historical change. The author heralded the founders as hopeful prophets and posited an original expectation that events would result in the spread of inclusive and egalitarian principles. As with so many others, the writer found declension instead of progress, noting that Taney “speaks as if there had been a great change in this country in favor of the blacks, since the Revolution, so great that, while in 1776, the sentence that ‘all men are created equal,’ would of course be understood to mean only white men, now it would be understood to embrace the whole human family. We wish we could think so, but we believe the reverse is nearer the reality.”<sup>126</sup> Citing the disenfranchisement of blacks in several states, the author traced “a great apostasy ... from the opinions of the Revolutionary era.”<sup>127</sup> Instead of outlining an increase in liberal sentiment, which masked more racially exclusive original meanings, the writer, like Lincoln, rejected Taney’s

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<sup>125</sup> Ibid., 508.

<sup>126</sup> Ibid., 510.

<sup>127</sup> Ibid.

reference to the spread of antislavery thought and instead outlined a growth of prejudicial feeling, which obscured more inclusive original expectations.

The reviewer also examined Taney's appeal to state laws and found there an even greater "misapprehension of historical facts."<sup>128</sup> The writer perceived a presentist analysis in Taney's discussion of southern states, such as Virginia, and northern states, such as Connecticut. The author believed that the Chief Justice was a better politician than a historian, or, consequently, a constitutional interpreter, understanding him as "manifestly judging of the Virginia of the Revolution, and of the other slave states of that period, by the Virginia of to-day."<sup>129</sup> With respect to the North, the writer noted that free blacks had been citizens and even electors in Connecticut until 1818, before making a strikingly modernist critique of Taney's historical method, questioning, "is it not obvious that Judge Taney is interpreting past history with the feelings of the present?"<sup>130</sup> The availability of this critique depended on an awareness and even an assumption of historical distance.

While depicting Taney's historical argument as presentist, the author portrayed the framers as forward-thinking personalities who promoted advanced principles. Thus, the reviewer remained consistent in critiquing as misguided Taney's attempt to overlook the "plainest language of the Constitution" and determine "what *the circumstances of the case* show they must have meant," and then positing that "it is but fair to take into view the new emergencies which have arisen, and act as we are sure *they* would have acted if these circumstances had existed then."<sup>131</sup> The obvious implication of this statement was that different circumstances existed in 1857 than existed in 1787, but the author also

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<sup>128</sup> Ibid., 514.

<sup>129</sup> Ibid., 513.

<sup>130</sup> Ibid., 518.

<sup>131</sup> Ibid., emphasis in the original.

implied that if the framers had predicted the emergence of the Slave Power rather than expecting the advance and spread of egalitarian sentiment, they would have taken greater measures to ensure slavery's demise. The founders, despite their progressive ideals, were not prophets. Northerners, then, should feel secure in their allegiance to the founding generation by taking measures to abolish slavery themselves. The reviewer appealed to the framers' original intent and expectations as more important than the potentially obscuring original meaning and understanding, including the period's reigning racist sentiment. The author also held that change, in the form of corrupting proslavery ideology, suppressed those original expectations, in the form of progressive antislavery ideals. In attributing uniquely held egalitarian principles to specific historical figures and in tracing the failure rather than fruition of those principles, this account drew attention to the historical distance from the favored founding era that resulted not only from rot but also from the inevitable passage of time.

### *Conclusion*

By the spring of 1857, politicians looked to the Supreme Court to resolve the historical debate over the constitutionality of southern slavery. Dred Scott's case, like no prior legal development, led the Court to fixate on the Revolutionary past in an attempt to discern and explain the framer's original intent, the Constitution's original meaning, and the people's original understanding. The *Dred Scott* decision, as with no other event, led American observers and commentators to engage this historical debate.

Constitutionalizing issues was common in the antebellum era, but this issue, in particular, required a sustained struggle to ascertain the meaning of the founding era and founding-

era documents. As with biblical interpretation, most found what they were looking for in the founding period, the founders, and the Constitution. Most interpreters held that if one could only read the supreme legal text in the light of historical context, one could resolve the slavery issue now and for all time. This approach allowed for a surprisingly rich range of interpretations, just as it had in the biblical debates, the analysis of which reveals a spectrum of readings that exposed the presence of historical distance from the founding era even while limiting its interpretational value.

Justices and respondents on both sides of the widening sectional divide understood that the *Dred Scott* case was bound up with questions of history and time. Taney's decision verified and amplified the decidedly historical nature of the battleground that had been chosen in the constitutional debates over slavery of the preceding two decades. He used a historical argument to contend that the framers intended to deny African Americans federal citizenship then and in the future, to restrict congressional power to lands held at the time of ratification, and to protect private property in territories held or acquired for all succeeding time. These static and original meanings, supported by public understanding and legal decisions deemed continuous with the founding era, trumped the new meanings that subsequent discontinuous deviations, including shifting public opinion or new legislation, imposed on the Constitution. Historical distance was recognized but then dismissed in the name of legal truth. McLean and Curtis met Taney on the chosen historical grounds. They also sought to recover original meaning, intent, and understanding but their view included original expectation too, as they believed that the framers anticipated changes on such issues as the status of African Americans and territorial acquisition. The purpose of constitutional

construction was to rescue the permanent from the transient, as in biblical interpretation, but if one of the recovered permanent ideas included an openness to change, then the Constitution should be construed in the light of expected developments.

Although most critics condemned Taney's decision by dismissing the Court as conspiratorial or the ruling as overreaching, some addressed his constitutional construction and the historical questions it raised. Thomas Hart Benton concentrated on the territorial issue, which he made non-constitutional. He privileged successive post-founding congressional action over static constitutional meanings, thus valuing diachronic development over synchronic stasis. Most abolitionists focused on African American citizenship and attacked Taney's historical narrative of the Revolutionary era. They depicted the framers as crafting an antislavery Declaration and Constitution to an increasingly antislavery Western world. Such respondents appealed to static original meanings, as Taney had, but ones critical rather than supportive of the proslavery position. Their creative historical revisions made the founders look as much like contemporary northern abolitionists as Taney had made them look like contemporary proslavery southerners. This narrative implied that reversals had taken place since the founding era—which signaled a kind of historical change—but failed to account for those reversals.

Rather than paint with such broad strokes, some antislavery respondents, including the author of the article on "Negro Citizenship" in the *New Englander*, depicted the founding fathers as forward thinking in their antislavery positions—as creating an antislavery Constitution in spite of their proslavery constituents and audiences. This permitted these respondents to posit the failure of the founders' original expectation that

their egalitarian principles would find more adherents among later generations, a view obscured by an apostasy from these ideas. Historical progress should have spurred the growth of progressive sentiments, but decline incited the spread of old corrupting power relations. The founders' exceptional ideas remained hidden behind the common views of their contemporaries and descendants. Similar to the opinions of McLean and Curtis, this narrative valued changes that were consistent with original expectation while condemning those that deviated from that expectation. More than those who depicted the founding era as either a static proslavery or antislavery age, these narratives drew attention to historical distance even as they sought to collapse time and reclaim the rare pure and permanent principles that they located in the past.

In contrast to these positions, Oneida perfectionists and Garrisonian abolitionists, even while condemning Taney's narrative as a perversion of history and a misreading of the Constitution, grew louder in dismissing the Constitution as an outdated creed that was unable to keep up with the march of freedom's progress. They insisted that the document was created and functioned as a proslavery legal text and that it stood in the way of freedom. A timeless conscience trumped a time-bound Constitution. Their appeal to the Declaration's universal assertions and the Revolution's immediacy was an attempt to snatch universal truths from the clutches of a past, the pastness of which seemed more and more clear. In their case, the realization of historical change and distance did not inform constitutional interpretation, it made the interpreted text irrelevant.

None of the pro-constitutional approaches fully valued change as a viable interpretive tool. Taney cast changes that were inconsistent with his conception of founding-era ideas as confusing to construction. Most abolitionist critics discovered

antislavery advocates where Taney had found proslavery proponents, which often had the effect of ignoring changes and collapsing temporal distinction. Even though McLean, Curtis, and a number of antislavery respondents pointed to the framers' original expectation of change, binding change to expectation undermined an appreciation of its contingent nature. Depicting change as positive or negative and measuring it as consistent or inconsistent with founding ideals qualified its interpretational value.

However, even attempts to dismiss change as irrelevant or efforts to value it only in relation to original expectations brought new attention to its existence as a historical reality. Indeed, although change more openly informed the decision in *Scott v. Emerson* than in *Scott v. Sandford*, and while radical abolitionists like Garrison more directly stressed the Constitution's time-bound nature than did the Court or the dissenters, *Dred Scott* held a unique potential to cultivate an awareness of historical change. Argued on a national stage, the opposing justices' contrasting identifications of deviations from the original intent, meaning, understanding, and expectations of historical figures from a set historical period uniquely spotlighted change and highlighted its contingent nature. The opposing emphases on deviations from the founding era, in terms of antislavery innovation and proslavery consolidation, drew more attention to the reality of historical change than the opposing foci on continuities, in terms of popular antislavery sentiment and proslavery government protection, from that same period. The call to disregard unwanted and unexpected change spotlighted its presence and signaled its power to divide the present from the past.

At times, the focus on negative change in *Dred Scott* and in the responses to that decision signaled a hope to return to the favored founding era and a belief in the



possibility of recreating the circumstances of that time. It certainly exhibited a desire to ignore changes in the application of the nation's sacred legal text. However, opposing arguments about the framers' intent and opposing narratives about developments since ratification belied the assumption that one could collapse time. That realization expanded as *Dred Scott* provided a public stage for pre-existing arguments and invited more participants to the debate, despite the Court's attempt to close the discussion. Some continued to ignore the historical differences between past and present or to insist on the need to view the founding era as either proslavery or antislavery and to then read the Constitution as a static text. However, the antislavery narrative stressing the framers' expectations of abolition eventually overwhelmed those readings. It granted slavery's presence in the founding era even as it called on nineteenth-century Americans to fulfill the framers' egalitarian expectations. Antebellum constitutional interpreters struggled to recover timeless legal truths from the Revolutionary past. That endeavor shed new light on historical change and drew unprecedented attention to historical distance.

## CONCLUSION

The foregoing narrative demonstrates that Roger Taney's *Dred Scott* decision is best understood against the backdrop of a climactic constitutional debate that partook of the same kind of historical argumentation characteristic of a protracted biblical debate.<sup>1</sup> The explosive constitutional crises of the mid-nineteenth century seemed a world apart from the genteel biblical discussions of the previous generation, but, in fact, the two discourses, which at times involved the same participants, engaged the same central conceptual riddle: what to do with history. And they both touched on the same ethical dilemma: what to do with slavery. Indeed, slavery created overlap between these discourses and made more acute the antebellum confrontation with history. Prior exposure to and engagements with biblical criticism and the resulting emphasis on a historical explication of the Bible created the preconditions for that development.

In the first decade of the nineteenth century, Joseph Stevens Buckminster departed from a traditional view of temporality that treated the Bible as perpetually contemporary and instead stressed reading biblical texts in their historical contexts, rejecting the assumption that each text and teaching was timeless. This emphasis brought new attention to historical difference and distance. However, when confronting the potentially incendiary issue of slavery, Buckminster ignored the distance that his reading revealed when he insisted on the relevance of Paul's directive that the fugitive return to his master. From the start, the issue of slavery was implicated in work that promoted historical awareness, but not always in clear or consistent ways. In succeeding decades,

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<sup>1</sup> For an analysis of Lincoln's response to *Dred Scott*, which includes a discussion of his understanding of the founding era promises as part of a process of fulfillment, see Burt, *Lincoln's Tragic Pragmatism*, 449-53.

the proclivity to collapse time—that is, to ignore historical distance in applying historical texts—persisted in both biblical exegesis and constitutional interpretation even as these readings brought new evidence of that distance to the fore. In light of that evidence, some abolitionists spotlighted historical distance and threw out the sacred religious and legal texts as obsolete. In either accentuating or dismissing the applicability of those texts on the question of slavery, a wide array of American figures began to take note of historical distance; some adopted the position that historical awareness was essential to correct interpretation, some doggedly insisted it was not, but whether they rejected historical awareness or embraced it, all had to deal with it. In using historical arguments either to preserve the sacred texts and sanction slavery or to abolish both the texts and the institution, many interpreters drew attention to the temporal gap separating nineteenth-century Americans from their most favored pasts. This demonstrates the emergence of a modern historical consciousness among a number of antebellum Americans in the form of an awareness of historical distance from periods with seemingly timeless appeal.

Alongside the opposed paths that either preserved or abolished both the sacred texts and slavery, historical awareness produced a middle path, one that preserved the sacred texts and abolished slavery. In the 1830s, religious thinkers such as William Channing and Francis Wayland conceded slavery's legal presence in the biblical past, but posited that the apostles had shown prudence by sowing the seeds of slavery's destruction. Moses Stuart also believed that Christian principles would ultimately cleanse America of slavery's stain, but cited the expediency of the apostles to condemn the immediacy of the abolitionists. In the 1840s, constitutionalists such as William Goodell and Lysander Spooner, even while they rejected the use of historical information as

extraneous, similarly averred that the founding fathers had crafted the Constitution with the expectation of slavery's institutional demise. Even abolitionists Theodore Parker and Frederick Douglass, who granted slavery's presence at the founding and proved willing to cast aside the sacred texts if necessary, maintained that those texts should adapt to meet the framers' antislavery expectations. Their historical readings highlighted historical distance to preserve the sacred texts and position them against slavery. In a culture that obsessively looked to the founding generation for its cues, these abolitionists described founding fathers who had anticipated significant historical change and expected that change to influence future interpretations of their work. These interpreters, then, argued that the Constitution must be read as a historically situated text and further proposed that because the framers themselves recognized that fact, they offered attentive nineteenth-century Americans a profound authorization to think historically. This kind of reasoning allowed these antislavery readers to continue to use the favored founding era. Abraham Lincoln's June 1857 response to *Dred Scott* owed much to this reading.

The decades of interpretive debates outlined in the foregoing chapters illuminates and explains the historical nature of that reading. Lincoln's contention that Taney's opinion rested "on assumed historical facts which are not really true," was symptomatic of the interpretive emphasis on context that had emerged in both biblical and constitutional interpretation.<sup>2</sup> Figures on all sides of the slavery issue had to deal in historical terms. In claiming that the Declaration's signers "did not mean to assert the obvious untruth, that all were then actually enjoying that equality," but did intend "to declare the *right*, so that the *enforcement* of it might follow as fast as circumstances

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<sup>2</sup> Lincoln, "Speech at Springfield," in *Collected Works*, 2:401.

should permit,” Lincoln built on antislavery efforts to locate within the Constitution an original expectation of the spread of the Declaration’s egalitarian ideals.<sup>3</sup> This was not an attempt to reclaim the present’s contemporaneity with a golden age but rather an assertion of an original expectation that change would produce different circumstances, ones in which original promises could be fulfilled. This position rested on the contention—hardly unique to Lincoln in 1857—that the founders had assumed that times would change and that new historical contexts would arise, introducing qualitative historical differences. *They* thought historically and so, Lincoln declared, must their nineteenth-century progeny. His attempt, on a national stage, to recover specific universal principles from an otherwise transient era drew unprecedented attention to the historical distance that separated America’s familiar and favored past from the present.

As this analysis has demonstrated, this was not a straightforward development. In some respects, the slavery debates created a longing for the past. Lamenting the spread of abolitionism or condemning the rise of the Slave Power could serve to further idealize the biblical and founding eras as favored pasts offering up timeless proslavery or antislavery truths. Simply identifying change, particularly in tracing decline, does not create awareness of the historical distance that results with the recognition that a past constitutes a distinct and unrecoverable temporal era. Indeed, insisting on decline often represents an effort to collapse historical distance and recover the prerogatives of the past. The contextual interpretations and historical narratives examined herein cultivated but also restricted a sense of historical distance when they posited that the biblical and

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<sup>3</sup> *Ibid.*, 2:406, emphasis in original. On Lincoln’s reading of the Declaration as a text with constitutional implications, see Neely, *Lincoln and the Triumph*, 40-48. See, also, Dirck, *Lincoln and the Constitution*, 33-50; and Burt, *Lincoln’s Tragic Pragmatism*, 67-69, 307-8.

Revolutionary eras contained original meanings with current relevance that historical deviations had obscured: context and change introduced a kind of distance from those pasts but one that Americans could and should overcome. This golden age sensibility tended to conflate historical difference and ignore historical change in ways characteristic of traditional hermeneutics. As we might expect, earlier modes of historical thought persisted while more modern understandings began to emerge. While the slavery debates encouraged interpretive approaches that revealed historical distance, they also encouraged attempts to collapse time and reclaim the favored biblical and founding eras.

And yet, the process of reclaiming certain biblical and founding-era ideas through historical investigation indicated the irrelevance of other ideas from those periods. Appealing to specific parts of a past as useful indictments of the current state of affairs implied that the remaining parts of that past were obsolete. To leading abolitionists, including Parker and Douglass, the recognition of slavery's religiously and legally sanctioned presence in those eras rendered them unfit for recovery. Some applicants, such as Richard Fuller, Roger Taney, and a number of his antislavery respondents, ignored problematic evidence and aimed to reclaim the whole biblical past or the entire founding era, including its peoples, documents, teachings, and laws, as either proslavery or antislavery, but many more narrowed their reclamation efforts to certain figures, texts, and ideas. Instead of characterizing biblical times, spanning Old and New Testament periods, as critical of slavery, many antislavery biblical readers upheld specific authors, books, and verses as unique. When historical insight undermined efforts to describe the Abrahamic, Mosaic, and Christian dispensations as epochs of freedom, readers such as Channing and Wayland restricted their focus to Christ and his apostles and their

antislavery principles. Some, including Parker, laid stress on specific biblical words and phrases, such as Christ's injunction to treat others as one would want to be treated. Similarly, instead of describing the period between 1776 and 1789 as an "epoch for all coming time" and labeling it as "an Anti-Slavery era," many antislavery constitutional interpreters upheld certain people, documents, or phrases as exceptional. When historical evidence complicated attempts to cast the entire period as antislavery, readers such as Lincoln narrowed their gaze from the sentiment of the Western audience and the American ratifiers to the founders of the Declaration and the framers of the Constitution and their original expectations of change. Some, such as Goodell and Spooner, appealed to the words of the Constitution alone, while others, like Garrison, used an even smaller lens to emphasize a specific phrase from a brief declaration of rights: "all men are created equal." Clear words held more straightforward significations than complicated historical figures and their creations. In a period when slavery cultivated greater interest in favored pasts, narrow historical claims implied broad dismissals of the biblical and founding eras that historical explication had shown to be less than appealing. In the attempt to rescue universal ideas from the sands of time, this sifting process began to exhibit that both pasts were foreign countries. Context may or may not have mattered, depending on one's interpretive preferences, but whether they argued for or against the use of historical sources, Americans increasingly had to consider the contexts that historical readings had exposed. And once they separated out timeless gems from the historical chaff of once-familiar eras, those pasts remained favored and timeless only in a newly restricted sense.

Most antislavery historical claims, then, did not signify a desire to collapse time and return to a pure past state. Their assertions of historical declension were not

jeremiadic calls for recovery, but rather appeals to pasts that anticipated historical change. Unlike their early modern forebears, slavery's critics did not really long to recreate biblical times, nor did they seek a return to the founding era—periods that sanctioned slavery—but desired to fulfill the promises and expectations of those eras. At times, when finding slavery's stranglehold on the hearts of men in the biblical period, in the founding era, and in the present, antislavery narrators implied that not much had changed after all and that the distance between then and now was not so great. But insisting that the circumstances now existed to realize the progressive hopes and promises of those periods suggested that qualitative differences distinguished the present from the past. The implication was that while antislavery sentiment had been an exceptional and proslavery sentiment a prominent feature in the Revolutionary past, proslavery sentiment was now the anachronistic and antislavery sentiment the characteristic element in the nineteenth-century present. To be sure, as this analysis has detailed, antebellum thinkers acknowledged historical distance in inconsistent, imprecise, and often idiosyncratic ways, but their interpretive debates over slavery made that distance difficult to ignore. And when they historicized the Bible and the Constitution (texts with the greatest purchase on temporal transcendence) and their pasts (epochs with timeless appeal) it suggested that if *these* texts and pasts could be historicized, *everything* could be historicized.

This analysis reveals the dialectical nature of this development. Using historical reasoning to read America's sacred religious and legal texts brought new attention to historical distance from America's favored pasts. In turn, that awareness led antislavery interpreters to use historical distance in different ways. It helped some dispatch the Bible and the Constitution as outdated products of the past, but it also supported the more



consequential interpretive move to read these texts as containing hidden or abstract truths and principles that time and new circumstances would cause to grow and flourish. Never before had historical change carried with it the insight and even the imperative that one must read sacred texts in view of historical distance. In the case of the Bible, that understanding cultivated the belief in new revelations and insights—although that remained a somewhat isolated, if still a varied and important, phenomenon—and paved the way for alternatives to the literalist hermeneutic that had come to dominate Protestant biblical interpretation in the United States. In the case of the Constitution, awareness of historical distance supported an influential reading that the framers had molded the document to adapt to change. That approach secured its continued usefulness in an unstable nation. It allowed Abraham Lincoln to claim that the framers had expected someone like him to use the Constitution to save a nation in its moment of deepest crisis.

### *Historical Distance and Historical Relevance*

At times, my analysis of this particular development of American historical consciousness has approached the conclusion that an awareness of historical distance renders the past and its products, including the most favored and familiar historical eras and their texts, irrelevant. A few antebellum thinkers considered it best to leave behind most if not all of the biblical and founding periods and to discard their venerable texts, the contextual examination of which exposed the failings of their authors. However, to the extent that they had become conscious of the historical distances dividing the biblical and founding eras from their present, many Americans ignored them, or, in the case of a number of the individuals and groups discussed above, formulated ways to read those

historical texts and periods in light of those distances. In other words, awareness of historical distance allowed and allows Americans to continue to use the past. In concluding, then, I hope to address some of the ways in which this particular narrative matters because of, rather than in spite of, our recognition of the profound differences that separate us from the period under examination.

In historiographical terms, this dissertation corrects the traditional view of American historical thought by demonstrating the antebellum emergence of ideas characteristic of a modern historical consciousness. It reveals the nature of antebellum historical awareness through a close reading of biblical and constitutional interpretation rather than by examining historical methodologies or philosophical approaches to the past. This method demonstrates that antebellum historical awareness took the form of a realization of historical distance. In particular, it highlights the growing awareness of the chasms of temporal distance that divided Americans from the biblical and founding eras and made those pasts foreign rather than familiar. This non-traditional account shows the complicated nature of historical awareness and the uneven development of antebellum American historical consciousness in particular. The peculiar institution and the peculiar shape of American history guided that process. The slavery debates directed Americans' to train their focus on their favored pasts for answers and encouraged contextual interpretations of the sacred texts from those periods. That attention shifted from the distant biblical pasts to the recent founding era, the period identified as the starting point of the nation's history. A sustained focus on the Constitution created awareness of historical distance even from that familiar period, which signaled the near completion of a historicization process that grounded all epochs of existence within time.

Along with these historiographical concerns, the historical significance of this particular narrative also corresponds to the amount of light it sheds on broader historical developments in the antebellum era. The history of biblical criticism in America, when explored in terms of its contribution to contextual interpretation, suggests that European biblical scholarship, including German biblical criticism, had a greater influence in antebellum America than previously thought. While casting aspersions on European thinkers, including English deists and German liberals, American biblical scholars incorporated a number of their hermeneutical lessons, especially those that emphasized the use of historical tools to determine the authenticity and meaning of biblical passages. Some molded the historical language and lessons of biblical criticism to uphold and advance evidentialist thought, but biblical scholarship also introduced historical reasoning that Transcendentalists, often depicted as ahistorical thinkers, used to undermine the historical foundations of religious faith. This dissertation demonstrates that historical explication became standard among a wide variety of religious thinkers, altering our perception of orthodox figures like Charles Hodge and liberal Transcendentalists like Theodore Parker, both of whom used contextual interpretation to cultivate faith in atemporal truths.

The focus on Parker, who acts as a hinge in this dissertation, highlights the important overlap between antebellum religious and legal thought in the form of biblical and constitutional interpretation. As these interpretive practices have constituted the foundations on which crucial traditions in American intellectual thought have taken shape, including progressivism and conservatism, examining them in tandem sheds light on some of the core concerns in American cultural and intellectual life. The historical

relationship between religion and law has, of course, been traced elsewhere, but the continued exploration of the cross-pollination between religious and legal interpretive strategies, in particular, promises to bear further fruit. We might consider, for example, whether American religious traditions that remained open to and even expectant of new revelation were more attuned to historical change and distance in their constitutional readings than those who sought religious instruction from the Bible alone.

The attention to interpretive strategies focused on resolving the debate over southern slavery also illuminates antebellum American constitutionalism. This dissertation shows that the passing of the founding generation and the publication of founding-era texts spurred along an interest in contextual readings of the Constitution focused on uncovering the framers' original intent. It also shows how the slavery crisis further fueled that interest, resulting in interpretations stressing the framers' original expectations. While a clear articulation of living constitutionalism did not emerge until legal positivist Oliver Wendell Holmes outlined the idea in the late nineteenth century, the foundations of an interpretive approach stressing adaptation to changing contexts stretch back to the framers themselves and to the constitutional thought of early jurists such as John Marshall.<sup>4</sup> Still, the slavery crisis encouraged contextual readings of the Constitution in a singular way, which inspired the assertion that the framers' had crafted the Constitution prospectively, with change in mind. Although the antislavery focus on the specific original expectation of slavery's eventual institutional collapse restrained the move toward a more complete understanding of the Constitution as a flexible and living

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<sup>4</sup> For example, in *McCulloch v. Maryland* (1819), Marshall referenced the necessary and proper clause as a provision "made in a constitution intended to endure for ages to come, and consequently, to be adapted to various crises of human affairs." *McCulloch v. Maryland*, 17 US (4 Wheaton) 316, 415.

text, it gave Lincoln the interpretive components he needed to consider it the framers' will that he read the Constitution in light of his own historical context.

The crisis setting soon allowed Lincoln to tie the imperative to preserve the Union to the framers' expectations of slavery's abolition. Perhaps they had anticipated that a different set of circumstances would bring about those expectations, but regardless of *how* they had expected slavery to end, *that* they had expected it gave Lincoln founding-era support to proceed along a course of emancipation once the cause of Union became bound up with the call for abolition. That convergence resulted from another dialectical process. Slavery raised the stakes of biblical and constitutional interpretation and, because Americans increasingly looked to the biblical and founding eras for resolutions to their most pressing social problems, biblical and constitutional interpretation played a role in raising the slavery controversy to a level of crisis and conflict. The expansion of American political culture in this period, which opened the door for a wider range of individuals and groups to discuss and debate a broader scope of issues with political relevance, charged this development. The interpretive debates traced herein, then, provide an important lens through which to view the crucial antebellum intellectual debates that heightened tensions between religious groups, political parties, and sections. In the tense decades of the 1840s and 1850s, distinct political parties and groups used the historical distance those debates revealed to further their purposes.

This leads to a final point about the historical relevance of this dissertation. The thinkers and writers discussed in these pages, including those most willing to recognize and incorporate historical change and distance in their arguments, put the past to political uses. That can be seen most clearly in the varieties of antislavery and abolitionists uses of

the founding era and its texts. In attending to these varieties, this dissertation highlights the distinctions not only between antislavery and abolitionist thinkers, but also among them. For example, Parker's and Lincoln's views of blacks constrained their relatively broad conceptions of equality. The same sense of progress that convinced Parker of the inevitable triumph of antislavery sentiment, led him to categorize African Americans in racial terms, as when he argued in January of 1858 that "the African is the most docile and pliant of all the races of men," before asserting that "the stroke of an axe would have settled the matter [of slavery] long ago. But the black man would not strike."<sup>5</sup> A few months later, in July of 1858, Lincoln made it clear that he did "not understand the Declaration to mean that all men were created equal in all respects," and later concluded that "what I would most desire would be the separation of the white and black races."<sup>6</sup> Lincoln thought it would be best if both slavery and blacks were removed from American soil. And while his reading of the Constitution and the founding era encouraged him to erase the peculiar institution from that document and that period, it also complicated African American efforts to remember and use their past in seeking a more expansive place on the nineteenth-century American stage.

However, the constitutional debates unsettled the historical understandings of the founding era, which made it possible to advance readings that not only opposed proslavery interpretations but that also challenged the racial ideas of figures like Parker and Lincoln. Frederick Douglass, more than most, pointed out the difficulties involved in

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<sup>5</sup> Theodore Parker, *The Present Aspect of Slavery in America and the Immediate Duty of the North: A Speech Delivered in the Hall of the State House, before the Massachusetts Anti-Slavery Convention, on Friday Night, January 29, 1858* (Boston: Bela Marsh, 1858), 5, 7.

<sup>6</sup> Lincoln, "Speech at Springfield," in *Collected Works*, 2:520, 520-21.

efforts to discern the framers' intentions, which allowed him and others to reintroduce overlooked black Revolutionary actors in an attempt to combat racist notions about African American capacities as soldiers and citizens. As Douglass stated in response to *Dred Scott*, "the Constitution, as well as the Declaration of Independence, and the sentiments of the founders of the Republic, give us a platform broad enough, and strong enough, to support the most comprehensive plans for the freedom and elevation of all the people of this country, without regard to color, class, or clime."<sup>7</sup> Douglass held that a recognition of historical distance demanded the expansion of freedom beyond what black Revolutionaries had experienced or even what figures like Parker and Lincoln proposed.

On 5 March 1858, in response to Taney's *Dred Scott* decision, a group of black and white Americans met in Faneuil Hall to commemorate the death of Crispus Attucks, upheld by African Americans as "the earliest martyr of American Independence."<sup>8</sup>

Fittingly, African American historian William C. Nell, who had published *The Colored Patriots of the American Revolution* in 1855, organized the commemoration.<sup>9</sup> The commemorative speeches made it clear that remembering the past had a clear and present

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<sup>7</sup> Frederick Douglass, "The Dred Scott Decision: An Address Delivered, in Part, in New York, New York, in May 1857," in *Frederick Douglass Papers, Series One*, 3:169, 171-72.

<sup>8</sup> "The Boston Massacre, March 5, 1770: Commemorative Festival in Faneuil Hall," *Liberator*, 12 March 1858, 42 (APSO). Douglass had countered white assumptions with similar historical appeals since the 1840s. See, for example, Douglass, "American Prejudice Against Color," 1:69; and Frederick Douglass, "Slavery and America's Bastard Republicanism," 1:80. Others also critiqued Taney's decision by pointing to black Revolutionaries. See, for example, William Penn, "Letter from Hon. Joshua R. Giddings to Judge Taney," *Liberator*, 3 April 1857, 54-55 (APSO); "Colored Citizen Soldiers of the Revolution," *Liberator*, 18 September 1857, 152 (APSO); "Spirit Meeting of the Colored Citizens of Philadelphia," *Liberator*, 10 April 1857, 59.

<sup>9</sup> William C. Nell, *The Colored Patriots of the American Revolution, with Sketches of Several Distinguished Colored Persons: To Which Is Added a Brief Survey of the Condition and Prospects of Colored Americans* (Boston: Robert F. Wallcut, 1855).

purpose. A number of the speakers pointed to Attucks and his counterparts to counter Parker's recent statements about black feebleness. Wendell Phillips identified "another ATTUCKS," in the struggle to free Anthony Burns.<sup>10</sup> John Stewart Rock, an African American doctor and abolitionist, lamented that "our fathers fought nobly for freedom, but they were not victorious. They fought for liberty, but they got slavery." Rock predicted, however, that African Americans would be more successful in following the example of their forebears. "Sooner or later," he stated, "the clashing of arms will be heard in this country, and the black man's services will be needed: 150,000 freemen capable of bearing arms ... and three quarters of a million slaves, wild with enthusiasm caused by the dawn of the glorious opportunity of being able to strike a genuine blow for freedom, will be a power which white men will be 'bound to respect.'"<sup>11</sup> The Civil War did not play out exactly as Rock had foretold, but it did allow African Americans to prove, once again, their military prowess and their rightful claim to citizenship.<sup>12</sup> As Nell had noted in an 1857 letter to Wendell Phillips about his book *Colored Patriots*, "Each name and every past has its use."<sup>13</sup> An awareness of historical distance and changed

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<sup>10</sup> "The Boston Massacre," 43.

<sup>11</sup> *Ibid.*, 42.

<sup>12</sup> On African American uses of Revolutionary precedents to legitimize their active revolutionary role in the mid-nineteenth century, see Minardi, *Making Slavery History*, 132-63. On African American historical writing in the nineteenth century, see John Ernest, *Liberation Historiography: African American Writers and the Challenge of History, 1784-1861* (Chapel Hill: University of North Carolina Press, 2004), Stephen G. Hall, *A Faithful Account of the Race: African American Historical Writing in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 2009), and Laurie F. Maffly-Kipp, *Setting Down the Sacred Past: African American Race Histories* (Cambridge, MA: Harvard University Press, 2010).

<sup>13</sup> William C. Nell to Wendell Phillips, 24 August 1857, in William Cooper Nell, *William Cooper Nell: Nineteenth-Century African American Abolitionist, Historian, Integrationist: Selected Writings, 1832-1874*, ed. Dorothy Porter Wesley and Constance Porter Uzelac (Baltimore: Black Classic Press, 2002), 489.



circumstances made those uses clearer, and, before long, demanded formal constitutional amendments alongside the informal emendations that preceded them.<sup>14</sup>

This dissertation adds a crucial component to our understanding of the rise of a modern American historical consciousness. It shows that even the idea of what it means to think historically has a history. This narrative also provides historical demonstration that historical awareness does not preclude the use of favored pasts and their sacred texts. Indeed it shows that when humans gain awareness of historical distance from favored pasts, those pasts and their texts remain useful in efforts to establish and maintain religious and political identities or to exclude or include individuals or groups from the benefits of claiming certain religious, legal, and political traditions. These discussions remain salient in our own political culture. In his second inaugural, President Barack Obama appealed to the American founding even as he acknowledged historical distance. He asserted that “we have always understood that when times change, so must we; that fidelity to our founding principles requires new responses to new challenges.” Reciting the phrase “all men are created equal,” he implored Americans to help “bridge the meaning of those words with the realities of our time.”<sup>15</sup> Long before President Obama uttered these words, Americans, including another American president, negotiated the relationship between favored pasts, sacred texts, and the present, and in doing so raised awareness of the historical distance that we take for granted.

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<sup>14</sup> The Thirteenth and Fourteenth Amendments, of course, officially superseded the *Dred Scott* decision, but that process was well under way during the Civil War. As the *Liberator* commented on the raising of African American regiments in early 1863, “the necessities of the country had reversed the Dred Scott decision.” “The Negro Regiment—Meeting of the Colored Citizens,” *Liberator*, February 20, 1863, 31 (APSO).

<sup>15</sup> Barack Obama, “Obama’s Second Inaugural Speech,” *New York Times*, 21 January 2013, [www.nytimes.com/2013/01/21/us/politics/obamas-second-inaugural-speech.html](http://www.nytimes.com/2013/01/21/us/politics/obamas-second-inaugural-speech.html).

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### **Education**

PhD, History, University of Nevada, Las Vegas, May 2014  
Dissertation: “Slavery, Sacred Texts, and the Antebellum Confrontation with History”  
Dissertation Committee: David F. Holland, Elizabeth W. Nelson, Gregory S. Brown, Colin Loader, and Anne H. Stevens  
Examination Fields: American History, American Intellectual History, European Intellectual History, Theory and Methods

MA, History, Claremont Graduate University, May 2009  
Thesis: “American Wests: Three Nineteenth-Century Travel Writers and the Adaptation of a Region”  
Thesis Committee: Richard Bushman and Janet Brodie

BA, History, Brigham Young University, April 2006

### **Honors, Awards, Fellowships, and Grants**

Outstanding Dissertation Award Nominee, University of Nevada, Las Vegas, 2014-2015

Andrew W. Mellon Foundation Fellowship, Library Company of America and the Historical Society of Pennsylvania, 2014-2015

New England Regional Fellowship Consortium, 2014-2015

Foundation Board of Trustees Fellowship, University of Nevada, Las Vegas, 2012-2014 (inaugural recipient)

Nibley Fellowship, Neal A. Maxwell Institute for Religious Scholarship, 2013-2014

Andrew W. Mellon Research Fellowship, Virginia Historical Society, 2013

Dissertation Grant, Brigham Young University, 2012-2013

Passed Comprehensive Examinations with Honors, University of Nevada, Las Vegas, 2012

Suzanne and Caleb Loring Fellowship on the Civil War, Its Origins, and Consequences, the Massachusetts Historical Society and the Boston Athenaeum, 2011-2012

Best Doctoral Student, History Department, University of Nevada, Las Vegas, 2011

Dr. Hal K. Rothman Doctoral History Graduate Student Award, University of Nevada, Las Vegas, 2010-2011

UNLV Access Grants, University of Nevada, Las Vegas, 2011-2014

Travel Grants, Graduate and Professional Student Association, University of Nevada, Las Vegas, 2010, 2012, 2013

Graduate Assistantships, University of Nevada, Las Vegas, 2009-2013

Summer Fellow, Summer Seminar on Joseph Smith, "Parley and Orson Pratt and Nineteenth-Century Mormon Thought," Brigham Young University, 5/26/2009-7/3/2009

### **Selected Publications**

#### *Articles and Essays*

"Early Mormonism and the Re-Enchantment of Antebellum Historical Thought," *Journal of Mormon History* 38, no. 3 (Summer 2012): 187-209, special issue in honor of Richard Lyman Bushman, edited by Spencer Fluhman, Jed Woodward, and Steven Harper.

"'All of One Species': Parley P. Pratt and the Dialectical Development of Early Mormon Conceptions of Theosis," in *Parley P. Pratt and the Making of Mormonism* (Norman, OK: Arthur H. Clark Company, 2011).

"The Great God, the Divine Mind, and the Ideal Absolute: Orson Pratt's Intelligent-Matter Theory and the Gods of Emerson and James," *Claremont Journal of Mormon Studies* 1 (April 2011): 33-51.

#### *Edited Documents*

"The Riches of Mormon Materialism: Parley Pratt's 'Materiality' and Early Mormon Theology," co-edited with Benjamin E. Park, *Mormon Historical Studies* 11 (Fall 2010): 159-72.

#### *Encyclopedia Entries*

"Miracles, Transcendentalism and," in *Miracles: An Encyclopedia of People, Places and Supernatural Events from Antiquity to the Present* (ABC-CLIO, forthcoming).

"History, 19<sup>th</sup> Century," in *Encyclopedia of Theory* (SAGE, forthcoming).

#### *Reviews*

Review of *Joseph Smith, Jesus, and Satanic Opposition: Atonement, Evil and the Mormon Vision*, by Douglas J. Davies. *Nova Religio: The Journal of Alternative and Emergent Religions* 17 (February 2014): 131-34.

Review of *The Mormon Menace: Violence and Anti-Mormonism in the Postbellum South*,

by Patrick O. Mason. *International Journal of Mormon Studies* 5 (2012): 193-97.

Review of *Joseph Smith Jr. Reappraisals after Two Centuries*, edited by Reid L. Neilson and Terryl L. Givens. *Nova Religio: The Journal of Alternative and Emergent Religions* 15, no. 4 (May 2012): 113-17.

Review of *Liberty to the Downtrodden: Thomas L. Kane, Romantic Reformer*, by Matthew J. Grow. *International Journal of Mormon Studies* 2 (Spring 2009): 224-27.

### **Selected Presentations**

“‘These Pages Prove the Melancholy Fact’: Madison’s Papers and the Use of Historical Evidence in Antislavery Readings of the Constitution.” Presented at the Interdisciplinary Nineteenth-Century Studies Conference, March 2014.

“The Apostle Paul, the American Founders, and the Fugitive Slave Law.” Presented at the Society of U.S. Intellectual History Conference, November 2013.

“Mormon Polygamy and the Past: The Unsettled Historical Grounds of Nineteenth-Century American Social Reform.” Presented at the Mormon History Association Conference, June 2013.

“‘The Historic Strife?’: Massachusetts and the Civil War’s Shifting Temporalities.” Presented at Massachusetts and the Civil War: The Commonwealth and National Disunion, Massachusetts Historical Society, April 2013.

“Joseph S. Buckminster and the Pastness of the Biblical Past in the New Republic.” Presented at the Boston Athenaeum, July 2012.

“Early Mormonism and the Re-Enchantment of Antebellum Historical Thought.” Presented at Mormonism in Cultural Context: A Symposium in Honor of Richard Lyman Bushman on the Occasion of His Eightieth Birthday, June 2011.

“‘Look Well to the West!’ Constructing the Mormon Other in a Catholic Image.” Presented at the Mormon History Association Conference, May 2011.

“‘The Central Figure of the Visible Sphere’: The Invisible Spirit and the Godlike Individual in Emerson’s Nature.” Presented at the Interdisciplinary Nineteenth-Century Studies Conference, April 2011.

“The Death and Birth of History: The French Revolution and the Development of Historical Thought.” Presented at the Southwestern Historical Association Conference, March 2011.

“American Wests: Three Nineteenth-Century Travel Writers and the Adaptation of a People.” Presented at the Western History Association Conference, October 2010.

“‘Virtue Fled into the Wilderness’: Parley P. Pratt’s Mormon Vision of the American Frontier.” Presented at the Mormon History Association Conference, May 2010.

“The Great God and the Divine Mind: Orson Pratt’s Intelligent-Matter Theory and the God of Emerson.” Presented at the Mormon History Association Conference, May 2009.

“Transmutational Theology: An Unofficial Authoritative View, Latter-day Saint Responses to Darwin, 1859-1933.” Presented at the Mormon History Association Conference, May 2008.

“Judge C.C. Goodwin and The Mormon Situation: Depicting a Tyrannical Despot.” Presented at the Mormon History Association Conference, May 2007.

### **Academic Employment**

Part-Time Faculty, Brigham Young University, Department of Religion, 6/2013-8/2013, 4/2014-6/2014

Early Mormon History and Theology in the Antebellum American Context

Deputy Director, Preserve Nevada, 8/2009-5/2012

Preserve Nevada is a statewide cultural research and preservation group housed in the University of Nevada, Las Vegas History Department.

Teaching Assistant, Department of History, University of Nevada, Las Vegas, 8/2009-12/2009, 8/2010-12/2010

American Environmental History-Andrew Kirk

U.S. History from 1865-Andrew Kirk

Research Assistant, Department of History, University of Nevada, Las Vegas, 9/2009-10/2009

Assisted Professor Andrew Kirk in collecting, annotating, and editing documents, excerpts, and images for three chapters in *Reading American Horizons*, a companion reader to the new textbook *American Horizons: U.S. History in a Global Context* (New York: Oxford University Press, 2013).

### **Professional Societies**

American Historical Association

Organization of American Historians

Society for Historians of the Early American Republic

Society for US Intellectual History

American Society for Legal History

American Society for Church History

Interdisciplinary Nineteenth-Century Studies

Mormon History Association

### **Languages**

Spanish (fluent)