

No Property In Man: Slavery and Antislavery at the Nation's Founding

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Review

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Measuring the Monster

Noted historian Sean Wilentz offers a weighty and sure-to-be controversial contribution to the extensive historiography on slavery and the original intent of the Constitution. Many historians agree the Constitution was, explicitly or implicitly, a proslavery document, ratified by elite white men many of whom had an interest in slavery as an American institution. But Wilentz contends that the Constitution was more ambivalent toward slavery—even indirectly antislavery in its language—than most scholars acknowledge. The Constitution's limited protection of slavery could not be equated to the recognition of slavery as a permanent institution. The national governing document failed to specifically recognize property in man and thus left slavery as a creation of the individual states, an important distinction for Wilentz and one that provided the political space necessary for antislavery constitutionalism to thrive in the first half of the nineteenth century. Antislavery efforts ignited in earnest with Vermont's 1777 ban on slavery and grew with such force that the provisions for slavery's protection placed in the Constitution were hard won despite antislavery's powerful presence at the 1787 convention. If antislavery rhetoric and ideology grew increasingly radical before the 1860s, so too then did proslavery assertions about the Constitution, Wilentz argues.

Wilentz takes issue with how modern scholars contextualize emancipation before the Civil War. By comparing private manumission and gradual emancipation before the war to the decisive end of institutional slavery in 1865, prewar antislavery efforts appear tame and unrevolutionary. On the contrary, Wilentz contends, "proscribing and then eradicating an entire class of property" through government power at the state level in the northern United States gradually over the late eighteenth and early nineteenth century represented a profound ideological shift for a northern populace with a not inconsiderable presence of enslaved workers

(36). That antislavery societies existed at all, much less gained success in their efforts in the face of substantial proslavery resistance, was a radical circumstance. Abolitionists were rarely satisfied with their progress either and kept pushing at the boundaries of emancipation to encompass more radical freedom. Within the historical time period, slaveholders had much to fear from abolition movements—movements that often looked to the freedoms guaranteed in the Constitution for lawful impetus.

Proslavery resistance to antislavery efforts of any kind centered on property rights and the division of powers between state and federal government. As antislavery forces worked to limit slavery's advance into the Louisiana Territory, proslavery politicians claimed that the Constitution expressly recognized property in man, namely through the Fugitive Slave Law of 1793 and the Three-Fifths compromise. As Congress debated ending the Atlantic slave trade just prior to 1808, John Randolph encouraged secession in response to what he viewed as despotic federal interventions onto property rights in slavery. After 1815, slaveholders began to purport the institution as a positive good and chafed at any limitation of slavery in western territories. Throughout the process of the Missouri Compromise, proslavery constituents continually affirmed their adherence to a proslavery constitution, even as the federal government regulated the presence of slavery in the territories. As hard line proslavery representatives passed a series of gag bills in the late 1830s, they continued to embrace a proslavery originalist interpretation in the Constitution, a belief nationally vindicated in the *Dred Scott* case.

In response, abolitionists enlisted an antislavery originalist view of the Constitution. Antislavery proponents like Quakers, Benjamin Lundy, and Representative George Thatcher continually bombarded Congress with petitions to act within its federally granted powers to end or limit slavery. James G. Birney and Salmon P. Chase argued that the Fifth Amendment empowered the federal government to end slavery immediately and restore to enslaved black persons their oppressed rights of self-ownership. In his Cooper Institute speech, Abraham Lincoln repudiated proslavery constitutionalism by asserting congressional authority over slavery in the territories and denying that the U.S. Constitution recognized property in man. Even a conservative northern Democrat like Stephen Douglas eventually admitted the Constitution did not recognize property in people.

The most significant contributions of Wilentz's book are his detailed explanations of the substance of constitutional debates in the decades leading up to the Civil War. He is also careful

to root those debates over the constitutional limits of power and the protection of slavery in their historical context. With *No Property in Man*, Wilentz makes the evolving antislavery and proslavery conceptions of national power perhaps more crystalline than any other scholar has yet done. Some problematic moments are to be found, however. His effort to explain James Madison's fence-sitting when it came to that founder's constitutional approach to slavery seems particularly strained (see pages 223, 328-9). During ratification, Madison and his allies were caught in the awkward position of defending the Constitution "as at once a blow against the slave trade and a firm protector of slaveholders' property rights" (143). The largest challenge southern Federalists faced was convincing slaveholding southerners that the Constitution protected property in slaves even as it limited the Atlantic (and possibly the domestic) slave trade. Madison's equivocal efforts, Wilentz asserts, "helped initiate both proslavery and antislavery interpretations of the framers' work" (146). Perhaps the Constitution was not so resolutely antislavery after all. Wilentz also admits that Lincoln understood how necessary the Thirteenth Amendment was in 1865. Because the "framer's work still contained its central paradox about slavery," the Union needed to amend or rewrite its original Constitution, "beginning with an abolition amendment, in order to secure a nation of freedom" (266). On the other hand, some of Wilentz's strongest evidence comes from radical abolitionists like William Goodell and Frederick Douglass, who believed that the Constitution was an antislavery document and that the Fifth Amendment gave the federal government the power to restore the lost property rights of enslaved persons by ending slavery immediately. Similarly, Lincoln dismissed the *Dred Scott* decision by asserting an antislavery understanding of the Constitution.

If any part of Wilentz's reconsideration of the Constitution and of antislavery projects is potentially troubling, it is the implications of the work. If Americans could produce a decades-long debate over the original meaning of the Constitution on slavery and even fight a war over those disagreements, perhaps the founders' refusal to recognize property in man was little more than Enlightenment sophistry. Wilentz himself acknowledges that "most free blacks found themselves either locked in landless rural penury or relegated to the meanest city occupations, despised by whites as social outcasts"—a national epidemic of racial poverty perpetuated far into the twentieth century and beyond (35). Expanding the historical lens to 1619-2019 should focus scholarly attention on the substantial racial disparities that still exist in America, disparities that characterize American history more extensively than even Wilentz's robust presentation of

American antislavery moralism from 1777-1865. Antislavery projects are one thing; radical and meaningful egalitarianism is another. Wilentz successfully argues that the Constitution did not enshrine slavery on a national scale and that antislavery forces embraced a healthy tradition of antislavery constitutionalism. But in America's racial dystopia, constitutional arguments have only gone so far to mitigate the extensive damages of institutional slavery. A host of other structural and social limitations circumscribes black people in America regardless of the Constitution's stance on slavery.

A recent documentary about James Baldwin highlighted the famous author's concern about the moral center of the nation. "I am terrified at the moral apathy—at the death of the heart—which is happening in this country. These people [white supremacists] have deluded themselves for so long that they really don't think I'm human. I base this on their conduct, not on what they say. And this means that they have become, in themselves, moral monsters." In the exhausting debate about the nature of the Constitution as a conduit of emancipation versus the Constitution as the bedrock of slavery, it is possible to lose sight of the grand scope of race and racism in American history. It would be a mistake to focus on the reverse of Baldwin's equation, emphasizing ambivalent words over the larger actions that allowed slavery to progress. While Wilentz is hardly guilty of focusing on words alone, the argument over the founding document and its writers divorces the moment of its creation from the larger moral grievances that yet haunt America. "All of the western nations have been caught in a lie," critiqued Baldwin, "the lie of their pretended humanism: this means that their history has no moral justification, and that the West has no moral authority."¹ Wilentz is no doubt correct about the Constitution's creeping antislavery power. However, if we use only the Constitution to measure the moral monsters of America, we have unintentionally obfuscated the nature and the power of those monsters who still wield cultural and governmental authority in the land of the free.

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¹ *I Am Not Your Negro*, directed by Paoul Peck (2016; Berlin, Germany: Velvet Film, 2017). First quote at 32:40; second quote at 1:14:22. See also, James Baldwin, *No Name in the Street* (New York: Vintage International, 1972), and Tim Grierson, "'I Am Not Your Negro': How a New Doc Turns James Baldwin into a Prophet," *Rolling Stone*, February 3, 2017, <https://www.rollingstone.com/movies/movie-features/i-am-not-your-negro-how-a-new-doc-turns-james-baldwin-into-a-prophet-117114/>.