

The Pennsylvania Delegation and the Peculiar Institution: The Two Faces of the Keystone State

SLAVERY WAS ONE OF THE MOST DIFFICULT ISSUES that faced the Constitutional Convention. From the first discussion of the Randolph (or Virginia) Plan on the fourth day of the Convention until the last day of debate on September 15, questions involving slavery plagued the Convention. Slavery affected the resolution of a variety of issues, including representation, taxation, domestic security, congressional regulation of commerce, the executive function, and interstate rendition of fugitives.¹

Two Pennsylvania delegates, James Wilson and Gouverneur Morris, took a leading role in these debates. More than any other northerners, they helped shape the relationship between slavery and the Constitution. As the most active members of the largest and most important northern delegation, their positions and actions reveal much about why the Convention chose to protect slavery in so many ways. Although they were the only Pennsylvanians to have spoken on the subject, Wilson and Morris nevertheless reflected the tensions that slavery caused for Pennsylvanians and other northerners. Also important to this analysis are the Pennsylvanians who might have spoken out on slavery but did not. Jared Ingersoll apparently drafted—but never gave—a speech in which he acknowledged the difficulties that

¹ On the importance of slavery at the Convention, see Paul Finkelman, "Slavery and the Constitutional Convention: Making a Covenant with Death," in Richard Beeman, Stephen Botein, and Edward C. Carter, II, eds., *Beyond Confederation: Origins of the Constitution and American National Identity* (Chapel Hill, 1987), 188-225. See also David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770-1823* (Ithaca, 1975), chapters 3 and 7; Donald Robinson, *Slavery in the Structure of American Politics, 1765-1820* (New York, 1971), chapters 5-6; William M. Wiecek, *The Sources of Antislavery Constitutionalism in America, 1760-1848* (Ithaca, 1977), chapter 3; Staughton Lynd, *Class Conflict, Slavery, and the United States Constitution* (Indianapolis, 1967).

slavery would cause if the Convention created a stronger national government.² Benjamin Franklin received an antislavery petition during the Convention, but declined to present it to the body. That Pennsylvanians Ingersoll and Franklin chose not to act illustrates the difficulties that slavery posed for Pennsylvanians and others at the Convention who opposed slavery.

The role of the Pennsylvania delegation in the slavery debates is important for a number of reasons. The sheer size and influence of the delegation made its actions more important than the delegations of other states. Pennsylvania had the largest delegation at the Convention, and—along with Virginia—the most talkative. Furthermore, it contained one of the Convention's two most famous delegates, Benjamin Franklin, as well as two of the most influential ones, James Wilson and Gouverneur Morris. As the largest northern state, Pennsylvania was in part the leader of that section. As the first state to adopt a gradual emancipation scheme, Pennsylvania was also the northern state most familiar with the problems that could emerge in the transition from slavery to freedom. Equally important, Pennsylvania was entirely surrounded by slave states and shared a long border with Virginia and Maryland, states committed to maintaining slavery for the foreseeable future. Finally, Pennsylvania had the most active abolitionist society in the nation. These social, political, and geographic factors made Pennsylvania delegates pivotal figures as the Convention sought to make accommodations with slavery.

Although Pennsylvania's was the northern delegation that had the most to say about slavery, it was also the most divided northern delegation. The Pennsylvania delegates all agreed on the immorality and impolicy of slavery. But the votes of the Pennsylvanians during the Convention reflected a split within the delegation on how much compromise was necessary to satisfy conflicting interests of conscience and union. A brief comparison of Pennsylvania with two other northern delegations helps illustrate the division within the Keystone delegation.

At the Convention the Connecticut delegation invariably stood with the South on slavery-related issues. Oliver Ellsworth, for example,

² James Hutson, ed., *Supplement to Max Farrand's The Records of the Federal Convention of 1787* (New Haven, 1987), 100-5.

opposed any prohibition on the slave trade, arguing that "what enriches a part enriches the whole." Similarly, Roger Sherman added that "it was expedient to have as few objections as possible to the proposed scheme of Government," and thus he favored allowing the trade if that was what the deep South wanted.³ Economic interest and political expediency converged to make Connecticut the South's most reliable northern ally throughout the Convention.

The New Jersey delegation, on the other hand, consistently opposed any concessions to slavery on both ethical and political grounds. During a debate over the three-fifths clause, William Paterson pointedly asked "Has a man in Virga. a number of votes in proportion to the number of his slaves?" Paterson's animosity towards human bondage only increased his strong opposition to using population as a basis for representation.⁴ Similarly, New Jersey's delegates opposed the continuation of the African slave trade.

On the three-fifths clause, Pennsylvania joined Connecticut in supporting the South. On the slave trade vote, Pennsylvania stood with New Jersey against the trade. Connecticut voted with the South on both issues, while New Jersey opposed the South on both votes. Pennsylvania's inconsistency reflected the constant tensions within the delegation created by James Wilson's overwhelmingly accommodationist position and Gouverneur Morris's vigorously antislavery stance.

To understand the role of Pennsylvania's delegates at the Convention, it is necessary briefly to examine the status of slavery in the Keystone State in 1787. The Commonwealth's experience with ending slavery doubtless influenced the delegates and helped them better to appreciate the difficulties of slavery and freedom coexisting within the nation.

In 1780 Pennsylvania adopted the nation's first statute to bring an end to slavery. Pennsylvania's "Act for the Gradual Abolition of Slavery" declared that all persons born in the state after March 1, 1780, would be born free. The law also emancipated all slaves brought into the state as permanent residents after that date. Masters living

³ Max Farrand, ed., *The Records of the Federal Convention of 1787* (4 vols., rev. ed., New Haven, 1966), 2:364 and 2:369.

⁴ *Ibid.*, 1:560-61.

in Pennsylvania before March 1, 1780, had until November 1, 1780, to pay a fee and register their slaves with local officials. All unregistered slaves were free after November 1, 1780.⁵ In 1784 Connecticut and Rhode Island had passed their own gradual emancipation statutes, modeled on the Pennsylvania law.⁶ By this time Massachusetts had ended slavery completely through its 1780 Constitution.⁷

Unlike the New England states, Pennsylvania had a fair-sized slave population, concentrated in and around Philadelphia and in the southwestern part of the state. Furthermore, in 1780 Pennsylvania was surrounded by slave states. While New York and New Jersey would eventually end slavery, they showed no inclination to do so in 1780, or even in 1787. Indeed, during the ratification struggle James Madison would use the examples of New York and New Jersey to allay the fears of those who believed the Constitution might threaten slavery. Madison argued that New York and New Jersey "would, probably, oppose any attempts [by the national government] to annihilate this species of property" because they "had made no attempt, or taken any step, to take them from the people" of their own states.⁸

Delaware, considered to have been on the verge of joining Pennsylvania as a free state, was in fact still a slaveholding jurisdiction, and would remain so until the end of the Civil War. At the Philadelphia Convention the Delaware delegation opposed proslavery measures, but these votes mostly reflected the beliefs and interests of such individual delegates as John Dickinson. Delaware would retain a mildly antislavery stance until 1800, when the state would move firmly into the camp of the slave South. To the south and west were

⁵ "An Act for the Gradual Abolition of Slavery," Act of March 1, 1780. *The Acts of the General Assembly of Pennsylvania, 1780* (Philadelphia, 1782), chapter CXLVI. This law is reprinted in Paul Finkelman, *The Law of Freedom and Bondage* (New York, 1986), 42-45.

⁶ "An Act for the Gradual Abolition of Slavery" (Act of March 1, 1784), *Connecticut Laws, 1784*; "An Act for the Gradual Abolition of Slavery" (Act of March 1, 1784), *Rhode Island Laws, 1784*.

⁷ See Finkelman, *Law of Freedom and Bondage*, 35-40.

⁸ In the Virginia ratifying convention Madison assured those who feared the Constitution might harm slavery that New York and New Jersey "would, probably, oppose any attempts to annihilate this species of property" by the national government because they "had made no attempt, or taken any step, to take them from the people." Jonathan Elliot, ed., *The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia, in 1787* (5 vols., Philadelphia, 1896), 3:422.

Maryland and Virginia. While some antislavery sentiment existed in Maryland and Virginia at this time, both states were already committed to preserving slavery. Neither would end slavery until the Civil War forced emancipation on them.⁹

Pennsylvania's proximity to so many slave states meant that many masters entered the Commonwealth with their bondsmen and bondswomen. Moreover, as the nation's capital during the Revolution, Philadelphia was often the host of many masters and their slaves. In drafting the 1780 gradual emancipation act, Pennsylvania's legislators considered both their desire to end slavery and the need to create smooth and harmonious relations between the states.

The 1780 law contained two provisions designed to accommodate Pennsylvania's slaveholding neighbors. So as not to discourage slaveholders from visiting the state on business or pleasure, sojourners were allowed to bring slaves into the state for up to six months without penalty. Legislators from other states were allowed to keep their slaves in Pennsylvania for unlimited amounts of time. The 1780 law also provided for the return of runaway slaves and the punishment of those who aided them. This provision was the first of its kind in the nation, preceding the fugitive slave clauses in the Northwest Ordinance and the Constitution by seven years.

Because of their experience with the 1780 law, the Pennsylvania delegates to the Convention brought two conflicting views of slavery with them. On the one hand, the delegation was unanimously opposed to slavery. The system violated their republican sensibilities and their morals. On the other hand, most of the delegation believed that a union of free and slave states required certain compromises, such as those found in the 1780 law. Within the delegation, however, tensions over slavery pulled delegates in two directions. James Wilson, although "a liberal" ideologically opposed to slavery, proved quite willing to make compromises over it. Gouverneur Morris, on the other hand, emerged as one of the most vigorous and vocal opponents of slavery at the Convention. As early as 1777 Morris had written a resolution urging the end of slavery in New York. By the time of

⁹ Robert McColley, *Slavery in Jeffersonian Virginia* (Urbana, 1964), demonstrates Virginia's ideological, economic, and social commitment to slavery by 1787. The votes of Maryland in the Convention suggest that state was even more self-consciously proslavery than Virginia.

the Convention he had joined the New York Manumission Society. In 1787 Benjamin Franklin was the President of the Pennsylvania Society for Promoting the Abolition of Slavery, and for the Relief of Free Negroes Unlawfully Held in Bondage—the Pennsylvania Abolition Society as it was called. His involvement with the Society attested to his opposition to slavery and the slave trade. Yet, Franklin was also a practical politician and a committed nationalist who would support some compromises, even when they violated his sense of morality. All three men no doubt reflected the interests and views of the people of Pennsylvania.¹⁰

The first slavery-related issue at the Convention concerned representation. The Randolph Plan called for representation in Congress “proportioned to the quotas of contribution, or to the number of free inhabitants, as the one or the other rule may seem best in different cases.”¹¹ “Quotas of contribution” was a euphemism for counting slaves for the purposes of representation. On June 11, the Convention faced the issue of representation and slavery. Northerners had indicated a desire to count only free persons when allocating representation. John Rutledge and Pierce Butler of South Carolina, on the other hand, wanted to count slaves equally with free persons. James Wilson helped head off a potentially destructive confrontation by proposing that representation be based on the “whole number of white and other free Citizens,” including indentured servants “and three fifths of all other persons. . . .” Charles Pinckney of South Carolina seconded this motion.¹² Thus, the three-fifths clause, which would give the South inflated political power until the Civil War, was first proposed by Wilson of Pennsylvania.

This cooperation between Charles Pinckney, the most aggressively proslavery delegate at the Convention, and Wilson is significant. Despite arguments by some scholars that sectionalism was not yet at issue,¹³ the sectional tension over counting slaves for representation

¹⁰ Davis, *The Problem of Slavery in the Age of Revolution*, 105, characterizing Wilson as a liberal; Edgar J. McManus, *A History of Negro Slavery in New York* (Syracuse, 1966), 161; Howard Swiggett, *The Extraordinary Mr. Morris* (Garden City, 1952), 109.

¹¹ Farrand, ed., *Records*, 1:36-38.

¹² *Ibid.*, 1:201.

¹³ Howard A. Ohline, “Republicanism and Slavery: Origins of the Three-Fifths Clause in the United States Constitution,” *William and Mary Quarterly* 28 (1971), 567.

was already evident. Indeed, as early as May 30, delegates from the North and South had begun to squabble over counting slaves for representation.¹⁴ Charles Pinckney had come to the Convention convinced that a three-fifths ratio of slaves to free men should be incorporated into any scheme of representation,¹⁵ but he did not introduce this proposal. Instead, he apparently arranged to have the ratio introduced by Wilson, the "liberal" and "democratic" delegate from Pennsylvania.¹⁶

Throughout the rest of the Convention the three-fifths clause would be debated. When Wilson introduced it, Elbridge Gerry of Massachusetts complained, with great irony, that there was no more propriety in counting blacks for representation, "who were property in the South," than for counting "the cattle & horses of the North." Gerry objected to putting the "Freemen of Massts. . . . upon a Footing with the Slaves of other States."¹⁷ This complaint carried few votes, however, and Wilson's motion passed, with only New Jersey and Delaware opposed. Their negative votes were based both on a hatred of slavery and on opposition to any scheme of government with population-based representation. The opposition of both states, plus Gerry's objection, reveal that it is wrong to assume that there "was virtual unanimity for the principle of counting slaves" for representation.¹⁸ Subsequent protests by Gouverneur Morris, who was absent from the Convention throughout most of June, make this even more clear. On June 11, the Pennsylvania delegation (with Morris absent) was in the majority in its support of the three-fifths clause. Wilson joined Pinckney of South Carolina in finding what would eventually be the solution to the difficult problem of allocating representation

¹⁴ Farrand, ed., *Records*, 1:33-37.

¹⁵ Ohline, "Origins of the Three-Fifths Clause," 568-69.

¹⁶ Davis, *The Problem of Slavery in the Age of Revolution*, 105; Ohline, "Origins of the Three-Fifths Clause," 571. Neither Pinckney nor Wilson can be credited with developing the ratio of three to five. That ratio emerged in the Congress under the Articles of Confederation as part of a proposal for assessing taxes among the states. This proposal was defeated because not all thirteen states supported a change in the Articles. When this ratio was first developed, it applied *only* to taxation. Its application to representation was never considered until Wilson proposed it in the Convention.

¹⁷ Farrand, ed., *Records*, 1:201, 205-6, 208.

¹⁸ Ohline, "Origins of the Three-Fifths Clause," 571.

in a nation that was becoming half slave and half free. Final acceptance of this solution would not be easy.

In early July the Convention appointed a committee, which included Gouverneur Morris, to allocate representation in the first Congress. On July 9 Morris presented the committee's report. Lacking any firm census data, the committee allocated representation according to what it guessed were the free and slave populations of the states. The committee's allocations did not entirely please the delegates. Paterson, for example, complained bitterly about counting slaves for representation.¹⁹ Admitting that his committee's report was "little more than a guess," Morris supported the appointment of a second committee, consisting of one delegate from each state to try once again to allocate representation in the first Congress.²⁰ Morris also represented Pennsylvania on this new committee.

The next day this second committee presented a new method of allocating representation. The five self-conscious slave states would have only twenty-nine of the sixty-five seats in the House of Representatives. General Charles Cotesworth Pinckney demanded greater representation for the South. He did "not expect the S. States to be raised to a majority of representatives, but wished them to have something like an equality."²¹ Gouverneur Morris took the lead in opposing Pinckney. He argued that the South had "more than their share of representatives." Morris agreed that "Property ought to have its weight" but "not all the weight," for in a national crisis the South might supply money but the free states of the North would "spill their blood" in defense of the nation.²² Morris successfully led the opposition to reducing the representation of some northern states or expanding the representation of some southern states.

On July 11 the debate over the three-fifths clause continued. Gouverneur Morris expressed his opposition to counting slaves for representation, because "the people of Pena. would revolt at the idea of being put on a footing with slaves."²³ The delegation was not,

¹⁹ Farrand, ed., *Records*, 1:560-61.

²⁰ *Ibid.*

²¹ *Ibid.*, 1:566-67.

²² *Ibid.*, 1:567.

²³ *Ibid.*, 1:583.

however, unanimous in its opposition to counting slaves. It was now James Wilson's turn to show the other face of Pennsylvania on slavery-related issues. Wilson shrewdly began by acknowledging the problem with counting slaves. He did "not well see on what principle" the three-fifths clause rested. He rhetorically asked, are slaves "admitted as Citizens? Then, why are they not admitted on an equality with White Citizens?" He then asked "are they admitted as property? Then why is not other property admitted into the computation?" These were theoretical problems for which he had no answer. Instead, he simply asserted that these difficulties "must be overruled by the necessity of compromise."²⁴

Morris answered his colleague, declaring that he was "reduced to the dilemma of doing injustice to the Southern States or to human nature," and he "must therefore do it to the former." Morris "could never agree to give such encouragement to the slave trade as would be given by allowing a representation" for slaves. Morris believed that the South would never accept a Constitution that would prohibit the African slave trade, and therefore he was compelled to oppose counting slaves for representation.²⁵

Following this speech, the Convention voted six to four against the three-fifths clause. Pennsylvania, led by Morris, voted with the majority. This majority did not indicate an absolute rejection of the clause. South Carolina voted *no*, holding out, no doubt, for full representation for slaves. Maryland also voted *no*, but only because that state's delegates did not like the wording of the clause.²⁶ The July 11 vote on the three-fifths clause undercuts the view of those scholars who insist that the formula for counting slaves for purposes of representation enjoyed virtually unanimous support at the Convention.

On July 12 Morris offered what was the beginning of a compromise. He suggested a provision "that taxation shall be in proportion to Representation."²⁷ Morris's motives here are unclear. He may have hoped to discourage southern support for counting slaves for repre-

²⁴ *Ibid.*, 1:587.

²⁵ *Ibid.*, 1:588.

²⁶ *Ibid.*

²⁷ *Ibid.*, 1:591-92.

sentation by linking such representation to taxation.²⁸ If this had indeed been Morris's plan, it failed. Pierce Butler of South Carolina immediately endorsed Morris's proposal, while arguing for counting slaves as equal to whites for the purposes of both representation and taxation. When Virginia's George Mason questioned how Morris's proposal might be implemented, Morris qualified his suggestion by saying that it only applied to direct taxes, and not to indirect taxes on exports and imports. This led to yet more controversy. Charles Cotesworth Pinckney also declared he "liked the idea" put forth by Morris, but he objected to the "taxing of exports." Pinckney also indicated his displeasure with Morris's attacks on slavery the day before.²⁹

James Wilson now joined the debate, suggesting that Morris's motion be limited to "direct" taxes. This was undoubtedly an attempt to defuse a potentially divisive discussion of both slavery and export taxes. The slave states viewed export taxes as a direct assault on their interests, because the main exports of the United States at this time were such slave-produced commodities as tobacco and rice. Wilson's conciliatory suggestion was accepted,³⁰ but this did not end debate on the entire matter.

William Davie of North Carolina declared it was "high time to speak out." He assured the Convention that his state would never agree to "any terms that did not rate [slaves] at least as $\frac{3}{5}$." He said that if the North could not agree to this, then "the business [of the Convention] was at an end."³¹ Morris took up this challenge, declaring that he would "candidly" speak out. He said he had come to the Convention "for the good of America," and he hoped all the states would join in a new compact. But he also argued that it was "vain for the Eastern States to insist on what the Southn States will never agree to" and it was "equally vain for the latter to require what the other States can never admit." He believed that Pennsylvania would "never agree to a representation" of slaves.³²

²⁸ See below, at note 40.

²⁹ Farrand, ed., *Records*, 1:592.

³⁰ *Ibid.*

³¹ *Ibid.*, 1:593.

³² *Ibid.*

Delegates from Virginia and South Carolina then argued for the three-fifths clause. Wilson, ever desirous of compromise, suggested that there might be "less umbrage" against counting slaves for representation if the clause were written "to make them indirectly only an ingredient in the rule, by saying that they should enter into the rule of taxation: and as representation was to be according to taxation, the end would be equally attained."³³ The Convention accepted Wilson's obfuscating language, and by a vote of six to two, with two states divided, adopted the three-fifths clause. This time Pennsylvania was in the majority, voting for the three-fifths clause. The *no* votes came from Delaware and New Jersey. The divided states were Massachusetts, for unknown reasons, and South Carolina, where half the delegation was holding out for full representation for slaves.³⁴ As Howard Ohline succinctly observed, "James Wilson had achieved a political marriage of the slave interest with the ideals of expansive and popular republicanism."³⁵ Representation in the new Congress would in fact be based on population. But that marriage was not one that all of the northern delegates approved. The most vocal opponent remained Wilson's fellow Pennsylvanian, Gouverneur Morris.

The three-fifths clause was adopted on July 12, but on July 13 the issue was once again the subject of a heated debate. The relationship between human bondage and representation arose during a discussion of how taxation and representation would be allocated in the period between the adoption of the Constitution and the taking of the first national census. This gave Morris one more opportunity to attack slavery and Wilson still another opportunity to defend sectional harmony.

Morris noted that some delegates had spoken of a distinction between the North and the South. Morris admitted that he had at first "considered this doctrine as heretical," and he still considered "the distinction groundless." But he noted that southerners would "not be satisfied unless they see the way open to their gaining a majority" in the government. This he would oppose. However, the real issue for Morris was whether "this distinction" between the North

³³ *Ibid.*, 1:595.

³⁴ *Ibid.*, 1:597.

³⁵ Ohline, "Origins of the Three-Fifths Clause," 581.

and South was "fictitious or real." He argued that "if fictitious let it be dismissed & let us proceed with due confidence," but "if it be real, instead of attempting to blend incompatible things, let us at once take a friendly leave of each other." Morris feared there would "be no end of demands for security if every particular interest is to be entitled to it."³⁶

Pierce Butler snapped back at Morris, "The security the Southn. States want is that their negroes may not be taken from them which some gentlemen within or without doors, have a very good mind to do."³⁷ Wilson once again tried to smooth things over. He stated that if the southern states wanted "a general declaration" for the security of slave property, he was willing to declare his "sentiments." Wilson was in favor of majority rule, but confident that no state needed to fear any other state.³⁸ This seemed to have satisfied the South, and debate ended with the Convention reaffirming its support for the three-fifths clause and for representation in the lower house of Congress based solely on population.

While slavery continued to affect the shaping of the Constitution during the next month,³⁹ the Convention avoided acrimonious debates. From July 26 to August 6 the Convention was in recess, while a Committee of Detail organized the work of the Convention up to that point. During the debate leading to this recess, Morris urged that the committee reconsider the relationship between taxation and representation, which he himself had suggested on July 12. As it now stood, direct taxation would incorporate the three-fifths rule, and representation would be based on the taxation formula. Morris now argued that he had only offered this "as a bridge to assist us over a certain gulph" but "having passed the gulph the bridge may be removed."⁴⁰

The committee, appointed on July 24, just moments after Morris spoke, was unlikely to be sympathetic to a reconsideration of the three-fifths clause. Wilson of Pennsylvania was one of the five members

³⁶ Farrand, ed., *Records*, 1:603-5.

³⁷ *Ibid.*, 1:605.

³⁸ *Ibid.*, 1:605-6.

³⁹ See generally Finkelman, "Slavery and the Constitutional Convention: Making a Covenant with Death," 188-225.

⁴⁰ Farrand, ed., *Records*, 2:106.

of that committee, along with Rutledge of South Carolina, Randolph of Virginia, Ellsworth of Connecticut, and Gorham of Massachusetts. The two southerners were strong defenders of slavery, while Ellsworth and Wilson were on record as willing to compromise any slavery-related questions in order to secure a stronger Union.

Not surprisingly, the committee report did not heed Morris's request. On the contrary, it followed the suggestion of Wilson to obfuscate the extent to which slavery affected representation. The report provided that in the future Congress would "regulate the number of representatives by the number of inhabitants, according to the provisions herein after made." This clause appeared in what was designated in the committee report as Article IV, Sec. 4. The "herein after" modification, which included the three-fifths clause, appeared in Article VII, Sec. 3. Of critical importance, however, is that under this draft the three-fifths clause did not in fact apply to representation at all, but was only applicable to "direct taxation."⁴¹ This meant that slaves would be counted fully for representation.

On August 8 Gouverneur Morris moved to amend the formula for representation by inserting the word "free" in front of the word "inhabitants." Morris asserted that "much . . . would depend on this point." He said he "never would concur in upholding domestic slavery."⁴² Morris then launched a sustained attack on slavery and the demands of the South for protection. Morris made three points. First, he argued against slavery on economic grounds. This was followed by a denunciation of the moral premises of the institution. Finally, Morris complained that the compromises demanded by the South were all one-sided—that only the South gained from these compromises.

Morris's speech merits extensive examination. As the longest and most bitter protest against slavery and slavery-related compromises at the Convention, it anticipated many of the abolitionists' arguments in the 1830s. The virulence of his speech suggests that antislavery was a far more troubling concern, even in the 1780s, than many scholars have recognized. Some scholars, politicians, and jurists—all of whom would prefer to ignore the issue of slavery during the

⁴¹ *Ibid.*, 2:178, 182-83.

⁴² *Ibid.*, 2:221.

bicentennial of the Constitution—have argued that slavery was not important to the framing and that the Framers were concerned solely with the question of a stable government and a strong Union. Morris's speech, however, demonstrates that slavery was a moral issue and that it was on the agenda of at least some of the delegates. Finally, the aftermath of the speech is significant. Morris's motion, to insert the word "free" in front of "inhabitants" for purposes of representation was overwhelmingly defeated, with Pennsylvania voting against the amendment.⁴³

Morris argued that slavery was "a nefarious institution . . . the curse of heaven on the States where it prevailed." He compared the "rich & noble cultivation" and "the prosperity & happiness of the people" in the free states with "the misery & poverty" in "the barren wastes of Va., Maryd. & the other States having slaves." He asserted that "every step you take thro' ye great regions of slaves, presents a desert increasing" with the "increasing proportion of these wretched beings."⁴⁴

For Morris, the evils of slavery were not merely economic. Turning to politics and political theory, he asked "Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them Citizens & let them vote? Are they property? Why then is no other property included?" Morris argued that the houses in Philadelphia were "worth more than all the wretched slaves which cover the rice swamps of South Carolina." For Morris, political theory and economics dovetailed with questions of morality. He declared that:

The admission of slaves in the Representation when fairly explained comes to this: that the inhabitant of Georgia and S.C. who goes to the Coast of Africa, and in defiance of the most sacred laws of humanity tears away his fellow creatures from their dearest connections & damns them to the most cruel bondages, shall have more votes in a Govt. instituted for protection of the rights of mankind, than the Citizen of Pa or N. Jersey who views with laudable horror, so nefarious a practice.

In addition to its immorality, Morris argued that slavery was the

⁴³ Ibid., 2:223.

⁴⁴ Ibid., 2:221-22.

"most prominent feature in the aristocratic countenance of the proposed Constitution." He suggested that slavery was like the "vassalage of the poor" which was "the favorite" of any "Aristocracy."⁴⁵

In addition to these economic, moral, and philosophical arguments, Morris asserted that the three-fifths clause was simply an unfair bargain. He asked what was "the proposed compensation to the Northern States for a sacrifice of every principle of right, or every impulse of humanity?" Quite simply, it was that northerners would "bind themselves to march their militia" to defend the South, "for the defence against those very slaves" for which the South demanded representation. The North would be required to "supply the vessels & seamen, in case of a foreign Attack," while the continued importation of slaves would only make the South more vulnerable to domestic insurrection and foreign invasion.⁴⁶

In a remarkably prescient analysis of future developments, Morris argued that the North would ultimately pay more than its share for the cost of governing the United States. He predicted that the imports of northerners would produce more duties "than the whole consumption of the miserable slave, which consists of nothing more than his physical subsistence and the rag that covers his nakedness." Nor would the South add to the national treasury through the taxing provisions of the three-fifths clause. In an age when it was impossible to foresee modern collection of taxes, Morris predicted it was "idle to suppose that the Genl. Govt. can stretch its hand directly into the pockets of the people scattered over so vast a Country."⁴⁷

Examining the entire question, Morris asked "for what then are all these sacrifices" in morality, political power, economics, and wise public policy? Morris saw nothing good in them and declared he "would sooner submit . . . to a tax for paying for all the Negroes in the U. States than saddle posterity with such a Constitution."⁴⁸

After this long speech Jonathan Dayton of New Jersey seconded Morris's motion. Predictably, Sherman of Connecticut supported the South and the three-fifths clause. Surprisingly, southerners were re-

⁴⁵ Ibid., 2:222.

⁴⁶ Ibid., 2:222-23.

⁴⁷ Ibid., 2:223.

⁴⁸ Ibid.

strained. The usually volatile Charles Pinckney merely indicated that he would present a different analysis "if the occasion were a proper one."⁴⁹ Evidently, the southerners realized that they had the votes on this issue and there was no point in further dragging out the debate. This analysis was surely confirmed when Morris's fellow delegate from Pennsylvania, James Wilson, spoke against the motion. In search of compromise, Wilson did not speak in favor of the three-fifths compromise *per se*. Instead, he argued that Morris's motion was "premature" and that adoption of the report of the Committee of Detail now "would be no bar" to changing the three-fifths clause at a later date. The Convention then defeated Morris's motion by a vote of ten to one. Only New Jersey supported this attempt to remove slaves from the calculations for assigning representation in Congress.⁵⁰ While the three-fifths clause continued to bother some members of the Convention, the August 8 debate proved to be the last major discussion of the issue.

An even more emotionally charged debate over the continuation of the African slave trade began on August 21 and continued sporadically until August 28.⁵¹ South Carolina led the debate in favor of the trade. Charles Pinckney told the Convention that South Carolina would "never receive the plan if it prohibits the slave trade." The Connecticut delegates continued their role as the precursors of the northern doughfaces of the antebellum era. Without any apparent qualms Oliver Ellsworth asserted that "the morality or wisdom of slavery are considerations belonging to the States themselves."⁵² The strongest opposition to allowing a continuation of the trade came from Virginia and Delaware. George Mason declared that it was "essential" that the national government have the power to prohibit the trade.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Immediately before this debate the Convention took up the question of allowing export taxes. As indicated above, the South viewed export taxes as a way of indirectly taxing slaves. Thus, with the exceptions of a few nationalists like Madison and Washington, Southerners were unalterably opposed to export taxes. Connecticut, as usual, supported the South on this issue. During this debate four delegates from Pennsylvania—Wilson, Morris, Thomas FitzSimons, and George Clymer—all supported allowing export taxes. On this issue Pennsylvania was joined by New Hampshire, New Jersey, and Delaware. Virginia split three to two in favor of the prohibition. Ibid., 2:359-64.

⁵² Ibid., 2:364.

Dickinson deemed a continuation of the trade "inadmissible on every principle of honor & safety."⁵³ Madison considered allowing the trade, even for only twenty years, "dishonorable."⁵⁴

For most of the debates over the slave trade, the Pennsylvania delegates were surprisingly silent. Perhaps they felt it more politic to let their slave state neighbors from Virginia and Delaware attack the African trade. When the Pennsylvanians did speak, the positions Wilson and Morris took were similar to the ones they had taken in the debate over the three-fifths clause. Both men expressed their distaste for the trade. After making clear his personal opposition to this traffic in human beings, Wilson nevertheless took a position that would allow for a compromise. Morris adamantly rejected any compromise, opposing the trade in his usually vigorous and outspoken manner, but as he had done in the debate over the three-fifths clause, Morris ended up suggesting grounds for a compromise that the Convention ultimately adopted. As with the three-fifths clause, it turned out to be a proposal that Morris himself could not fully support because he would not compromise on the issue of human bondage.

Oddly enough, James Wilson preceded Morris in attacking the trade. Yet Wilson expressed some ambivalence combined with his inclination to reach a compromise. Wilson observed that if South Carolina and Georgia were "disposed themselves to get rid of the importation of slaves in a short time" as some had suggested, then they would never refuse to support the Constitution "because the importation might be prohibited." Wilson also noted that under the clause being debated slaves were exempt from taxation, and this actually created "a bounty" on their importation.⁵⁵

Wilson's statement appeared to be a rejection of allowing the trade, but it left room for compromise on the issue in two ways. First, Wilson's position presupposed that South Carolina and Georgia were in fact likely to end the trade on their own. This was no doubt based on a statement by Abraham Baldwin of Georgia that his state "If left to herself" would "probably put a stop to the evil."⁵⁶ Wilson

⁵³ *Ibid.*, 2:370-73.

⁵⁴ *Ibid.*, 2:415.

⁵⁵ *Ibid.*, 2:372.

⁵⁶ *Ibid.*

had stated that the Carolinas and Georgia would never reject the Constitution over the slave trade if they really were going to abolish the trade. This implied, however, that Wilson would not reject the Constitution if the trade were protected, if he thought the states would soon abolish the trade. In other words, Wilson seemed prepared to accept the trade if the delegates from the deep South would promise voluntarily to abolish it in the near future. This position was undermined shortly after Wilson's speech when Charles Cotesworth Pinckney said he was "bound to declare candidly" that he did not believe "South Carolina would stop her importations of slaves in any short time, but only stop them occasionally as she now does."⁵⁷

The second opening for compromise in Wilson's position concerned taxing imported slaves. Presumably, Wilson might accept the slave trade if the imported slaves could be taxed. This was not a problem for the proponents of the trade. Hugh Williamson noted that North Carolina taxed imported slaves, implying that he might accept a tax provision in the clause. Charles Cotesworth Pinckney was more direct. He pragmatically moved "to commit the clause that slaves might be made liable to an equal tax with other imports." Pinckney considered this "right" and also noted it "wd. remove one difficulty that had been started."⁵⁸ Thus, as he had done over the three-fifths clause, Wilson proposed the makings of a compromise between the North and the South over slavery.

Gouverneur Morris's contribution to the slave trade debate was also much like his contributions to the debate over representation. In the earlier debate he had suggested the application of the three-fifths clause to taxation, even though he opposed the whole idea of counting slaves for representation. Now Morris made a similar suggestion. He wished that "the whole subject be committed including the clauses relating to taxes on exports & to a navigation act." Morris thought "these things may form a bargain among the Northern & Southern States." The Convention quickly agreed to this, although Pennsylvania voted *no*.⁵⁹

Morris's motivation for this proposal is unclear. In addition to their

⁵⁷ *Ibid.*, 2:373.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*, 2:374.

adamant opposition to export taxes, the southern delegates also opposed allowing Congress to regulate commerce and manufacturing, or navigation, as it was sometimes called.⁶⁰ Morris may have believed that if the North reiterated its demands for a simple majority for the regulation of commerce and for export taxes, the deep South might withdraw its insistence on the continuation of the slave trade. Morris also may have felt that if the slave trade was to be sanctioned, the North should get something it wanted in return. If this is what he wished for, Morris's suggestion was only partially successful. The Convention appointed a committee of one delegate from each state to reconsider navigation acts and the slave trade, but not, significantly, export taxes. Pennsylvania's delegate on this committee was the relatively quiet George Clymer.⁶¹

Two days later, on Friday, August 24, this committee reported a new clause that would prevent Congress from prohibiting the slave trade until 1800 and would allow a tax "not exceeding the average of the duties laid on imports." The Convention debated this provision the next day.⁶² Charles Cotesworth Pinckney immediately moved to amend the provision to allow the trade until at least 1808. Madison declared that twenty years would produce great "mischief," but he could not convince the Convention that the eight extra years mattered. Pennsylvania, New Jersey, Delaware, and Virginia opposed this motion, which passed seven to four. These states remained opposed to the trade throughout this debate.⁶³

This vote led Morris to another outburst against slavery. He suggested an utterly impolitic amendment, which could have only served to heighten tensions in the Convention. Morris noted that only the two Carolinas and Georgia wanted the trade and so proposed that it "would be most fair" and would avoid "ambiguity" if the clause declared that the "'importation of slaves into N. Carolina, S. Carolina & Georgia' shall not be prohibited &c." George Mason opposed this

⁶⁰ The delegates appear to have used the term "navigation" in the way that the British did before the Revolution. Under "navigation" acts the British regulated the colonial manufacturing of everything from hats to finished iron products, in addition, of course, to taxing sugar, tea, and other imported goods.

⁶¹ Farrand, ed., *Records*, 2:375.

⁶² *Ibid.*, 2:400.

⁶³ *Ibid.*, 2:415.

because it would "give offence to the people of those states."⁶⁴ No doubt that was precisely Morris's intention. However, after some debate on the subject, Morris withdrew his motion. There was no reason to bring the motion for a vote when it would be overwhelmingly defeated. Morris had made his point about the nefarious nature of the trade. By a vote of seven to four—with Pennsylvania in the minority—the clause allowing the trade until 1808 was adopted.⁶⁵

Four days later, on August 29, the Convention adopted a clause allowing Congress to regulate commerce and navigation by a simple majority. The key vote came on a motion by Charles Pinckney to require a two-thirds majority for commercial legislation. Six northern states opposed this amendment. Joining them was Pinckney's own state of South Carolina. Pinckney's cousin, Charles Cotesworth Pinckney, made it clear that he supported a simple majority for commercial legislation because the New England states had supported his demand for the slave trade.⁶⁶ Morris's suggestion of August 22 that a bargain over the slave trade and commerce might be possible had been correct.⁶⁷ But it was a bargain in which he, and the Pennsylvania delegation, did not take part, for Pennsylvania opposed the slave trade to the end.

The last major concession to slavery was the fugitive slave clause. On August 28 the Convention considered a clause requiring state governors to order the arrest and extradition of fugitives from justice from other states. This was a non-controversial provision, which everyone agreed was necessary for the nation. Before the vote on this question two South Carolinians, Pierce Butler and Charles Pinckney, moved "to require fugitive slaves and servants to be delivered up like criminals." James Wilson objected to this provision because it "would oblige the Executive of the State to do it, at the public

⁶⁴ Ibid.

⁶⁵ Ibid., 2:416.

⁶⁶ Ibid., 2:449-50. Pierce Butler declared that the interests of the South and the North were "as different as the interests of Russia and Turkey." Nevertheless, he voted with the North on this issue because he was "desirous of conciliating the affections of the East" and because the New England states had supported South Carolina on the slave trade clause. Ibid., 2:451.

⁶⁷ Ibid., 2:374.

expense.”⁶⁸ Consistent with his opinion throughout the Convention, Wilson did not oppose a concession to slavery on principle. Rather, he raised a practical, financial objection. This objection, like Wilson’s objections to the three-fifths clause and the slave trade, could be overcome—and compromised—and so it was. The next day Butler moved a separate clause, which gave masters, on their own, the right to seize runaway slaves. Butler introduced this immediately after the vote on commerce and navigation, and it passed without debate.⁶⁹

While slavery affected the Convention through September 15, by the end of August the major issues had been settled: slaves would be counted for representation and would also affect presidential elections through the electoral college; the slave trade could continue until at least 1808, with no guarantee that the Congress and the President would agree to end it at that time; masters could recover their slaves who sought freedom in other states; export taxes would be prohibited; the national government was pledged to protect the states from insurrections, including slave rebellions. It is little wonder that the nineteenth-century abolitionist William Lloyd Garrison thought the Constitution was a “Covenant with death and an agreement with Hell.”

* * * *

The compromises over slavery at the Convention were fashioned by delegates from many states. The Pennsylvania delegation, however, had a peculiar role. The first state to pass a gradual emancipation statute was critical in developing compromises that, for the most part, aided slavery at the expense of liberty.

James Wilson, the future Supreme Court Justice, was a prime architect of many of these compromises. Wilson acted deliberately. His concerns did not include the plight of slaves, free blacks, or the morality of the issue. Wilson’s position was made clear during the Pennsylvania ratification convention. At that convention Wilson was forced to explain, and defend, the slave trade clause. Wilson declared

⁶⁸ *Ibid.*, 2:443.

⁶⁹ *Ibid.*, 2:453-54.

that this clause laid "the foundation for banishing slavery out of this country." He declared it would "produce the same kind, gradual change, which was pursued in Pennsylvania." In the meantime, Wilson noted the "immediate advantage" that Congress could raise money by taxing imported slaves. He also asserted that "slaves will never be introduced" into any new states.⁷⁰

Wilson knew better. Throughout the debates over the slave trade the delegates from the deep South reiterated that they had no plans to give up slavery. Nor did anyone at the Convention believe that Congress had the power to end slavery in the states. Finally, anyone aware, as Wilson surely was, of the westward movement into what would soon become the states of Kentucky and Tennessee knew that slavery had already been established in the West. Wilson wanted a stronger Union, at any cost. While always professing to hate slavery, he was always willing to compromise away his opposition to the issue.

Gouverneur Morris, on the other hand, was one of the Convention's most vocal opponents of slavery. To the end, he opposed concessions for slavery. Ironically, of course, two of his suggested compromises (which he may have made for tactical reasons) proved to be keys to the adoption of the slavery-related clauses.

Perhaps the most curious response to the problem of slavery at the Convention came from Benjamin Franklin. William Pierce of Georgia wrote that Franklin, although eighty-two, "possesses an activity of mind equal to a youth of twenty-five years of age." Pierce might have added that Franklin used this youthful activity to offer sound and wise advice that could only have come from "the greatest philosopher of the present age."⁷¹ Although often lacking the strength to give his own speeches, Franklin added immeasurably to the Convention, especially by offering sage advice during critical periods. As early as 1770 Franklin had written an antislavery pamphlet. At the time of the Convention, Franklin was the President of the Pennsylvania Abolition Society. During the Convention Franklin received a petition from the Society asking that the delegates do something to

⁷⁰ Elliot, ed., *Debates in the States Conventions*, 2:422-23.

⁷¹ Farrand, ed., *Records*, 3:91.

end slavery in America.⁷² Franklin, however, never presented this petition, no doubt because he felt it would cause dissension and threaten the unity he was striving to achieve. In 1790 Franklin did present such a petition to Congress, urging that body to "Step to the very verge of the power vested in you" for "discouraging every species of traffic in the persons of our fellow men." This petition led to a vigorous debate in Congress, and gave Franklin an opportunity to write a wonderful satire against those who supported slavery and the slave trade.⁷³

Franklin's satire was his last published writing. It was a fitting finale to his long career. However, it is at least worth a moment's pause to wonder what would have happened if Franklin *had* presented to the Convention the memorial of his own abolition society. What might have been the result if Franklin had used his vast prestige, wit, and wisdom to fight slavery during the summer of 1787? The concessions to slavery might have been fewer if Franklin had joined Gouverneur Morris, the New Jersey delegates, Rufus King of Massachusetts, Dickinson of Delaware, and a few others in opposing slavery and the demands of the slave trade. Instead, Franklin sided with his good friend James Wilson, and in the end helped defuse the antislavery sentiments of, not only Gouverneur Morris, but the vast majority of the people of Pennsylvania. That too, alas, is part of the heritage we celebrate during the bicentennial of the Constitution.

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⁷² Ibid., 3:361; Davis, *The Problem of Slavery in the Age of Revolution*, 321; Robinson, *Slavery in the Structure of American Politics*, 470.

⁷³ Franklin's petition is quoted in Robinson, *Slavery in the Structure of American Politics*, 303.

