

Sources of the Constitution

A Mini-unit based on the 2010 TAH Seminar

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Unit Introduction

This mini-unit seeks to utilize some of the content, ideas, coursework, and pedagogy emerging from the Teaching American History Seminar, *A More Perfect Union: The Origins and Development of the U.S. Constitution*. More specifically, the lessons deal primarily with conflicting perceptions, ideas, and interests at the Philadelphia Convention and in the subsequent struggle over ratification. In concert with Massachusetts' recent movement toward alignment with National Standards, the individual lessons provide correlations with US standards, rather than the state Frameworks. Nevertheless, Lessons 2 and 3 of this Unit most directly address the following objectives of those Frameworks:

USI.2 Explain the historical and intellectual influences on the American Revolution and the formation and framework of the American government. (H, C)

- A. the legacy of ancient Greece and Rome
- B. the political theories of such European philosophers as Locke and Montesquieu

USI.8 Describe the debate over the ratification of the Constitution between Federalists on federalism, factions, checks and balances, and the importance of an independent judiciary.¹

The lessons of this unit require that the students have previously read and studied the Constitution, itself, in a previous unit, although Lesson 1, with its valuable grounding of the students as to time and location, could be productively used earlier. Each of the lessons has been designed to be completed in a single (40-50 minute) class period. All lessons and handouts or other materials therein are original, unless otherwise noted.

Lessons Summary

1. Chronology/Geography Lesson involving Ratification
2. Classical Roots: Aristotle and the Struggle for Ratification
3. The Politics of the Enlightenment: Locke, Montesquieu, and Hamilton
4. Slavery and the Constitution

Lesson 1: Geography, Chronology, and Ratification

Rationale

Students often lack a solid grounding with respect to space and sequence, which leads to confusion and alienation. Even students with strong map and timeline skills benefit from regular practice and review. Although these two skills are clearly both related and co-dependent, they are usually taught separately. The exercise which forms the core of this lesson attempts to establish connection between the two. In addition, it seeks to provide a springboard to broader themes of coincidence, chronology, and causation, which are elicited in the questions of the Project Handout (1A) and subsequent discussion. Although this lesson deals primarily with the ratification process, it allows an opportunity for a more general orientation with respect to both geography and chronology. Moreover, this orientation provides a very helpful framework for understanding the Letters of the Founders, which will form the core of the Classical Roots lesson. Therefore this Chronology/Geography lesson is presented first.

National Standards

Era 3: Revolution and the New Nation (1754-1820s)

Standard 3A: The student understands the issues involved in the creation and ratification of the United States Constitution and the new government it established.²

Historical Thinking Standard 1: Chronological Thinking

Standard 1E: The student thinks chronologically; therefore the student will interpret data presented in time lines and create time lines.³

Geography Standard 6: The Uses of Geography

As a result of activities in grades K-12, all students should understand how to apply geography to interpret the past.⁴

Objectives

1. To place the events of the Constitutional Convention and the ratification process in a geographical and chronological context.
2. To build or reinforce skills with maps, especially the creation of map keys, and with timelines, especially converting temporal data onto a map.
3. To make hypotheses and draw conclusions based on an assortment of data; including timelines, maps and combinations of maps, and previously learned information.
4. To differentiate among coincidence, chronology, and causation; especially as those concepts apply to the Constitution, the ratification process, and the adoption of the Bill of Rights.

Procedures

1. Direct Group Instruction
 - Write a timeline on the board with the following dates: 1607, 1763, 1776, 1781, 1783, 1787, 1788, and 1791. Identify the importance of each as a class, labeling the timeline in the process.
 - Have students read Articles 5 and 7 of the US Constitution.

- Ask why only nine states were required for such a momentous change as the creation of a new framework of government. [In *The Americans*⁵ students can also read the “Constitutional Insight” paragraph accompanying Article 7 on p. 165.]
- Have students turn to the “Bill of Rights” and explain its connection to Article 5.

2. Individual assignment

- Pass out copies of Handouts 1A, 1B, and 1C and make a box of assorted colored pencils and/or markers available.
- Have students complete the map and the questions. Provide individual assistance, as needed.

3. Discussion and Socratic Method

- Discuss students’ answers to the project questions.
 - The original Senate would only have had 22 members, since two states had not yet ratified the Constitution. [11 states x 2 members/state = 22]
 - The colonial map does not include the US territory west of the Appalachians that was granted by the Treaty of Paris of 1783.
 - The map in the text does not show the abandonment of western land claims by several states or the organization of the Northwest Territory, which had occurred under the Articles of Confederation.
- Introduce the concept of coincidence. Example: The authors of *The Federalist* were from the reluctantly ratifying states of New York and Virginia.
- Introduce the concept of chronology (without causation). Example: The ratification of the Constitution by New York occurred before the seating of the first Congress, but was not a cause or necessary precondition for that seating, since nine other states had already ratified. [Note, however, that the seating could not have occurred in the nation’s first capital, New York City, if New York had not joined the United States.]
- Introduce the concept of causation. Examples: Reasonable (and accurate) hypotheses can be made that (1) geographical proximity to Philadelphia probably played some role in ratification by the first three states and (2) the proposal of a Bill of Rights favorably influenced North Carolina (and other states) to ratify the Constitution.
- Circle on the timeline on the board (1) signing of the Constitution (1787), (2) ratification of the Constitution by nine states (1788), and ratification of the Bill of Rights (1791). Discuss relationships among these three events as to chronology and causation.

- ## 4. Assessment: The written assignments (map and questions) can be used as be used as an evaluation of the students’ efforts and, even more valuably, as a diagnostic assessment of the strengths and weaknesses of individuals and the class as a whole. When promptly completed and returned, such diagnostic assessments will suggest productive adjustments to future lessons.

Map and Timeline Project on Constitutional Ratification

1. On the blank outline map provided, fill in the names of as many of the thirteen original states as you can remember. Then use an Atlas or other resource to fill in the rest.
2. Locate and label the city of Philadelphia, where the Constitutional Convention took place.
3. Using the chart provided, write the month and year of ratification under the names of each of the states.
4. Create a Map Key in color with four categories:
 - the first three states to ratify;
 - the next six ratifying states leading to the establishment of the Constitution;
 - states ratifying later, but before the seating of the new government; and
 - states ratifying after the new government was seated.
5. Color the map according to the key and staple this sheet onto it. Address the following:

- How many members in the original US Senate? _____
- Compare your map with that of 1784 on p. 122 of your text, *The Americans*. How is your map inaccurate? _____

How had the 1784 map changed by the time of the Constitutional Convention? _____

- *The Federalist* was a series of essays promoting ratification of the Constitution. They were written by Alexander Hamilton and John Jay of New York and by James Madison of Virginia. What conclusion might be drawn from this? _____

- Was the ratification of the Constitution by New York in 1788 a cause of the seating of the new government in 1789? _____ Why or why not? _____

- What conclusion might be drawn from geographical location of the first three ratifying states? _____

- From the timeline, what hypotheses or conclusions can be drawn about the sequence of the Bill of Rights, the Constitution, and the ratification process? _____

- What other hypotheses or conclusions can be formulated based on the map, the timeline, or both? _____

Timeline for Ratification of the Constitution and Bill of Rights⁶

December 7, 1787	Constitution is ratified – Delaware	Unanimous vote - 30-0
December 12, 1787	Constitution is ratified – Pennsylvania	Vote 46-23
December 18, 1787	Constitution is ratified – New Jersey	Unanimous vote - 38-0
January 2, 1788	Constitution is ratified – Georgia	Unanimous vote - 26-0
January 9, 1788	Constitution is ratified – Connecticut	Vote 128-40
February 6, 1788	Constitution is ratified – Massachusetts	Vote 187-168
April 26, 1788	Constitution is ratified – Maryland	Vote 63-11
May 23, 1788	Constitution is ratified – South Carolina	Vote 149-73
June 21, 1788	Constitution is ratified – New Hampshire	Vote 57-47
June 21, 1788	Constitution is now established by the ratification of nine states	
June 25, 1788	Constitution is ratified – Virginia	Vote 89-79
July 26, 1788	Constitution is ratified – New York	Vote 30-27
March 4, 1789	First Congress of the United States of America is seated	
April 30, 1789	George Washington is inaugurated as the first President of the United States	
September 26, 1789	Congress of the United States sends twelve amendments to the Constitution to the states for ratification. The last ten were eventually enacted as the Bill of Rights.	
November 21, 1789	Constitution is ratified – North Carolina	Vote 194-77
May 29, 1790	Constitution is ratified – Rhode Island	Vote 34-32
December 15, 1791	Bill of Rights comes into force on ratification by Virginia	

Lesson 2: Classical Roots: Aristotle and the Struggle for Ratification

Rationale and Background

In Massachusetts, the teaching of ancient history has been relegated to Grade 7. As a result, most high school students have a limited concept of the tremendous influence that classical civilizations exerted on the Founders and the Constitution. Moreover, as stated in the introduction to this unit, the state Frameworks specifically mandate understanding of the legacy of ancient Greece and Rome in American government. Another explicit state objective is stated in USI.12, “Explain and provide examples of different forms of government, including democracy, monarchy, oligarchy, theocracy, and autocracy.”⁷ The considerable value of these goals explains the use of a passage from Aristotle’s *Politics* to frame the key concepts of this lesson.

The use of selections from the Founders letters serves two key purposes. First, it provides an experience with primary sources, a valuable tool in and of itself, but also a crucial skill in the addressing the Document Based Questions (DBQs) that comprise much of the Advanced Placement courses and exam. Moreover the actual words of the founders do much to undo their mythic deification⁸ and establish them as approachable “founding guys.”⁹ Finally, the reading of personal communications tends to make history feel more lively and relevant for the students.

National Standards

Era 3: Revolution and the New Nation (1754-1820s)

Standard 3A: The student understands the issues involved in the creation and ratification of the United States Constitution and the new government it established.¹⁰

Historical Thinking Standard 3A: The student engages in historical analysis and interpretation; therefore, the student is able to compare and contrast differing sets of ideas, values, personalities, behaviors, and institutions by identifying likenesses and differences.¹¹

Historical Thinking Standard 4A: The student conducts historical research; therefore, the student is able to formulate historical questions from encounters with historical documents, eyewitness accounts, letters, diaries, artifacts, photos, historical sites, art, architecture, and other records from the past.¹²

Objectives

1. To learn Aristotle’s scheme for classifying governments, including the following terms: monarchy, tyranny, autocracy, aristocracy, oligarchy, theocracy, and constitution and democracy (as defined by Aristotle).
2. To apply the terms above to institutions in American government under the Constitution, specifically the President, Senate, and House of Representatives.
3. To develop familiarity and facility with letters as primary sources.
4. To build skills in reading comprehension and in formal writing.

Procedures

1. Direct Group Instruction

- Write “Good Forms of Government” and “Bad Forms of Government” on the board. Ask the students to name as many of each as they can. Add forms from USI.12 (see Rationale, above). Categorize and define all forms as a class. Allow forms to be placed on both lists, withholding discussion or debate until later.
- Ask who Aristotle was, establishing that he was a philosopher in ancient Greece. Tell the students they are going to be reading about Aristotle’s perversions. [That should get their attention!] Distribute Handout 2A.

2. Independent reading: Handout 2A

3. Socratic method

Some suggested questions follow and should lead to other questions:

- What is Aristotle’s special use of the words, *constitution*?
- Why does he consider *democracy* to be a perversion of good government? [Point out that this conception, although foreign to us today, it was generally accepted by people of the 18th century, especially the Founders, most of whom would have been familiar with Aristotle’s ideas.]
- Is democracy sometimes “bad?” What’s the difference between a democracy and a republic?
- Can a republic be an aristocracy? [Rome was.] Can it support slavery? [Rome and the US Constitution did.]
- Can a monarchy or aristocracy be a better form of government than a democracy, as we define it today? Why or why not?
- If assigned the “Good” and “Bad” lists now, would you do them differently?
- What institutions in American government were designed to reflect rule by one or monarchy [the Presidency], rule by a few [the Senate], and rule by the many [the House]?

4. Critical reading with highlighting

- Distribute Handout 2B and highlighters.
- Read directions at the beginning of the Handout and answer questions.
- Break class up into pairs for the assignment. Provide assistance as needed.

5. Discussion

- Ask which Founder makes the most direct reference to Aristotle’s concepts. [Adams]
- Review and discuss the results of the highlighting activity.

6. Extension (Homework): Students should read Handout 2C and write a one paragraph summary of the major thesis of the essay, *Examining Letters of the Founders through an Aristotelian Lens*.

7. Assessment: Evaluate the homework paragraphs using any preferred rubric.

Selection from Aristotle's *Politics*

The true forms of government, therefore, are those in which the one, or the few, or the many, govern with a view to the common interest; but governments that rule with a view to the private interest, whether of the one, or the few, or the many, are perversions. For the members of a state, if they are truly citizens, ought to participate in its advantages. Of the forms of government in which one rules we call that which regards the common interests, kingship or royalty; that in which more than one, but not many, rule, aristocracy; and it is so called either because the rulers are the best men, or because they have at heart the best interest of the state and of the citizens. When the citizens at large administer the state for the common interest, the government is called by its generic name, a constitution ...Of the above-mentioned forms the perversions are as follows: --of royalty, tyranny; of aristocracy, oligarchy; of constitutional government, democracy. For tyranny is a kind of monarchy which has in view the interest of the monarch only; oligarchy has in view the interest of the wealthy; democracy of the needy: none of them the common good of all.¹³

Directions:

Skim the following letters looking for the governmental concepts of Aristotle: one, few, many, monarchy, aristocracy, tyranny, oligarchy, democracy, etc. and for their representation in the government as King or sovereign, President (or Executive); Senate (upper house or branch), and House (lower house or branch), Parliament or simply Legislature. Highlight each reference. Then read the surrounding context of each highlighted item very carefully. Be prepared to discuss the influence of Aristotelian concepts on the Constitution and on the debate over its ratification.

Selected Private Correspondence of the Founders, 1787-1788¹⁴

James Madison to Thomas Jefferson, October 24, 1787
(describing discussions at the Constitutional Convention)

On the question whether [the Executive] should consist of a single person, or a plurality of coordinate members, on the mode of appointment, on the duration in office, on the degree of power, on the re-eligibility, tedious and reiterated discussions took place... As to the duration in office, a few would have preferred a tenure [for life] during good behaviour – a considerable number would have done so, in case an easy & effectual removal by impeachment could be settled... The questions concerning the degree of power turned chiefly on the appointment to offices and the controul of the Legislature. An *absolute* appointment to all offices – to some offices – to no offices, formed the scale of opinions on the first point. On the second, some contended for an absolute negative [veto], as the only possible means of reducing to practice, the theory of a free Government which forbids the mixing of the Legislative & Executive powers.

...If the supremacy of the British Parliament is not necessary as has been contended, for the harmony of that Empire; it is evident I think that without the royal negative or some equivalent control, the unity of the system would be destroyed...

...Those who contend for a simple Democracy, or a pure republic, actuated by the sense of the majority, and operating within narrow limits, assume or suppose a case which is entirely fictitious... It remains then to be enquired whether a majority having any common interest, or feeling any common passion, will find sufficient motives to restrain them from oppressing the minority... If two individuals are under the bias of interest or enmity against a third, the rights of the latter could never be safely referred to a majority of three. Will two thousand individuals be less apt to oppress one thousand?

...In absolute monarchies, the Prince maybe tolerably neutral towards different classes of his subjects, but may sacrifice the happiness of all to his personal ambition or avarice.

Joseph Jones to James Madison, October 29, 1787

...I must confess that I see many objections to this constitution submitted to the Conventions of the States. That which has the greatest weight with me lies against the constitution of the Senate, which being both legislative and Executive and in some respects judiciary is I think radically bad. The President and the Senate too may in some instances legislate for the Union... It is to be feared that this body united with the President... will be an overmatch for the popular branch... I own I should have been pleased to see a declaration of rights accompany this constitution as there is much to be provided for by the legislature and that body possessing too great a portion of Aristocracy.

Thomas Jefferson (in Paris) to John Adams (in London), November 13, 1787

...[The] President seems a bad edition of a Polish king. He may be elected for 4 years to 4 years for life. Reason and experience prove to us that a chief magistrate [executive], so continuable is an officer for life. When one or two generations shall have proved that this is an office for life, it becomes on every succession worthy of intrigue, of bribery, of force, and even of foreign interference...I wish that at the end of the 4 years they had made him for ever ineligible for a second time.

John Adams (in London) to Thomas Jefferson (in Paris), December 6, 1787

The Project of a new Constitution has Objections against it, to which I find it difficult to reconcile myself, but I am so unfortunate as to differ somewhat from you in the Articles, according to your last kind Letter.

You are afraid of the one – I, of the few. We agree perfectly that the many should have a full fair and perfect Representation. – You are apprehensive of Monarchy; I, of Aristocracy. I would therefore have given more power to the President and less to the Senate...

You are apprehensive the President when once chosen, will be chosen again and again as long as he lives. So much the better as it appears to me... But as often as Elections happen, the danger of foreign influence recurs. The less frequently they happen the less danger. – And if the Same Man may be chosen again, it is probable he will be, and the danger of foreign influence will be less.

Elections, my dear sir, Elections to offices which are great objects of Ambition, I look at with terror...there is great reason to dread them...

George Washington to Marquis de Lafayette, February 7, 1788

...Powers [of the government under the proposed Constitution] are so distributed among the Legislative, Executive, and Judicial Branches, into which the general Government is arranged, that it can never be in danger of degenerating into a monarchy, an Oligarchy, an Aristocracy, or any other despotic or oppressive form, so long as there shall remain any virtue in the body of the People.

...It will at least be a recommendation to the proposed Constitution that it is provided with more checks and barriers against the introduction of Tyranny, and those of a nature less liable to be surmounted, than any government hitherto instituted among mortals, hath possessed...

George Washington to Marquis de Lafayette, April 28, 1788

...[O]n the eligibility of the same person for President, after he should have served a certain course of years. Guarded so effectually as the proposed Constitution is, in respect to the prevention of bribery and undue influence in the choice of the President: I confess, I differ widely myself from Mr. Jefferson and you, as to the necessity or expediency of rotation in that appointment... There cannot, in my judgment, be the least danger that the President will by any practicable intrigue ever be able to continue himself one moment in office, much less perpetuate himself in it... Under an extended view of this part of the subject, I can see no propriety in precluding ourselves of the services of any man, who on some great emergency shall be deemed universally, most capable of serving the Public...

Examining Letters of the Founders through an Aristotelian Lens

Introduction

In 1787 and 1788, the attempt to secure ratification of the Constitution became a desperate battle over what (and even whether) the United States should be. As shown by many private correspondences of the Founders, this was a struggle involving self-centered personalities, crass economic interests, and partisan bickering. It was, however, also a struggle of high-minded ideas. The effort to justify the Constitution and to win its approval brought about that great work of American political philosophy, *The Federalist*. There, the Constitution is presented as the result of a quest to find the best form of government. This fundamental philosophical query began with the ancient Greek philosopher Aristotle and played a significant role in many of the private letters of the Founders, as well. Moreover, Aristotle's explication of the three pure forms of government (and their perversions) provides a unifying framework for examining the political ideas of the Founders, as described in their private letters.

Aristotle's View

In his *Politics*, Aristotle states that:

The true forms of government, therefore, are those in which the one, or the few, or the many, govern with a view to the common interest; but governments that rule with a view to the private interest, whether of the one, or the few, or the many, are perversions. For the members of a state, if they are truly citizens, ought to participate in its advantages. Of the forms of government in which one rules we call that which regards the common interests, kingship or royalty; that in which more than one, but not many, rule, aristocracy; and it is so called either because the rulers are the best men, or because they have at heart the best interest of the state and of the citizens. When the citizens at large administer the state for the common interest, the government is called by its generic name, a *constitution* [italics added]...Of the above-mentioned forms the perversions are as follows: --of royalty, tyranny; of aristocracy, oligarchy; of constitutional government, democracy. For tyranny is a kind of monarchy which has in view the interest of the monarch only; oligarchy has in view the interest of the wealthy; democracy of the needy: none of them the common good of all.¹

"The one," Monarchy, the Presidency

The apparent weaknesses of the Articles of Confederation led many Founders to conclude that some aspect "in which one rules" needed to be included in any true *constitution* (in the Aristotelian sense.) A monarchy on the British model was familiar to all and very appealing to some. Alexander Hamilton, who had recently left the Philadelphia Convention in frustration, endorsed a belief that "[t]he people begin to be convinced that their...government...will not answer their purpose; and that they must substitute something not very remote from that which they have lately quitted."² His proposal for the new government included a very monarchical chief executive with tenure "during good behavior" (i.e. for life)³ and the power to appoint the governors of all the states.⁴

The British system of monarch and Parliament seemed to work, so the Founders sought to determine why. James Madison opined that "[i]f the supremacy of the British Parliament is not necessary as has

¹ Aristotle, *Politics/Poetics*, Book Three, Part VII, translation by Benjamin Jowett and Thomas Twining, published in *The World's Greatest Classics*, (New York: Grolier Incorporated) 94-95.

² Hamilton's letter to George Washington of July 3, 1787, in Michael Kammen, ed., *The Origins of the American Constitution: A Documentary History* (New York: Penguin Books, 1986), 53.

³ Hamilton's plan presented to the Philadelphia Convention on June 18, 1787, in Kammen, 37.

⁴ *Ibid*, 38.

been contended, for the harmony of that Empire; it is evident I think that without the royal negative [veto] or some equivalent control, the unity of the system would be destroyed.”⁵ Later, Madison contemplates the perversion of monarchy that Aristotle had defined as “tyranny”: “In absolute monarchies, the Prince may be tolerably neutral toward different classes of his subjects, but may sacrifice the happiness of all to his personal ambition or avarice.”⁶

Eventually the role of Aristotle’s “the one” was to be exercised by the office of President, as defined in Article I of the Constitution. The length of the President’s tenure arose as a significant consideration at and after the Philadelphia Convention. Thomas Jefferson decried the “abandonment...of rotation in office, and most particularly in the case of the President. Experience concurs with reason in concluding that the first magistrate will always be re-elected if the Constitution permits it.”⁷ In an earlier letter, Jefferson had concluded that the “President seems a bad edition of a Polish king...When one or two generations shall have proved that this is an office for life, it becomes on every succession worthy of intrigue, of bribery, of force, or even of foreign interference.”⁸

Jefferson could not have foreseen the tradition of the two-term Presidency and its eventual formalization in the Twenty-second Amendment. Since George Washington would create that two-term tradition, his thoughts are especially noteworthy:

Guarded so effectually as the proposed Constitution is, in respect to the prevention of bribery and undue influence in the choice of President: I confess, I differ widely myself from Mr. Jefferson and you, as to the necessity or expediency of rotation in that appointment. There cannot, in my judgment, be the least danger that the President will by any practicable intrigue ever be able to continue himself one moment in office, much less perpetuate himself in it; ...Under an extended view of this part of the subject, I can see no propriety in precluding ourselves from the services of any man, who on some great emergency shall be deemed universally, most capable of serving the public...⁹

Through personal example, Washington would do much to assure the fruition of his prediction. He had faith that the system of checks and balances would prevent those Aristotelian perversions of a constitutional government that he personally abhorred. The future first President, who was to set the permanent standard for “the one,” believed that the American government “can never be in danger of degenerating into a monarchy, an Oligarchy, an Aristocracy, or any other despotic or oppressive form, so long as there shall remain virtue in the body of the people.”¹⁰

“The few,” Aristocracy, the Senate

A tyrannical president was not the only feared perversion of good government. In his response to Thomas Jefferson, John Adams stated his concerns in distinctly Aristotelian terms: “You are afraid of the one--I of the few. We agree perfectly that the many should have a full fair and perfect Representation.—You are Apprehensive of Monarchy; I of Aristocracy. I would therefore have given more power to the President and less to the Senate.”¹¹

Joseph Jones, a close friend of the Virginia Founders also expressed serious concerns regarding the Senate, especially as it might act in concert with the President: “[T]he constitution of the Senate...is I think radically bad. The President and the Senate too may in some instances legislate for the Union,

⁵ Madison’s letter to Thomas Jefferson of October 24, 1787, in Kammen, 68.

⁶ Ibid, 73.

⁷ Jefferson’s letter to Madison of December 27, 1787, in Kammen, 91.

⁸ Jefferson’s letter to John Adams of November 13, 1787, in Kammen, 84.

⁹ Washington’s letter to Madison of April 28, 1788, in Kammen, 109

¹⁰ Washington’s letter to Marquis de Lafayette of February 7, 1788, in Kammen, 102

¹¹ Adam’s letter to Thomas Jefferson of December 6, 1787, in Kammen, 87

without. the concurrence of the popular branch...”¹² He concludes that the Senate weighs down the legislative body of the new government with “too great a portion of Aristocracy.”¹³

The Senate epitomized rule by “the few” that frightened many of the opponents of the Constitution. An opposition faction was described by Madison as believing that “the Convention at Philada. had entered into a conspiracy against the liberties of the people at large, in order to erect an aristocracy for the rich the *well-born*, and the men of Education.”¹⁴ This closely echoes Aristotle’s description of the perversion of aristocracy into oligarchy. Yet the Framers¹⁵ felt such a body added needed balance in the creation of an ideal government that avoided the excesses of democracy, a government that Aristotle called a *constitution*.

“The many,” Constitution, the People

The proposed Constitution provided specific governmental structures to represent the benefits of rule by “the one” (the Presidency), and “the few” (the Senate). A letter to Thomas Jefferson expressed the fears of the Framers: “Some Gentlemen apprehend that this project is the foundation of Monarchy, or at least an oppressive Aristocracy, but my apprehensions are rather from the inroads of democracy,”¹⁶ The new government would mitigate against the excesses of “democracy”, which had been defined by Aristotle as the perversion of a *constitution*. One would expect the leaders and the elite to be unreservedly enthusiastic toward such a plan, while the common people would be wary. Private correspondence of the Founders says otherwise:

Hamilton: [A] strong well mounted government will better suit the popular palate than one of a different complexion. Men in office are indeed taking all possible pains to given unfavorable impression of the Convention; but the current seems to be running strongly the other way.¹⁷

Washington: [M]any *ostensible* reasons are assigned to prevent the adoption of it, [but] the real ones are concealed behind the Curtain...¹⁸
The men who oppose a strong & energetic government are...narrow minded politicians. The apprehension expressed by them that the *people* will not accede to the form proposed is the *ostensible*, not the real cause of the opposition...¹⁹

Tench Coxe: The opposition here [in Philadelphia]...is by those *leaders*...who have acted in concern with the Western interest. *The people* of the party in the city are chiefly federal...²⁰

Madison: I do not learn however that the cause [of ratification] has lost its majority in the Legislature, and still less among the people at large.²¹

¹² Jones’ letter to James Madison of October 29, 1787, in Kammen, 77

¹³ Ibid, 78

¹⁴ Madison’s letter to Thomas Jefferson of February 19, 1788, in Kammen, 104

¹⁵ The capitalized term, “Framers,” which might be thought a later historians’ invention, was actually used as early as 1787 by George Washington in his letter to Marquis de Lafayette of September 18, 1787, in Kammen, 55

¹⁶ Edward Carrington quoted by Carol Berkin, *A Brilliant Solution: Inventing the American Constitution* (Orlando, Harcourt, Inc., 2002), 177

¹⁷ Hamilton’s letter to Washington of July 3, 1787 in Kammen, 53

¹⁸ George Washington’s letter to Bushrod Washington of November 10, 1787 in Kammen, 83

¹⁹ Washington’s letter to Hamilton of July 10, 1787 in Kammen, 54-55

²⁰ Coxe’s letter to Madison of October 21, 1787 in Kammen, 63

²¹ Madison’s letter to Washington of November 18, 1787 in Kammen, 85

[T]he mass of the people...not only go before, but contrary to, their most popular leaders.²²

The people at large have been uniformly said to be more friendly to the Constitution than the Assembly.²³

These observations cannot easily be dismissed as simply the wishful thinking of the Constitution's proponents. Even Edmund Randolph whose opposition to the Constitution led to his refusal to sign it, noted the popular sentiments:

The first raptures in favor of the Constitution were excessive. Every town resounded with applause. The conjectures of my reasons for refusing to sign were extraordinary, and ...malicious...These were the effluviae until the assembly met."²⁴

Once the leaders in the legislature became involved, however,

[a] great ferment was kept up...[such that] if it had been propounded by the legislature to the people as *we* [the legislature] propounded it, the constitution would have been rejected and the spirit of union extinguished.²⁵

Conclusion

Why were "the many" so favorable toward a government that featured an enhanced role for "the one" and "the few?" Another view through the lens of Aristotle may provide an answer. Perhaps the people, like Aristotle, had come to see the unbridled excesses of democracy as a perversion of good government. Perhaps, as James Madison told Thomas Jefferson,

the body of sober & steady people, even of the lowest order are tired of the vicitudes, injustice and follies which have so much characterized public measures, and are impatient for some change which promises stability and repose.²⁶

In Aristotelian terms, perhaps they wanted a Constitution that created a *constitution*.

²² Madison's letter to Jefferson of December 9, 1787 in Kammen, 89

²³ Madison's letter to Jefferson of February 19, 1788 in Kammen, 105

²⁴ Randolph's letter to James Madison, ca. October 29, 1787, in Kammen, 79

²⁵ Ibid

²⁶ Madison's letter to Jefferson of December 9, 1787, in Kammen, 89

Lesson 3: The Politics of the Enlightenment: Locke, Montesquieu, and Hamilton

Rationale and Background

The Enlightenment exerted tremendous influence in creation of the American government. This lesson highlights three important facets of that influence through the use of primary sources and a selection from *Hamilton, Adams, Jefferson: The Politics of the Enlightenment and the American Founding* by Darren Staloff, a major contributor to the 2010 TAH Seminar. The three key areas of connection are:

- the ideals of the Revolution, itself, as represented by the writings of John Locke,
- the structure of government under the Constitution, as seen in the Montesquieu's *Spirit of the Laws*, and
- the beliefs and practices of the founders, themselves, as epitomized by Alexander Hamilton, whose "vision was the fulfillment of the politics of the Enlightenment."¹⁵

The inclusion of Hamilton serves two additional purposes. It throws a deserved spotlight on Hamilton as an underappreciated Founder and a true Enlightenment figure, perhaps the most prescient and modern of the "Fathers." Moreover, it provides a bridge to subsequent study of Washington's presidency and the significant role played by Hamilton therein.

Some of the readings would provide a high level of challenge for high school students, but should be suitable in most honors or AP classes.

National Standards

Era 3: Revolution and the New Nation (1754-1820s)

Standard 3A: The student understands the issues involved in the creation and ratification of the United States Constitution and the new government it established.¹⁶

Historical Thinking Standard 3A: The student engages in historical analysis and interpretation; therefore, the student is able to compare and contrast differing sets of ideas, values, personalities, behaviors, and institutions by identifying likenesses and differences.¹⁷

Historical Thinking Standard 4A: The student conducts historical research; therefore, the student is able to formulate historical questions from encounters with historical documents, eyewitness accounts, letters, diaries, artifacts, photos, historical sites, art, architecture, and other records from the past.¹⁸

Objectives

1. To compare the principles of John Locke with those in the Declaration of Independence.
2. To compare Montesquieu's ideas about government with the structure of government under the US Constitution.
3. To appreciate Alexander Hamilton and his policies as the fulfilling key ideals of the Enlightenment.

Procedures

1. Direct Instruction: Very briefly introduce the philosophes, the European Enlightenment, Locke, and Montesquieu.
2. Activity (“Jigsaw”):
 - Divide the class into nine groups: 1H, 1L, 1M, 2H, 2L, 2M, 3H, 3L, 3M
 - “Letter” Conferences (15) minutes)
 - Assemble all the Hs to read and Handout 3A on Hamilton and discuss his connection to the Enlightenment.
 - Assemble all the Ls to read Handout 3B from Locke and the Declaration of Independence and discuss connections between the two sources. (**NB- In a highly heterogeneous class this reading would best serve less skilled readers.**)
 - Assemble all the Ms to read Handout 3D and its influence on the US Constitution.
 - “Number” Conferences (10) minutes): Three new groups (1s, 2s, and 3s) assemble to report on and discuss the findings in their respective letter groups. Each group should select a representative to present two-minute summaries of these discussions to the entire class.
 - Representatives of each group present summaries. (6 minutes)
 - Concluding comments by teacher.
3. Assessment: Contributions of individual students to the Jigsaw Activity can be assessed either informally or using a standard oral participation rubric.

John Locke and Thomas Jefferson

John Locke's *Social Contract*¹⁹

"Men have rights by their nature... We give up our right to ourselves exact [revenge] for crimes in return for [nonjudgmental] justice backed by overwhelming force. We retain the right to life and liberty, and gain the right to just, impartial protection of our property."

". Society creates order and grants the state its [purpose]... The only important role of the state is to ensure that justice is seen to be done"

"If a ruler seeks absolute power, if he acts both as judge and participant in disputes, he puts himself in a state of war with his subjects and we have the right and the duty to kill such rulers and their servants."

Thomas Jefferson in the *Declaration of Independence*²⁰

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

Locke and Jefferson, side by side²¹

John Locke, <i>Concerning Civil Government</i> , 1693, second essay, Ch. 19	Thomas Jefferson [Plagiarist], <i>Declaration of Independence</i> , 1776
<p>Secondly: I answer, such revolutions happen not upon every little mismanagement in public affairs. Great mistakes in the ruling part, many wrong and inconvenient laws, and all the slips of human frailty will be borne by the people without mutiny or murmur. But if a long train of abuses, prevarications, and artifices, all tending the same way, make the design visible to the people, and they cannot but feel what they lie under, and see whither they are going, it is not to be wondered that they should then rouse themselves, and endeavor to put the rule into such hands which may secure to them the end for which government was at first erected...</p>	<p>Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.</p>

Thomas Jefferson, along with the other Founding Fathers, adhered to rather conventional 18th century political ideas, derived mainly from the works of Locke and Montesquieu. The Declaration of Independence, which is often cited in the media as a marvel of originality, is nothing but a trite paraphrase of the leading ideas in John Locke's 1693 *Concerning the True Original Extent and End of Civil Government*. John Adams thought the DOI was hackneyed, and James Madison apologized for its plagiarism by saying that "The object was to assert, not to discover truths."

Montesquieu: The Spirit of the Laws, 1748²²

Charles de Secondat, Baron de Montesquieu (1689-1755), was a nobleman, a judge in a French court, and one of the most influential political thinkers. Based on his research he developed a number of political theories presented in The Spirit of the Laws (1748). This treatise presented numerous theories - among the most important was respect for the role of history and climate in shaping a nation's political structure. It was for his views on the English Constitution, which he saw in an overly idealized way, that he is perhaps most renowned.

In every government there are three sorts of power; the legislative; the executive, in respect to things dependent on the law of nations; and the executive, in regard to things that depend on the civil law.

By virtue of the first, the prince or magistrate enacts temporary or perpetual laws, and amends or abrogates those that have been already enacted. By the second, he makes peace or war, sends or receives embassies; establishes the public security, and provides against invasions. By the third, he punishes criminals, or determines the disputes that arise between individuals. The latter we shall call the judiciary power, and the other simply the executive power of the state...

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner.

Again, there is no liberty, if the power of judging be not separated from the legislative and executive powers. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor.

There would be an end of every thing were the same man, or the same body, whether of the nobles or of the people to exercise those three powers that of enacting laws, that of executing the public resolutions, and that of judging the crimes or differences of individuals...

Hence it is that many of the princes of Europe, whose aim has been levelled at arbitrary power, have constantly set out with uniting in their own persons, all the branches of magistracy, and all the great offices of state.

The executive power ought to be in the hands of a monarch; because this branch of government, which has always need of expedition, is better administered by one than by many: Whereas, whatever depends on the legislative power, is oftentimes better regulated by many than by a single person.

But if there was no monarch, and the executive power was committed to a certain number of persons selected from the legislative body, there would be an end then of liberty; by reason the two powers would be united, as the same persons would actually sometimes have, and would moreover be always able to have, a share in both...

The legislative body should not assemble of itself... It is fit therefore that the executive power should regulate the time of convening, as well as the duration of those assemblies, according to the circumstances and exigencies of state known to itself.

Were the executive power not to have a right of putting a stop to the encroachments of the legislative body, the latter would become despotic; for as it might arrogate to itself what authority it pleased, it would soon destroy all the other powers.

But it is not proper, on the other hand, that the legislative power should have a right to stop the executive. For as the execution has its natural limits, it is useless to confine it; besides, the executive power is generally employed in momentary operations. The power therefore of the Roman tribunes was faulty, as it put a stop not only to the legislation, but likewise to the execution itself; which was attended with infinite mischiefs.

But if the legislative power in a free government ought to have no right to stop the executive, it has a right, and ought to have the means of examining in what manner its laws have been executed; an advantage which this government has over that of Crete and Sparta, where the Cosmi and the Ephori gave no account of their administration.

But whatever may be the issue of that examination, the legislative body ought not to have a power of judging the person, nor of course the conduct of him who is intrusted with the executive power. His person should be sacred, because as it is necessary for the good of the state to prevent the legislative body from rendering themselves arbitrary, the moment he is accused or tried, there is an end of liberty.

To prevent the executive power from being able to oppress, it is requisite, that the armies, with which it is intrusted, should consist of the people, and have the same spirit as the people, as was the case at Rome, till the time of Marius. To obtain this end, there are only two ways, either that the persons employed in the army, should have sufficient property to answer for their conduct to their fellow subjects, and be enlisted only for a year, as customary at Rome: Or if there should be a standing army, composed chiefly of the most despicable part of the nation, the legislative power should have a right to disband them as soon as it pleased; the soldiers should live in common with the rest of the people; and no separate camp, barracks, or fortress, should be suffered.

When once an army is established, it ought not to depend immediately on the legislative, but on the executive power, and this from the very nature of the thing; its business consisting more in action than in deliberation...

Whoever shall read the admirable treatise of Tacitus on the manners of the Germans, will find that it is from them the English have borrowed the idea of their political government. This beautiful system was invented first in the woods.

As all human things have an end, the state we are speaking of will lose its liberty, it will perish. Have not Rome, Sparta, and Carthage perished? It will perish when the legislative power shall be more corrupted than the executive.

It is not my business to examine whether the English actually enjoy this liberty, or not. It is sufficient for my purpose to observe, that it is established by their laws; and I inquire no further.

Neither do I pretend by this to undervalue other governments, not to say that this extreme political liberty ought to give uneasiness to those who have only a moderate share of it. How should I have any such design, I who think that even the excess of reason is not always desirable, and that mankind generally find their account better in mediums than in extremes?

Lesson 4: Slavery and the Constitution

Rationale and Background

The legacy of slavery provides the final and most controversial “source of the Constitution” in the unit. Every unit on the Constitution should include a lesson on slavery. This one seeks to provide the essential background information that is often lacking due to the current Massachusetts Frameworks, which excludes colonial history from the high school US History I curriculum²³. [It is mandated in the Fifth Grade, but obviously with a lesser degree of depth and complexity²⁴.] Lively, well-presented lectures still have their place in history teaching, especially as preparation for college. This lesson, like most of the others in this unit, reflects a pedagogical balance of direct instruction with collaborative efforts and opportunities for individual effort and accountability. Some differentiated instruction is provided to accommodate students with auditory learning deficits or very slow processing speed.

National Standards

Era 2: Colonization and Settlement (1585-1763)

Standard 3A: The student understands colonial economic life and labor systems in the Americas.²⁵

Standard 3C: The student understands African life under slavery.²⁶

Historical Thinking Standard 5E: The student engages in historical issues-analysis and decision-making, therefore the student is able to formulate a position or course of action on an issue by identifying the nature of the problem, analyzing the underlying factors contributing to the problem, and choosing a plausible solution from a choice of carefully evaluated options.²⁷

Objectives

1. To better understand the development of the institution of slavery in America before 1787.
2. To develop sharper skills in listening and note-taking.
3. To analyze a defense of the Founders’ handling of the slavery issue at the Constitutional Convention.

Procedures

1. Lecture: Present the information in Handout 4A as a lecture with student note-taking.
2. Small group activity: Substantive and metacognitive review of note-taking.
 - Break the class into groups of 4-6 students, placing students with auditory or processing issues in different groups. Give copies of Handout 3A to each such student.
 - Have each group review each other’s notes with the goal of determining which items were most universally included.
 - Briefly discuss results of the activity as an entire class.
3. Individual reading: Handout 4B
4. Discussion: If time allows elicit reactions.
5. Extension (Homework): Students should write a three-paragraph essay providing an analysis and brief critique of the major arguments in Handout 4B, *The Issue of Slavery at the Constitutional Convention: The Founders Failure?*
6. Assessment: Evaluate the homework assignment using any preferred rubric.

7. Handout 4A

Slavery before the Constitution

Slavery stained the soul of America from its earliest origins. It remained as the original sin at the moment of the birth of the United States. Thomas Jefferson sought to partially expiate the sin with a clause in the Declaration of Independence that blamed the slave trade on George III, but this clause was excised from the final document. Four score and nine years later, the price to be paid was described as follows:

...American slavery is one of those offenses which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and [so] He gives to both North and South this terrible war as the woe due to those by whom the offense came [and] if God wills that it continue until all the wealth piled by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said "the judgments of the Lord are true and righteous altogether."

The 'terrible war' drew Abraham Lincoln's own last 'drop of blood' a month after he spoke these words. Was a cataclysmic end to the problem of slavery inevitable? Why did slavery have such a powerful hold on a country "dedicated to the proposition that all men are created equal"? Could the Founders have done a better job of promoting an earlier and less violent end to this evil institution? This essay will attempt to provide some perspectives on these questions.

In several ways, America appeared inhospitable to slavery. African slaves had largely disappeared in England and in the home countries of most European immigrants. Moreover, the British colonies in North America were, in most respects, more politically republican and socially egalitarian than even the mother country, which was itself the major European nation that had progressed furthest in protecting individual liberties. Many of the American colonists had crossed the Atlantic in search of greater political or religious freedom. The Puritans wished to establish a "Bible Commonwealth," in which civil law would reflect moral rectitude. After the establishment of Pennsylvania as a "Holy Experiment," the Quakers, early opponents of slavery, became a vocal minority in many colonies. These factors weighed against the establishment and growth of slavery.

On the other hand, the lure of slavery proved powerful. The "South Atlantic system" had brought tremendous wealth and power to the Spanish and Portuguese sugar colonies. Entrepreneurs in the British West Indies began to enjoy similar success on plantations operated by slave labor. From a global perspective, the introduction of slaves into North America was a minor offshoot of the massive forced migration of over eleven million Africans to the Caribbean and Brazil. In fact, much of the development of the Carolinas came, not from England, but from British colonists in Barbados who brought their slaves and closely replicated the harsh Caribbean model. South Carolina and later Georgia imported large numbers of slaves for rice plantations. Africans were especially well-suited to this endeavor because they had experience with rice cultivation on their native continent. Moreover, the humid rice marshes teemed with mosquitoes that caused malaria epidemics among white laborers, while African slaves possessed considerable genetic resistance (which also, unfortunately, made them and their descendants more susceptible to sickle cell anemia). Thus even aspects of geography and genetics conspired to make slavery attractive in the two southernmost colonies, where the roots of slavery grew deepest.

In the Chesapeake region slavery also proved economically profitable during the colonial era, mainly on tobacco plantations. In this region the less harsh treatment and somewhat better diets of the slaves led to a natural increase in their numbers, which was quickly perceived as a potential source of wealth in and of itself. This increased the demand for female slaves. Thomas Jefferson noted that "A

woman who brings a child every two years [is] more valuable than the best man on the farm for what she produces is an addition to the capital.” Jefferson may have had a more personal and direct responsibility for some of the ‘addition to capital’ on his own plantation as suggested by the Sally Hemings controversy. Whether or not the allegation against Jefferson is true, the opportunity for sexual exploitation of slaves was, for some whites, an aspect of the social appeal of the institution. An even broader social aspect stemmed from the enhanced esteem enjoyed by non-slaveholding whites, whose status and sense of superiority was bolstered by the existence of the slave underclass. As a matter of course, these social advantages translated into some measure of economic and political advantage, as well. This was true not only in the Chesapeake region, but throughout the thirteen colonies.

Throughout all those colonies slavery remained a pervasive and powerful force for the entire colonial era. “Slavery was a fundamental, acceptable, thoroughly American institution.” (Faragher, *Out of Many*, p.105) It remained legal in all thirteen colonies, even through the republican exuberance of the Revolution and the Confederation. As late as the Constitutional Convention, slavery had been banned only in Massachusetts and there by judicial fiat, not through legislation. Slaves comprised some 15-20% of the population of Northern cities like Boston and New York. Even in areas with few slaves, the institution brought considerable wealth to some. Even before the eighteenth century alliance between “the lords of the lash and the lords of the loom,” Northerners drew substantial profit from the institution. The triangular trade delivered benefits to fisherman and farmers whose products fed slaves in the South and the Caribbean, rum distillers, shipwrights, sailors, and innumerable others. The “middle passage” of this triangle, the importing of slaves (mostly to the West Indies), proved to be an especially lucrative enterprise for some Rhode Islanders. The reach of the South Atlantic System extended far into the interior of the continent. Flour from farms far up the Hudson River found its way to plantations in the West Indies.

“Slavery was a national institution, and nearly every white American, directly or indirectly, benefited from it. By 1776, however, nearly every American leader knew that its continued existence violated everything the Revolution was about.” (Wood, p.57)

The Revolutionary and Confederation periods saw some limited action against slavery. Although the final draft of Declaration of Independence had failed to include Jefferson’s “execrable commerce” clause, both the First and Second Continental Congresses proscribed the importation of slaves during the war. This, however, “was primarily economic rather than a recognition of the evils of slavery.” (Kaminski, p. 4) The Virginia Declaration of Rights pronounced, “That all men are by nature free and equal,” a sentiment echoed in Jefferson’s national declaration and in various Declarations of Rights by several states. The Massachusetts version proved especially noteworthy as the legal basis for a judicial order emancipating all slaves in the state in 1783 (and the basis for legalizing same-sex marriages in 2004.) Under the Confederation, Congress effected the Northwest Ordinance, which banned slavery in the lands north of the Ohio River. Yet most Americans of that time shared the prejudices of Thomas Jefferson and (later) Abraham Lincoln, both of whom thought the races unequal and doubted that they could be harmoniously integrated after emancipation. Moreover, Eli Whitney’s “gin,” and Samuel Slater’s mill would not arrive on the scene until 1793. Unable to foresee the impending national power of cotton, many of the Founders thought that slavery was on the road to extinction.

The Issue of Slavery at the Constitutional Convention: The Founders Failure?

Some of the most serious indictments of the Founders' failure to deal effectively with slavery stem from their decisions at the Constitutional Convention in 1787. A modern eye tends to perceive this event as an opportunity for the country to reassert its core principles and to move toward limiting or, at least, discouraging the sin of slavery. In its Preamble, its mode of ratification, and in many of its key features, the Constitution did take substantial, effective steps toward guaranteeing republican principles. Yet, with respect to the most obvious American evil, not only did the Constitution fail to discourage slavery, it actually protected and nurtured it. The three most glaring examples were the slave trade clause, the three fifths clause, and the fugitive slave clause.

The debates over slave trade clause (Article I, Section 9) and its exemption from possible amendment (Article V) show not only the divisions between North and South, but between the Chesapeake and the Deep South. James Madison scribbled in his personal notes of the Constitutional Convention: "It seemed now to be pretty well understood that the real difference of interest lay, not between the large and small but between the N. and Southn. States. The institution of slavery and its consequences formed a line of distinction." Nevertheless, the delegates from the Northern states and those from the slaveholding states of the Chesapeake, notably Virginia, were united in their opposition to the continued importation of slaves. Northern opposition arose mainly from morality and principle, while the Virginians had a financial interest in eliminating foreign competition for their surplus slaves, which would considerably increase their value. In the end, however, the same two states that had torpedoed the anti-slavery clause in 1776, South Carolina and Georgia, also remained intransigent at the Philadelphia convention. The resultant compromise banned Congress from interfering with the slave trade until 1808. Opponents of the trade took solace in the prospect of Congress abolishing the trade after twenty years and used that rather specious argument in debates at ratifying conventions like that in Massachusetts:

On the other side gentlemen said, that the step taken in this article, towards the abolition of slavery, was one of the great beauties of this Constitution. They observed that in the confederation there was no provision whatever for its being abolished; but this constitution provides, that congress may, after twenty years, totally annihilate the slave trade; and that all the states, except two, have passed laws to this effect, it might be reasonably expected, that it would be done. (in Kaminski, p. 89)

Congress did, in fact, ban the foreign slave trade in 1808, but smuggling continued, resulting in the importation of over 10,000 slaves per annum by 1815.

The origins of the three fifths clause (Article I, Section 2) help explain the Founders thinking. The counting of slaves at the fraction of three fifths was rooted in the attempt to establish equitable tax burdens for the states under the Articles of Confederation. For the sake of simplicity, labor had been decided as the determinant of wealth (and thus the ability to pay taxes) and slaves were adjudged to be only about 60% as productive as free laborers. A head count of population would thus yield the fair share of taxes for each state. This formula had been approved by eleven of the thirteen states and became the accepted standard, often termed the "federal ratio." Under the Articles, the fraction had no relevance for representation, since all states, big and small, had a single vote in the Congress. The new Constitution sought to create a more equitable system, however.

The modern observer, looking back through the lens of 200 years of increased democracy, would logically interpret the relationship between population and representation in the modern, democratic "one person, one vote" sense. According to this view, slaves should have been counted as five fifths, like everyone else, or as no fifths, since their interests were clearly not being represented. The latter

accounting would have prevented the cascade of slavery-promoting effects described in *America's Constitution: A Biography*. Some at the convention, such as Gouverneur Morris, took strong anti-slavery positions. Yet for most of the delegates in Philadelphia in 1787 (including Morris) "democracy" was an abomination that substituted crass material interests for the civic virtue and high-minded purpose of an ideal republic. Their greater concern was for property rights, which desperately needed protection. In the debate at the Convention, Pierce Butler argued for wealth (including slaves) as the proper measure of representation in "a Government that was instituted primarily for the protection of property and was itself to be supported by property." (in Kaminski p. 50) William Samuel Johnson of Connecticut asserted "that wealth and population were the true, equitable rules of representation; but he conceived that these two principles resolved themselves into one." (in Kaminski, p.52) He then called for a committee to be formed to study and resolve "the computation." That committee reported out the three fifths rule. The vote of approval was not close: 6 states to 2 with 2 divided.

In evaluating the Framers decisions on slavery, their paramount objectives must be considered first. Slavery was not their major concern. First and foremost, they sought to create a truly united nation, "a more perfect union" in the face of serious threats from within and abroad. In the slave trade debate, Charles Pinckney asserted that he "should consider a rejection of the clause as an exclusion of South Carolina from the Union." (in Kaminski, p.60) Thus, when faced with either protecting the slave trade or losing South Carolina and probably Georgia, the choice was easy. These states were quite different from the recalcitrant Rhode Island; without these states the geographical integrity of the country would be sacrificed in a very vulnerable location, next to Spanish Florida. Moreover, it was unlikely that there would be a Union at all, for without these states' approval the Federalists would probably fall short of the nine votes required for ratification.

A second goal and related goal was to secure property rights. This involved protecting the vital interests of disparate sections of the country, such that those sections could feel comfortable in joining the new constitutional Union. James Madison, often called the Father of the Constitution, "felt that the interests of both slave states and non-slave states needed to be protected." (in Kaminski, p.42) The decision to do this was clearly the justification for the three fifths compromise and the fugitive slave proviso, as well. In fact, the deliberations on that latter clause (Article IV, Sec. 2) clearly show a clear consensus among the delegates for protecting all forms of property, even slaves. The measure received minimal debate and was approved *nemine contradicente* (no one contradicting.) The delegates decisions follow the realpolitik of John Rutledge, who stated that "Religion and humanity had nothing to do with [the slavery] question. Interest alone is the governing principle with nations." (in Kaminski, p.58)

Thus the sin was not a sin or, if it was, it was irrelevant to the more crucial goal of binding the nation together. In the beginning and in the end, in 1776 and in 1865, for Jefferson and for Lincoln, the issue was the same: slavery vs. union. The needed glue had a foul odor. If South Carolina had never joined the Union in 1788, she could never have seceded in 1861. There could have been no 'terrible war' if there had never been a truly united nation. This was a price that the Founders were unwilling to pay. The Great Emancipator himself said,

If I could free all the slaves and preserve the Union I would do that. If I could free none of the slaves and preserve the Union I would do that. If I could free some slaves and leave others in place and save the Union, I would do that also.

The founding generation should not be bound to a higher calling or held to a higher standard.

Endnotes

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- ¹Massachusetts History and Social Science Curriculum Frameworks, <http://www.doemass.org/frameworks/hss/final.pdf>, 65
- ² National History Standards (content), http://www.educationworld.com/standards/national/soc_sci/us_history/5_12.shtml
- ³ National History Standards (historical thinking) <http://nchs.ucla.edu/standards/thinking5-12-1.html>
- ⁴ National Geography Standards, http://www.educationworld.com/standards/national/soc_sci/geography/k_12.shtml
- ⁵ Danzer, Gerald A., et al. *The Americans* (Evanston, IL, McDougal Littell, 2007), 165
- ⁶ *The Documentary History of the Ratification of the Constitution*. Vol. XIII-XIV. Ed. John P. Kaminski and Gaspare J. Saladino. Madison: State Historical Society of Wisconsin, 1981. A timeline appears on pp. xl-xlii in vol. XIII. All events on this timeline appear in this resource.
- ⁷Massachusetts History and Social Science Curriculum Frameworks, 67
- ⁸ As elaborated by Carol Berkin in her TAH lecture of 7/27/10.
- ⁹ As described by Richard Bernstein in his TAH lectures of 7/20/10 and 7/21/10.
- ¹⁰ National History Standards (content), http://www.educationworld.com/standards/national/soc_sci/us_history/5_12.shtml
- ¹¹National History Standards (Historical thinking), <http://nchs.ucla.edu/standards/thinking5-12-3.html>
- ¹² Ibid, <http://nchs.ucla.edu/standards/thinking5-12-4.html>
- ¹³ Aristotle, *Politics/Poetics*, Book Three, Part VII, translation by Benjamin Jowett and Thomas Twining, published in *The World's Greatest Classics*, (New York: Grolier Incorporated) 94-95.
- ¹⁴ From Michael Kammen, ed., *The Origins of the American Constitution: A Documentary History* (New York: Penguin Books, 1986).
- ¹⁵ Staloff, Darren, *Hamilton, Adams, Jefferson: The Politics of the Enlightenment and the American Founding* (New York, Hill and Wang, 2005), 78
- ¹⁶ National History Standards (content), http://www.educationworld.com/standards/national/soc_sci/us_history/5_12.shtml
- ¹⁷National History Standards (Historical thinking), <http://nchs.ucla.edu/standards/thinking5-12-3.html>
- ¹⁸ Ibid, <http://nchs.ucla.edu/standards/thinking5-12-4.html>
- ¹⁹ <http://www.polk-fl.net/staff/teachers/tah/documents/turningpoints/documentquestions/a-LockesSocialContract-Deiches.pdf>
- ²⁰ http://www.archives.gov/exhibits/charters/declaration_transcript.html
- ²¹ <http://www.anesi.com/q0033.htm>
- ²² <http://www.fordham.edu/halsall/mod/montesquieu-spirit.html>

²³ Massachusetts Curriculum Frameworks, <http://www.doemass.org/frameworks/hss/final.pdf>, 64

²⁴ Ibid, 27

²⁵ National History Standards (content), http://www.educationworld.com/standards/national/soc_sci/us_history/5_12.shtml

²⁶ Ibid

²⁷ National History Standards (Historical Thinking), <http://nchs.ucla.edu/standards/thinking5-12-5.html>