

Athol Mass Sept 8, 1844

Sir,

I am induced to take the liberty of addressing you, by reason of having seen your letter to Mr. Whittier of 18<sup>th</sup> July.

I am very well convinced that slavery neither has, nor ever had, any constitutional existence in this country. That it has always been a mere abuse, practised by the strongest party, in defiance of that declared constitutional principles of their governments – and that the judiciary are bound to abolish it.

Under the colonial governments it was unconstitutional, if all the colonial charters were like those I have examined– for those charters required the legislation of the colonies to be conformable, as nearly as circumstances would allow, to the common law of England. The common law of England repudiates slavery, and I see no reason why the decision in Somerset's case should not have freed every slave in this country, if the question had then been raised here.

I have never seen the evidence that England “imposed slavery on the colonies,” as is so frequently asserted. She suffered the slave trade to be carried on unchecked by legislation. Did she ever do more? I cannot answer this question with certainty, not having had an opportunity to examine the English statutes. But if she did nothing more than this tolerate the trade, that toleration alone could not legislate slavery in the colonies– especially in defiance of the colonial charters. And it is doubtful even whether parliament could– or perhaps rather it is certain that they could no – have passed any act that would have legislated slavery in the colonies, unless with the consent of the colonies themselves.

Supposing then all the colonial charters to have been such as I have presumed they were and supposing parliament never to have passed any laws legalizing slavery, or enforcing it upon the colonies – and there was no constitutional slavery in the country up to the time of the revolution.

But even supposing that slavery were consistent with, or even authorized by, the colonial charters, or acts of parliament, was it not abolished by the Declaration of Independence? The Declaration was certainly the constitutional law of this country for certain purposes. e.g. it absolved the people from their allegiance to the crown. And if it were constitutional law for that purpose, was it not constitutional law also for the purpose of establishing the natural right of all men to life, liberty and the pursuit of happiness? I do not assert that it was; but the question admits of argument.

Supposing then either that slavery had never had any constitutional authority previous to '76, or that it was then abolished by the Declaration of Independence – what next? The early state constitutions – those formed between '76 and '89, all, so far as I have examined, failed to

establish slavery, unless it could be established, (as I contend it could not be), without using language that was explicit and peremptory. I think it will be found that all state constitutions, in which slavery was distinctly avowed, have been established since 1789. If such be the fact, then there was no constitutional slavery up to the adoption of the constitution of the United States.

The constitution of the United States– taken by itself– is certainly a free constitution for all “the people” and “persons” of the United States. However, we may suppose that then existed, they clearly cannot be said to have established it. Nor can they be said even to have recognized slavery as a constitutional institution, if it be shown, (as I have supposed it can be), that slavery then had no bona fide constitutional existence by the state constitutions.

If then the state constitutions previous to '89 were free constitutions, and if the constitution of the United States be also a free constitution, it is clear that all the slave constitutions since adopted by the states are void, so far as slavery is concerned. For certainly the states cannot enslave those that are free by the United States constitution. A state cannot enslave a citizen of the United States.

Besides the foregoing, there are many other very important, and some, as I think, conclusive arguments, which I have never seen in point. While those that are commonly urged, would, it seems to me, be immeasurably strengthened, and even their necessity almost superseded, by those I have suggested, if these latter are sound.

To bring out all the principles that support liberty, and to do away with all the plausible implications and assumptions by which slavery is at present upheld, would require a strongest application of legal rules of interpretation— such as might perhaps properly be denominated quibbling, if employed to defend the wrong, but which are perfectly legitimate when employed to defend the right.

I have had it in my mind for years to write an argument on this subject, and, as opportunity has permitted, have accumulated facts and arguments bearing upon it. But several long absences in the west, combined with poverty and a want of access to the necessary references have thus far prevented the accomplishment of the design.

My motive in now addressing you, is to offer to undertake a thorough examination of the question and to write the best argument upon the subject that I may be capable of, provided I can have the means furnished me of paying my current expenses while doing it. It would probably employ me for three months. It would be necessary for me to go to Boston or New York, where I could have access to all necessary books. These expense would probably be \$150. I have myself no property whatever. I have thought it probable you would furnish me the means, if you could be satisfied of my competency to do justice to the subject. To enable you to judge on this point, I send you herewith a pamphlet of mine on the “Unconstitutionality of the Laws of Congress Prohibiting Private Mails.” This pamphlet has been the foundation of the present agitation of the constitutionality of the Post Office laws – and especially of the proceedings of the American Letter Mail Company, of which, for some months n the commencement I had the direction. I also send herewith a pamphlet of mine, entitled “Constitutional Law relative to Credit, Currency and Banking.”

As to my respectability, you are at liberty to refer to Ex. Gov. John Davis, with whom I read law a part of my term— also to Charles Allen, one of the Judges of our Common Pleas, with whom also I read law three years – also to Pliny Merrick, one of our Judges of Common Pleas, who has known me for many years. These gentlemen all reside in Worcester Mass.

The Rev. Mr. Chipman of this town, desirous of having me enabled to accomplish this object, has written a letter to President Green of the Oneida Institute, with whom he is acquainted, authorizing him to inform you that I am the author of the pamphlets sent.

Should you feel interested in the matter, I should feel obliged by an early answer. I am stopping here for a short time with my friends – but must engage in some employment immediately— and cannot promise to be at leisure to undertake the work unless I have an early answer.

If you feel no interest in the matter, you will please pardon the liberty I have taken in addressing you.

Very respectfully, your Obedient Servant,

Lysander Spooner

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